

DISPOSITION AND DEVELOPMENT AGREEMENT
(Seacoast Inn)

by and between

IMPERIAL BEACH REDEVELOPMENT AGENCY,

and

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

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DISPOSITION AND DEVELOPMENT AGREEMENT

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

PART 1. SUBJECT OF AGREEMENT

SECTION 101 Purpose of the Agreement

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

SECTION 102 Definitions

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

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

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

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

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

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

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

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

“City” means the City of Imperial Beach, California.

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

“Closing Date” means the date on which the Closing has occurred.

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

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

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

“Construction Loan Deed of Trust” means the deed of trust securing the Construction Loan.

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

“Declaration of CC&Rs” means the Declaration of CC&Rs substantially in form attached hereto as Attachment No. 18.

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

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

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

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

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

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

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

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

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

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

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

“Improvements” means the improvements more particularly described in the Scope of Development.

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

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

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

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

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

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

“Method of Financing” means Attachment No. 3 to this Agreement.

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

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

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

“Pedestrian and Vehicular Access Easement Agreement” means the Pedestrian and Vehicular Access Easement Agreement recorded on _____, 2010 in the San Diego County Recorder’s Office as Document No. 2010-_____.

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

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

“Permanent Loan Deed of Trust” means the deed of trust securing the Permanent Loan.

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

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

“Permitted Transfer” means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Resort Covenants" means those Resort Covenants in form by the City and Agency prior to recordation.

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

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

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

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

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

“Temporary Encroachment Permit” means the Temporary Encroachment Permit recorded on _____, 2010 in the San Diego County Recorder’s Office as Document No. 2010-_____.

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

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

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

SECTION 103 The Redevelopment Plan

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

SECTION 104 The Property

The “Property” is located at 800 Seacoast Drive, in the City of Imperial Beach, California. The Property is depicted on the Site Map attached hereto as Attachment No. 1. The legal description of the Property is set forth in the Legal Description attached hereto as Attachment No. 2. In the event that Developer subdivides the Property into a vertical subdivision, each parcel within the vertical subdivision shall be subject to the rights and

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

SECTION 105 Agency

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

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

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

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

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

SECTION 106 Developer

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 201 Agency's Purchase of the Property from Developer

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

SECTION 202 Agency's Lease of the Property to Developer

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

SECTION 202.1 Option to Purchase Leasehold

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

SECTION 202.2 Agency Purchase of Plans

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

SECTION 203 Reimbursement for Public Improvements

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

(\$885,797.00)(“Reimbursement Amount”). The Agency’s reimbursement shall occur in accordance with the Disbursement Agreement.

SECTION 204 Conditions Precedent to Agency Subsidy

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

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

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

- a. Limited Partnerships. The limited partnership agreement (but only with respect to whether such limited partnership agreement is consistent with this Agreement) has been approved by the Executive Director.
- b. Title Insurance Policies. The Title Company shall be committed to issue the Agency’s Title Policy in accordance with Section 209, herein.
- c. Final Construction Drawings. Developer shall have submitted and Agency shall have approved Final Construction Drawings for all Improvements, in accordance with Section 305, herein.
- d. Project Budget. Developer shall have delivered to the Agency final revisions to the Project Budget, which have been approved by the Executive Director and certified by Developer’s Construction Lender, demonstrating to the satisfaction of the Agency the availability of sufficient funds to pay all Acquisition and Development Costs (“Final Project Budget”).
- e. Construction Contract. Developer shall have delivered to the Agency a general construction contract between the Developer and a licensed general contractor, covering all construction required by this Agreement and the approved Final Construction Drawings, in an amount that is consistent with the Final Project Budget, together with a construction schedule showing a detailed trade-by-trade breakdown of the estimated periods of commencement and completion of construction and complete fixturization of the Project, and demonstrating that construction will be completed

within the time provided in the Schedule of Performance.

- f. Evidence of Financing. Developer shall have submitted and the Executive Director shall have approved evidence relating to all Sources of Financing, and all documents required to be executed in connection with such financing shall have been duly executed, acknowledged and delivered. Such evidence shall include:
 - (1) a copy of all loan documents relating to the Construction Loan, certified by Developer to be a true and correct copy or copies thereof;
 - (2) a copy of any other financing commitments evidencing that Developer has obtained the financing necessary for the acquisition and development of the Property in accordance with this Agreement, certified by Developer to be a true and correct copy or copies thereof.
- g. Insurance. Developer shall have submitted to the Agency evidence of the insurance policies required by Section 309, herein.
- h. Permits. Developer shall have delivered to the Agency a list of all permits required for the construction of the Improvements including, without limitation, the Pedestrian and Vehicular Access Easement Agreement and the Temporary Encroachment Permit, and shall have demonstrated that all variances, entitlements and approvals have been obtained and that all conditions for the issuance of all necessary permits have been satisfied (with the exception of payment of fees, which payment is provided for in the approved Project Budget).
- i. Developer's Formation Documents. Developer shall have delivered documentation relating to the corporate, partnership, limited liability or other similar status of Developer and its general partner(s), including, without limitation and as applicable: limited partnership agreements and any amendments thereto; articles of incorporation; Limited Liability Company Articles of Incorporation (LLC-1); Statement of Information and Operating Agreement (including any amendments thereto); copies of all resolutions or other necessary actions taken by such entity to authorize the execution of this Agreement and related documents; a certificate of status issued by the California Secretary of State; and a copy of any Fictitious Business Name Statement, if any, as published and filed with the Clerk of San Diego County.
- j. Recording Instructions. Escrow Agent shall have approved such supplemental recording instructions as may have been prepared on behalf of the Agency.
- k. Documents. Agency, Developer and/or other parties, as appropriate, shall have executed, and filed or recorded as appropriate, the following

documents:

- (1) Grant Deed (Attachment No. 7), to be signed and acknowledged by Agency and Developer;
 - (2) Ground Lease (Attachment No. 10) and Memorandum of Ground Lease (Attachment No. 10A), to be signed and acknowledged by Agency and Developer;
 - (3) Attornment Agreement (Attachment No. 12), to be signed and acknowledged the Construction Lender;
 - (4) Environmental Indemnity (Attachment No. 8), to be signed by Developer;
 - (5) Disbursement Agreement (Attachment No. 9), to be signed by Agency, Developer, and the Construction Lender;
 - (6) Option to Purchase Leasehold Interest (Attachment No. 11) and Memorandum of Option to Purchase Leasehold Interest (Attachment No.11A), to be signed and acknowledged by Agency and Developer;
 - (7) Guaranty Agreement (Attachment No. 15), to be signed and acknowledged by Ashok Israni; and
 - (8) Assignment of Agreements (Attachment No. 17), to be signed by Developer.
 - (9) Declaration of CC&Rs (Attachment No. 18), to be signed and acknowledged by Developer.
- l. Current Payment of In-Lieu TOT. Developer shall have paid, by cashier's check or money order, all in-lieu transient occupancy taxes owed to the City, at the rate of \$6,666 per month, beginning from the City's issuance of Developer's demolition permit for the Project through the date of Closing.
- m. Current Payment of Fees. Developer shall have paid all City's/Agency's staff, consultant, and legal fees to negotiate, draft, and process this Agreement, in accordance with Section 3(f) of the Memorandum of Understanding by and among the City, Agency and Developer, dated April 21, 2010 ("Agency Fees"). If Developer has made any partial payments of Agency Fees, Developer shall pay, as a condition to Closing, any outstanding amounts of Agency Fees invoiced to Developer prior to Closing.

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

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

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

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

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

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

SECTION 205 Escrow

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

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

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

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

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

- a. Escrow fee;
- b. Recording fees;
- c. Notary fees;
- d. Premiums for the Title Insurance ordered by Agency and Developer as set forth in Section 209 of this Agreement.
- e. Costs necessary to place the title in the condition required by the provisions of this Agreement;

- g. Ad valorem taxes and any other taxes, assessments or impositions of any kind, if any, attributable to the Property prior to conveyance of the Leasehold.
- h. State, county, city or other documentary stamps and transfer taxes, if any.

The Escrow Agent is authorized to:

1. Pay, and charge Agency and Developer, respectively, for any fees, charges and costs payable under this Section 205. Before such payments are made, the Escrow Agent shall notify Developer of such fees, charges and costs;
2. Disburse funds and deliver all documents to the parties entitled thereto when the conditions of the escrow have been fulfilled by Agency and Developer; and
3. Record any instruments delivered through the escrow if necessary or proper to vest the applicable interests in Developer and Agency in accordance with the terms and provisions of this Agreement.

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

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

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

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

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

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

SECTION 206 Recordation of Documents

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

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

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

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

c. Developer shall record the Declaration of CC&Rs against the Leasehold at Closing, unless otherwise agreed to, in writing, by Agency. Developer shall record the Resort Covenants against the Leasehold prior to issuance of the Certificate of Occupancy for the Project and as a condition to the Agency’s issuance of a Release of Construction Covenants in accordance with Section 324, herein. The Resort Covenants shall, at a minimum, contain all of the following provisions:

(i) language mirroring Section 13.8 of the Declaration of CC&Rs regarding collection of transient occupancy taxes (“TOT”);

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

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

Developer shall obtain Agency’s written approval of the form and content of the Resort Covenants prior to recordation. The Agency’s review of the Resort Covenants shall include, but is not limited to, a comparison of the Resort Covenants with the Development Agreement and this Agreement (including all attachments) to ensure consistency amongst these documents. The

Agency shall not unreasonably withhold such approval. Any changes in form or content to the Declaration of CC&Rs prior to recordation shall be subject to Agency's written approval.

SECTION 207 Possession of Leasehold Upon Close of Escrow

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

SECTION 208 Condition of Title

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

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

SECTION 209 Title Insurance

SECTION 209.1 Agency's Title Insurance

Concurrently with the recordation of the Grant Deed, Title Company shall provide and deliver to Agency a 2006 ALTA owner's policy of Title Insurance, issued by the Title Company, insuring that the fee interest of the Property is vested in Agency in the condition required by Section 208 of this Agreement, together with any endorsements as the Agency may reasonably require ("Agency's Title Policy"). The Title Company shall provide Agency and Developer with a copy of the Agency's Title Policy. The Agency's Title Policy shall be in the amount of the Purchase Price. If Title Company is unable or unwilling to deliver the Agency's Title Policy consistent with the provisions of this Agreement, then in addition to any other rights or remedies of Agency, Agency may terminate this Agreement pursuant to Section 510.

SECTION 209.2 Leasehold Title Policy

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

SECTION 210 Notice of Possessory Interest; Payment of Taxes and Assessments

on Value of Entire Property

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

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

SECTION 211 Contests

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

b. Developer agrees that any such permitted proceedings shall be begun without undue delay after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch. Developer shall give Agency prompt notice in writing of any such contest at least ten (10) days before filing any contests. Developer may only exercise its right to contest an imposition hereunder if the subject legal proceedings shall operate to prevent the collection of the imposition so contested, or the sale of the Property, or any part thereof, to satisfy the same, and only if Developer shall, prior to the date such imposition is due and payable, have given such reasonable security as may be required by Agency from time to time in order to insure the payment of such imposition to prevent any sale, foreclosure or forfeiture of the Property, or any part thereof, by reason of such nonpayment. In the event of any such contest and the final determination thereof adversely to Developer, Developer shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Developer and, after such payment and discharge by Developer, Agency will promptly return to Developer such security as Agency shall have received in connection with such contest.

c. Agency shall cooperate reasonably in any such contest permitted by this Section 211, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Developer shall be prosecuted by Developer at Developer's sole cost and

expense; and Developer shall indemnify and save harmless Agency against any and all loss, cost or expense of any kind, including, but not limited to, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by Agency in connection therewith.

SECTION 212 Condition of the Property

SECTION 212.1 Hazardous Substances

a. "Hazardous Substance," as used in this Agreement means any substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including, without limitation, any material, substance or waste which is (i) defined as a "hazardous waste," "acutely hazardous waste," "restricted hazardous waste," or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code; (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code; (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code; (v) petroleum; (vi) asbestos; (vii) a polychlorinated biphenyl; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20; (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (xi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as "hazardous" or is harmful to the environment or capable of posing a risk of injury to public health and safety. "Hazardous Substances" do not include materials customarily used in the construction, development, operation or maintenance of real estate, provided such substances are used in accordance with all laws.

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

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

SECTION 212.2 Suitability of the Property

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

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

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

d. On and after the Effective Date of this Agreement, Developer hereby waives, releases and discharges the Agency, the City and their respective members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys’ fees) arising out of or in any way connected with the use, maintenance, ownership or operation of the Property or any portion thereof, any Hazardous Substances on the Property, or the existence of Hazardous Substances contamination in any state on the Property, however the Hazardous Substances came to be placed there, except that arising out of the gross negligence or willful misconduct of the Agency or its employees, officers or agents. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

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

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

SECTION 213 Method of Financing

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

SECTION 214 Evidence of Financing

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

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

SECTION 215 Reserved

SECTION 216 Designation as Point of Sale

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

PART 3. DEVELOPMENT OF THE PROPERTY

SECTION 301 Land Use Approvals

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

profits from the development of the Property, or (d) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864.

SECTION 302 Scope of Development

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

SECTION 303 Basic Concept Drawings

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

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

SECTION 304 Landscaping and Grading Plans

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

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

SECTION 305 Construction Drawings and Related Documents

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

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

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

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

SECTION 306 Agency Approval of Plans

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

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

SECTION 307 Cost of Construction

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

SECTION 308 Schedule of Performance

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

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

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

SECTION 309 Indemnification and Insurance

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

1. The existence, release, presence or disposal on, in, or under the Property of any Hazardous Substances resulting from the acts or omissions of Developer, its contractors, subcontractors, agents or other persons acting on Developer's behalf (individually, "Indemnifying Party," and collectively, "Indemnifying Parties");
2. The development, construction, marketing, use, operation or condition of the Property and the Improvements by any Indemnifying Party;
3. Any accident, personal injury or casualty on the Property or the Improvements resulting from the acts or omissions of any Indemnifying Party;
4. Any plans or designs for Improvements (collectively, "Plans") prepared by or on behalf of any Indemnifying Party, including without limitation any errors or omissions with respect to such plans or designs, except in the event that (i) none of the Indemnifying Parties develops the Property pursuant to this Agreement, and (ii) upon assignment of the Plans to Agency, Agency uses the Plans or causes such Plans to be used to develop the Property;

5. Any loss or damage to Agency resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any breach or default by Developer, under this Agreement; and
6. Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits for the Improvements by the City or the Agency.

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

b. Insurance Policies.

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

(a) All-Risk Policies: Developer shall maintain or cause to be maintained coverage of the type now known as builder’s completed value risk insurance, as delineated on an All Risk Builder’s Risk 100% Value Non-Reporting Form. Such insurance shall insure against direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance, excluding earthquake(s). Such policy shall include (1) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (2) a “Replacement Cost Endorsement” in amount sufficient to prevent Developer from becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by Agency, and (3) an endorsement to include coverage for budgeted soft costs. The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property, or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding \$25,000 per occurrence;

(b) Liability Insurance: Developer shall maintain or cause to be maintained general liability insurance or an equivalent owner contractors protective policy, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of Developer on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Developer, or any person acting for Developer, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Developer or its tenants, or any person

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

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

(d) Workers' Compensation Insurance: Developer shall maintain or cause to be maintained workers' compensation insurance, if required, for any employees of Developer, issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Developer in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Developer. Notwithstanding the foregoing, Developer may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Developer shall deliver to Agency evidence that such self-insurance has been approved by the appropriate State authorities.

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

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

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

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

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

SECTION 310 Nondiscrimination

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

SECTION 311 Local, State and Federal Laws

The Developer shall carry out development and construction (as defined by applicable law) of the Improvements on the Property, including, without limitation, any and all public works, (as defined by applicable law), if any, in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any applicable requirement to pay state prevailing wages). Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby agrees that Developer shall have the obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer shall indemnify, protect, defend and hold harmless the Agency, City, and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Agency and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development and/or construction (as defined by applicable law) of the Improvements, including, without limitation, any and all public works (if any) (as defined by applicable law), results or

arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Chapter 804, Statutes of 2003; (3) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (4) failure by Developer to provide any required disclosure representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (5) failure by Developer to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby expressly acknowledges and agrees that neither City nor Agency has ever previously affirmatively represented to the Developer or its contractor(s) for the Improvements in writing or otherwise, that the work to be covered by the bid or contract is not a “public work,” as defined in Section 1720 of the Labor Code. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law) of the Improvements, including, without limitation, any public work (as defined by applicable law), if any, Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Chapter 804, Statutes of 2003 and/or Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. “Increased costs” as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion and the recordation of the Release of Construction Covenants.

SECTION 312 Notice of Non-Responsibility

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

SECTION 313 Permits

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

SECTION 314 Rights of Access

Commencing upon the Closing, representatives of the Agency and the City shall have the reasonable right of access to the Property, upon 24 hours' written notice to Developer (except in the case of an emergency, in which case Agency shall provide such notice as may be practical under the circumstances), without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency.

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

SECTION 315 Disclaimer of Responsibility by Agency

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

SECTION 316 Taxes, Assessments, Encumbrances and Liens

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

SECTION 317 Reserved.

SECTION 318 No Encumbrances Except Permitted Mortgages

a. Notwithstanding Section 107, upon and after the Closing, Developer shall have the right to encumber the Leasehold with a Permitted Mortgage, but only for the purpose of securing loans of funds to be used for financing and refinancing the Acquisition and Development Costs and other expenditures necessary and appropriate to develop the Property under this

Agreement, consistent with the amounts to be financed by Developer per the Method of Financing (“Permitted Financing Purposes”). Developer has no authority to encumber the Agency’s fee interest in the Property at any time and for any purpose, whatsoever. The maker of any loan approved by the Agency pursuant to this Section 318 shall not be bound by any amendment, implementation agreement or modification to this Agreement subsequent to its approval without such lender giving its prior written consent.

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

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

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

SECTION 319 Lender Not Obligated to Construct Improvements

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

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

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

Agreement, shall have the right to undertake or continue the construction or completion of the Improvements upon execution of a written agreement with the Agency by which such Permitted Mortgagee expressly assumes Developer's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by Agency. Any such Permitted Mortgagee properly completing such improvements shall be entitled, upon written request made to the Agency, to a Release of Construction Covenants from the Agency.

SECTION 321 Failure of Lender to Complete Improvements

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

SECTION 322 Right of the Agency to Cure Defaults

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

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

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

SECTION 324 Release of Construction Covenants

a. Promptly after Completion of the Improvements as required by this Agreement, and subject to (i) Developer's provision to Agency of a copy of the Resort Covenants conformed as an Official Record and (ii) compliance of the Resort Covenants with Section 206(c), herein, Agency shall deliver to Developer a Release of Construction Covenants, upon written request therefor by Developer. The Agency's issuance of the Release of Construction Covenant shall signify Developer's satisfaction of Sections 302 - 308 of this Agreement. The Agency shall not unreasonably withhold any such Release of Construction Covenants. Such Release of

Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of the Scope of Development required by this Agreement.

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

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

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

PART 4. USE OF THE PROPERTY

SECTION 401 Uses

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

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

- a) The Hotel shall contain an on-site, full service (sit down) three-meal restaurant and lounge.
- b) The Hotel shall have at least one swimming pool.
- c) The Hotel shall have a fully-equipped exercise room/fitness center.
- d) The Hotel shall have a business center.

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

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

SECTION 402 Maintenance

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

SECTION 403 Obligation to Refrain from Discrimination

Developer covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.

SECTION 404 Form of Nondiscrimination and Nonsegregation Clauses

Developer shall refrain from restricting the rental, sale or lease of the Property and/or Leasehold on the basis of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- a. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of

subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

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

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

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

SECTION 405 Effect and Duration of Covenants

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

PART 5. DEFAULTS AND REMEDIES

SECTION 501 Defaults - General

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

b. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

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

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

SECTION 502 Institution of Legal Actions

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

SECTION 503 Applicable Law

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

SECTION 504 Acceptance of Service of Process

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

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

SECTION 505 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

SECTION 506 Damages

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

SECTION 507 Specific Performance

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

SECTION 508 Reserved.

SECTION 509 Termination by Developer

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

SECTION 510 Termination by Agency

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

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

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

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

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

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

PART 6. GENERAL PROVISIONS

SECTION 601 Notices

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

SECTION 602 Enforced Delay: Extension of Time of Performance

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

b. An extension of time for any such cause (a “Force Majeure Delay”) shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by the Agency and Developer.

SECTION 603 Conflict of Interest

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

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

SECTION 604 Nonliability of Agency Officials and Employees

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

SECTION 605 Inspection of Books and Records

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

SECTION 606 Approvals

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

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

SECTION 607 Real Estate Commissions; Finder's Fee

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

SECTION 608 Construction and Interpretation of Agreement

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

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

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

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

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

SECTION 609 Time of Essence

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

SECTION 610 No Partnership

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

SECTION 611 Compliance with Law

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

SECTION 612 Binding Effect

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

SECTION 613 No Third Party Beneficiaries

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

SECTION 614 Authority to Sign

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

SECTION 615 Incorporation by Reference

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

SECTION 616 Counterparts

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

PART 7. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

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

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

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

PART 8. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

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

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

SIGNATURES ON NEXT PAGE

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

By: PACIFICA – HOSPITALITY GROUP,
a Nevada corporation

Dated: _____

By: _____
Ashok Israni, President

IMPERIAL BEACH REDEVELOPMENT
AGENCY

Dated: _____

By: _____
Gary Brown
Executive Director

APPROVED AS TO FORM
AND LEGALITY

Agency General Counsel

By: _____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Susan Y. Cola

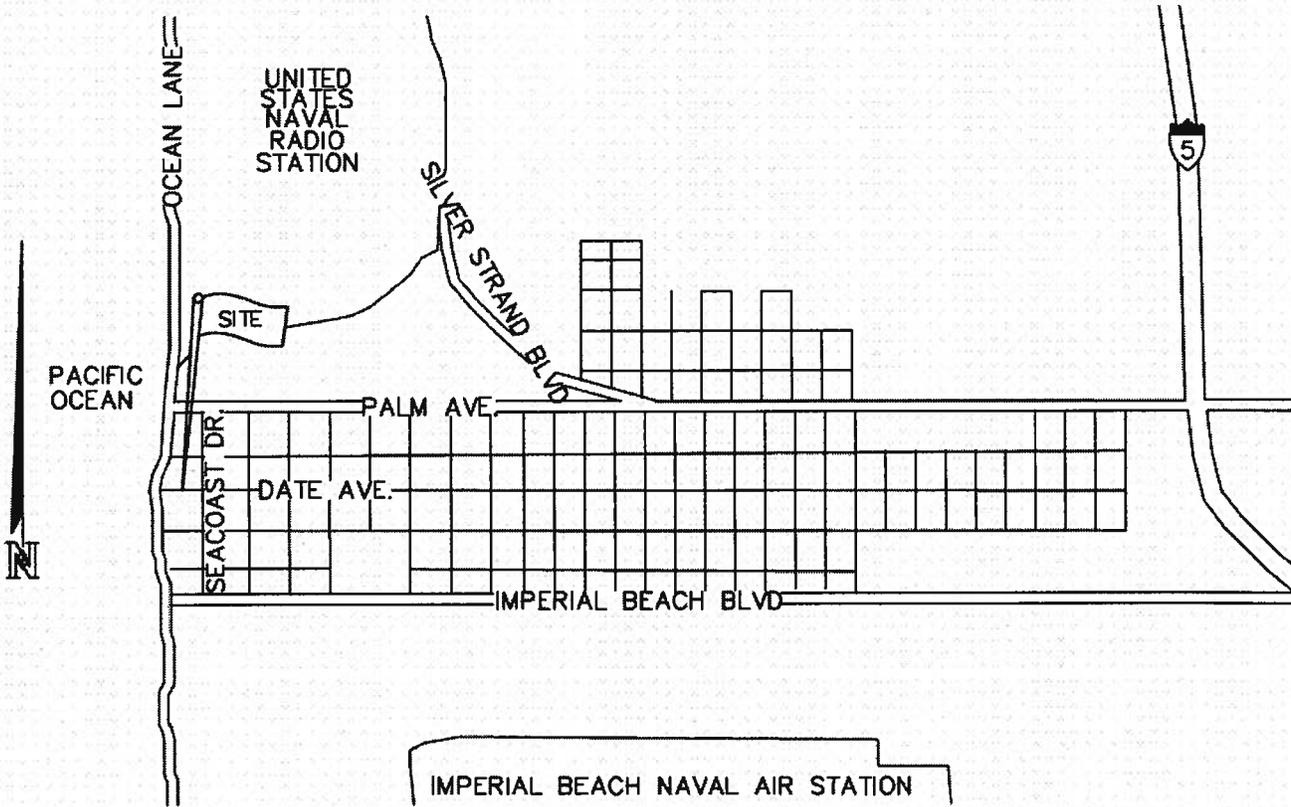
ATTACHMENT NO. 1

SITE MAP

[behind this page]

ATTACHMENT NO. 1

SITE MAP - SEACOAST INN



VICINITY MAP

NO SCALE

ATTACHMENT NO. 2

LEGAL DESCRIPTION

[behind this page]

ATTACHMENT NO. 2

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

ATTACHMENT NO. 3
METHOD OF FINANCING

[behind this page]

ATTACHMENT NO. 3

METHOD OF FINANCING

This is the Method of Financing attached to the Disposition And Development Agreement (“DDA”) by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY (the “Agency”) and IMPERIAL COAST, L.P., a California limited partnership (the “Developer”) as of _____, 2010, pertaining to the development of a full service resort hotel on the Property with seventy-eight (78) lodging rooms (also referenced herein as “the Project”). Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

1. **Total Development Cost.** The parties estimate that the cost of the development and construction of the Project will be approximately \$21,937,000, to be provided as follows in Section 2 of this Method of Financing.

2. **Sources of Financing.** The parties anticipate that the costs of the development and construction of the Project (the "Development Costs") shall be financed with a combination of loans and Developer's equity, as set forth in the following chart:

Source of Funds	Construction
Construction Loan	\$13,162,000
Equity	\$8,775,000.
TOTAL FINANCING	\$21,937,000

3. **Project Budget.** The parties anticipate that all estimated Development Costs for the Project shall be as set forth in the Project Budget (“Development Costs”) attached to the DDA as Attachment No. 6 (the "Project Budget"), incorporated herein by this reference. Any Material Change as hereinafter defined shall require the approval of the Executive Director or designee. For the purposes herein, a “Material Change” means any change that would (i) increase or decrease the total Project Budget or (ii) increase or decrease a line item by more than 10%. Except as provided in the previous sentence, the Executive Director or designee shall not unreasonably withhold approval of any requested Material Change if, within fifteen (15) working days after receipt of the request, Agency receives such explanation and/or back-up information in connection with its approval of the Material Change, and if the following conditions are satisfied:

- a. to the extent the Material Change is limited to a reallocation of budgeted funds among Project Budget line items without any increase in the total Project Budget, (i) the funds in the line item(s) to be reduced remain

sufficient for completion of the Project, and (ii) the requested increase in one or more line item(s) is to be used to pay approved costs; and

- b. to the extent the Material Change involves an increase in the total Project Budget, (i) additional funds in an amount equal to the increase in the total Project Budget will be provided by Developer or other Permitted Mortgagee and (ii) the requested increase in the Project Budget is to be used to pay approved costs.

Upon approval of any Material Change, the Project Budget shall be replaced by the approved revised Project Budget.

4. **Evidence of Financing.** The sum of the sources of construction financing described in Section 2.1, above, shall be sufficient at all times to pay all Development Costs as set forth in the most recently approved Project Budget. Within the time provided therefor in the Schedule of Performance, Developer shall submit, for approval by the Agency's Executive Director or designee, evidence of construction financing. The Agency's Executive Director or designee shall not unreasonably withhold his or her approval. Developer shall provide written certification to the Agency that such construction financing documents are correct copies of the actual documents to be executed by Developer on or before the Closing Date. To the extent that the sum of the sources of funds described in Section 2.1, above, is insufficient to pay all Development Costs, Developer shall demonstrate the availability prior to the Closing of increased sources at least equal to the shortfall.

5. **Subordination.** Any deed of trust recorded to secure construction and/or permanent financing for the Project shall be subordinate to the Ground Lease.

ATTACHMENT NO. 4
SCOPE OF DEVELOPMENT
[behind this page]

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

I. GENERAL DESCRIPTION

This is the Scope of Development attached to the Disposition and Development Agreement (“DDA”) by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY (the “Agency”) and IMPERIAL COAST, L.P., a California limited partnership (the “Developer”), dated as of _____, 2010 pertaining to development of the Property. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

Developer’s plans, drawings and proposals submitted to the Agency or City for approval shall describe in reasonable detail the architectural character intended for the Improvements. The provisions, design criteria, and property development standards set forth in this Scope of Development apply to the Site, except where specifically indicated otherwise.

II. IMPROVEMENTS

A. DEVELOPMENT IN ACCORDANCE WITH ENTITLEMENTS

The Property shall be developed in accordance with the Development Agreement, including, without limitation, Exhibit “E” of the Development Agreement, the Specific Plan, and any agreements with the City, including, without limitation, the Temporary Encroachment Permit, and the Pedestrian and Vehicular Access Easement Agreement.

B. DATE AVENUE OFF-SITE IMPROVEMENTS

1. Developer shall demolish and remove all existing off-site improvements and construct or caused to be constructed new off-site improvements within the Date Avenue right-of-way between Seacoast Drive and the Ocean Boulevard right-of-way. Improvements shall be in substantial conformance with the drawings and specifications prepared by the Agency and as contained in Exhibit “A,” attached hereto and incorporated herein by this reference, and shall include new curbs, gutters, sidewalks, ADA-compliant driveway approach, ADA-compliant access ramps, landscaping, street lights, enhanced paving, and a vertical concrete seawall at the western terminus of Date Avenue.
2. Developer shall design and construct or caused to be constructed a new concrete, vertical seawall for shoreline protection of the Date Avenue street end. Said seawall shall be in general conformance with the drawings contained in Exhibit “B,” attached hereto and incorporated herein by this reference, and shall extend the entire width of the Date Avenue right-of-way.
3. Developer shall provide irrigation to all landscaping within the Date Avenue right-of-way and shall connect that irrigation to privately-metered, on-site water service.

C. DEVELOPMENT IDENTIFICATION SIGNS

Prior to commencement of any improvements on the Property, the Developer shall prepare and install, at its sole cost and expenses, sign(s) on the barricades around the Property which identify the development. There shall be at least one sign on each street frontage. Frontages where the development covers more than half a block shall contain two signs. Each sign shall be at least four (4) feet by six (6) feet and be visible to passing pedestrians and vehicular traffic. The design of all signs as well as their proposed locations shall be submitted to the Agency for review and approval prior to installation. All signs shall at a minimum include:

Developer Name

The phrase: A Project of the Imperial Beach Redevelopment Agency and the City of Imperial Beach

Mayor:
Jim Janney

Council members:
Laurie Bragg
Jim King
Patricia McCoy
Diane Rose

Completion Date:

For information call:

The Developer shall obtain a current roster of Redevelopment Agency members before signs are printed.

EXHIBIT "A"

DATE AVENUE OFF-SITE IMPROVEMENTS DRAWINGS AND SPECIFICATIONS

[BEHND THIS PAGE]

CITY OF IMPERIAL BEACH REDEVELOPMENT AGENCY

DATE AVENUE

GENERAL NOTES

1. THE APPROVAL OF THIS PLAN BY THE CITY OF IMPERIAL BEACH DOES NOT AUTHORIZE THE SUBDIVIDER AND OWNER TO VIOLATE ANY FEDERAL, STATE OR CITY LAWS, ORDINANCES, REGULATIONS, OR POLICIES, INCLUDING, BUT NOT LIMITED TO, THE FEDERAL ENDANGERED SPECIES ACT OF 1973 AND AMENDMENTS THERETO (16 USC SECTION 1531 ET.SEQ.)
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR SURVEY MONUMENTS AND/OR VERTICAL CONTROL BENCHMARKS WHICH ARE DISTURBED OR DESTROYED BY CONSTRUCTION. A LAND SURVEYOR MUST FIELD LOCATE, REFERENCE, AND/OR PRESERVE ALL HISTORICAL OR CONTROLLING MONUMENTS PRIOR TO ANY EARTHWORK. IF DESTROYED, SUCH MONUMENTS SHALL BE REPLACED WITH APPROPRIATE MONUMENTS BY A LAND SURVEYOR. A CORNER RECORD OR RECORD OF SURVEY, AS APPROPRIATE, SHALL BE FILED AS REQUIRED BY THE PROFESSIONAL LAND SURVEYORS ACT. IF ANY VERTICAL CONTROL IS TO BE DISTURBED OR DESTROYED, THE CITY OF IMPERIAL BEACH PUBLIC WORKS DIRECTOR (HANK LEVIEN) MUST BE NOTIFIED, IN WRITING, AT LEAST 3 DAYS PRIOR TO THE CONSTRUCTION. THE CONTRACTOR WILL BE RESPONSIBLE FOR THE COST OF REPLACING ANY VERTICAL CONTROL BENCHMARKS DESTROYED BY THE CONSTRUCTION.
3. IMPORTANT NOTICE: SECTION 4216 OF THE GOVERNMENT CODE REQUIRES A DIG ALERT IDENTIFICATION NUMBER BE ISSUED BEFORE A "PERMIT TO EXCAVATE" WILL BE VALID. FOR YOUR DIG ALERT I.D. NUMBER, CALL UNDERGROUND SERVICE ALERT, TOLL FREE 1-800-422-4133, TWO DAYS BEFORE YOU DIG.
4. CONTRACTOR SHALL IMPLEMENT AN EROSION CONTROL PROGRAM DURING THE PROJECT GRADING AND/OR CONSTRUCTION ACTIVITIES. THE PROGRAM SHALL MEET ALL APPLICABLE REQUIREMENTS OF THE STATE WATER RESOURCE CONTROL BOARD, REGIONAL WATER CONTROL BOARD SAN DIEGO REGION, AND THE CITY OF IMPERIAL BEACH MUNICIPAL CODE AND STORM WATER STANDARDS MANUAL.
5. PRIOR TO ANY DISTURBANCE TO THE SITE, EXCLUDING UTILITY MARK-OUTS AND SURVEYING, THE CONTRACTOR SHALL MAKE ARRANGEMENTS FOR A PRE-CONSTRUCTION MEETING WITH THE CITY OF IMPERIAL BEACH FIELD PUBLIC WORKS DEPARTMENT (619) 424-2214.
6. DEVIATIONS FROM THESE SIGNED PLANS WILL NOT BE ALLOWED UNLESS A CONSTRUCTION CHANGE IS APPROVED IN WRITING BY PUBLIC WORKS DIRECTOR AND THE CHANGE IS REQUIRED BY THE CITY INSPECTOR.
7. AS-BUILT DRAWINGS MUST BE SUBMITTED TO THE RESIDENT ENGINEER PRIOR TO ACCEPTANCE OF THIS PROJECT BY THE CITY OF IMPERIAL BEACH.

ISSUANCE OF THE CITY'S PERMIT SHALL NOT RELIEVE THE APPLICANT OR ANY OF THEIR REPRESENTATIVES OR CONTRACTORS FROM COMPLYING WITH ANY STATE OR FEDERAL REQUIREMENTS BY AGENCIES INCLUDING BUT NOT LIMITED TO CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, DEPARTMENT OF FISH AND GAME. COMPLIANCE MAY INCLUDE OBTAINING PERMITS, OTHER AUTHORIZATIONS, OR COMPLIANCE WITH MANDATES BY ANY APPLICABLE STATE OR FEDERAL AGENCY.

SPECIAL NOTES

THE FOLLOWING NOTES ARE PROVIDED TO GIVE DIRECTIONS TO THE CONTRACTOR BY THE ENGINEER OF WORK. THE PUBLIC WORKS DIRECTOR'S SIGNATURE ON THESE PLANS DOES NOT CONSTITUTE APPROVAL OF ANY OF THESE NOTES AND THE CITY WILL NOT BE RESPONSIBLE FOR THEIR ENFORCEMENT.

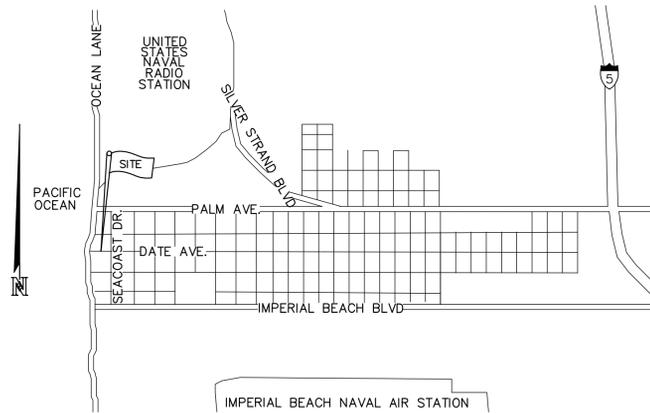
1. CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR THE JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND THAT THE CONTRACTORS SHALL DEFEND, INDEMNIFY, AND HOLD THE OWNER, ENGINEER AND GEOLOGIST HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN THE CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROPERTY, EXCEPTING FOR LIABILITY ARISING FROM SOLE NEGLIGENCE OF THE OWNER OR ENGINEER.
2. THE CONTRACTOR SHALL MAKE EXPLORATORY EXCAVATIONS AND LOCATE EXISTING UNDERGROUND FACILITIES SUFFICIENTLY AHEAD OF CONSTRUCTION TO PERMIT REVISIONS TO PLANS IF REVISIONS ARE NECESSARY BECAUSE OF ACTUAL LOCATION OF EXISTING FACILITIES.
3. DURING CONSTRUCTION: THE CONTRACTOR SHALL PROPERLY GRADE ALL EXCAVATED SURFACES TO PROVIDE POSITIVE DRAINAGE AND PREVENT PONDING OF WATER. HE SHALL CONTROL SURFACE WATER TO AVOID DAMAGE TO ADJOINING PROPERTIES OR TO FINISHED WORK ON THE SITE.
4. ALL WORK NEEDING MATERIALS TESTING REQUIRES THAT THE CONTRACTOR NOTIFY THE MATERIALS TESTING CONSULTANT BY NOON THE DAY BEFORE THE WORK IS SCHEDULED TO BEGIN TO ARRANGE FOR TESTING.
5. WORK PERFORMED WITHOUT BENEFIT OF TESTING AND/OR INSPECTION SHALL BE SUBJECT TO REJECTION AND REMOVAL.
6. THE EXISTENCE AND LOCATION OF UTILITY STRUCTURES AND FACILITIES SHOWN ON THE CONSTRUCTION PLANS WERE OBTAINED BY A SEARCH OF THE AVAILABLE RECORDS. ATTENTION IS CALLED TO THE POSSIBLE EXISTENCE OF OTHER UTILITY FACILITIES OR STRUCTURES NOT KNOWN OR IN A LOCATION DIFFERENT FROM THAT SHOWN ON THE PLANS. THE CONTRACTOR IS REQUIRED TO TAKE DUE PRECAUTIONARY MEASURES TO PROTECT THE UTILITIES SHOWN ON THE PLANS AND ANY OTHER EXISTING FACILITIES OR STRUCTURES THAT MAY NOT BE SHOWN.
7. THE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL EXISTING FACILITIES (ABOVEGROUND AND UNDERGROUND) WITHIN THE PROJECT SITE SUFFICIENTLY AHEAD OF CONSTRUCTION TO PERMIT THE REVISION OF THE CONSTRUCTION PLANS IF IT IS FOUND THE ACTUAL LOCATIONS ARE IN CONFLICT WITH THE PROPOSED WORK.
8. NEITHER THE CITY NOR THE ENGINEER OF WORK WILL ENFORCE SAFETY MEASURES OR REGULATIONS. THE CONTRACTOR SHALL DESIGN, CONSTRUCT, AND MAINTAIN ALL SAFETY DEVICES INCLUDING SHORING, AND SHALL BE SOLELY RESPONSIBLE FOR CONFORMING TO ALL LOCAL, STATE AND FEDERAL SAFETY AND HEALTH STANDARDS, LAWS, AND REGULATIONS.

SHEET INDEX

DESCRIPTION	SHEET
COVER SHEET	1
EXISTING CONDITIONS	2
DEMO PLAN	3
IMPROVEMENT PLAN	4-5
STRIPING PLAN	6
STREET LIGHTING PLAN	7
LANDSCAPE/HARDSCAPE PLAN	8-11

CONSTRUCTION CHANGE TABLE

CHANGE	DATE	AFFECTED OR ADDED SHEET NUMBERS
△		
△		
△		
△		
△		
△		



VICINITY MAP

NO SCALE

LEGEND:

ITEM	STD. DWG OR DETAIL	SYMBOL
RIGHT-OF-WAY		--- RW ---
EXISTING STORM DRAIN		--- S ---
EXISTING MANHOLE		○
EXISTING SEWER		--- S ---
EXISTING WATER		--- W ---
EXISTING WATER METER		W M
EXISTING ELECTRIC		--- E ---
EXISTING TELEPHONE		--- T ---
EXISTING FIRE HYDRANT		⊙
EXISTING UTILITY POLE		⊙
EXISTING CURB		--- C ---
EXISTING CURB AND GUTTER		--- CG ---
EXISTING DRIVEWAY		--- D ---
EXISTING STREET LIGHT		⊙
EXISTING BOLLARD		⊙
EXISTING SIGN		⊙
PROPOSED PEDESTRIAN RAMP W/TRUNCATED DOMES	RSD G-27	⊙
PROPOSED PEDESTRIAN RAMP W/TRUNCATED DOMES	RSD SDG-137	⊙
PROPOSED PEDESTRIAN RAMP W/TRUNCATED DOMES	RSD G-31	⊙
PROPOSED DRIVEWAY	RSD G-14A	⊙
TYPE 'D' MODIFIED INLET	RSD D-4	⊙
PROPOSED PCC CROSSGUTTER	RSD G-12	⊙
PROPOSED P.C.C. SIDEWALK	RSD G-7	⊙
A.C. OVERLAY		⊙
A.C. REMOVAL AND REPLACE		⊙
PROPOSED PERVIOUS PAVEMENT		⊙
SAWCUT LINE		⊙
PROPOSED CATCH BASIN		⊙
PROPOSED STREET LIGHT		⊙
PROPOSED FIRE HYDRANT		⊙
PROPOSED SEAWALL		⊙
PROPOSED SEWER		--- S ---
PROPOSED WATER		--- W ---
PROPOSED STORM DRAIN		--- SD ---
PROPOSED BACKFLOW PREVENTOR		⊙
PROPOSED GATE VALVE		⊙

WORK TO BE DONE

THE IMPROVEMENTS CONSIST OF THE FOLLOWING WORK TO BE DONE ACCORDING TO THESE PLANS AND THE SPECIFICATIONS AND REGIONAL STANDARD DRAWINGS.

STANDARD SPECIFICATIONS:

1. STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION "GREEN BOOK" (2009 EDITION).
2. THE MUTCD, 2003 EDITION.

STANDARD DRAWINGS:

1. REGIONAL STANDARD DRAWINGS, FOR AGENCIES IN THE SAN DIEGO REGION DATED AUGUST 2006.
2. CALIFORNIA AMERICAN WATER STANDARD DRAWING, APRIL 2006.

TOPOGRAPHY SOURCE

THE SOURCE OF TOPOGRAPHIC INFORMATION IS A FIELD SURVEY COMPLETED BY NASLAND ENGINEERING ON OCTOBER 16, 2008.

BENCHMARK

CITY OF IMPERIAL BEACH #34
3RD & PALM, 5' W. OF SW PCR ON PALM. ELEV 12.63 MSL

UTILITY RESPONSIBILITIES			
UTILITY	GOVERNING AGENCY CONTACT	CONTRACTOR RESPONSIBILITY	OTHERS
GAS	SAN DIEGO GAS AND ELECTRIC 8335 CENTURY PARK COURT, CP12G SAN DIEGO, CA 92123 PHONE (858) 654-1136 DAVID EMERSON GOVERNMENTAL LIAISON PLANNER		
TELEPHONE	AT&T 1650 HOTEL CIRCLE, SUITE 100 SAN DIEGO, CA 92108 PHONE (619) 542-8360		
ELECTRIC	SAN DIEGO GAS AND ELECTRIC 8335 CENTURY PARK COURT, CP12G SAN DIEGO, CA 92123 PHONE (858) 654-1136 DAVID EMERSON GOVERNMENTAL LIAISON PLANNER		
SANITARY SEWER	CITY OF IMPERIAL BEACH PUBLIC WORKS DEPARTMENT 495 10TH STREET IMPERIAL BEACH, CA 91932 PHONE (760) 726-1340 EXT 1606 LARRY MARTIN PROJECT MANAGER TECHNICIAN		
WATER	CALIFORNIA AMERICAN WATER COMPANY 1019 CHERRY AVE. IMPERIAL BEACH, CA 91932 PHONE (619) 409-7753 DOUG KRUPINSKI MAINTENANCE SERVICE SPECIALIST		
STORM SEWER	CITY OF IMPERIAL BEACH PUBLIC WORKS DEPARTMENT 495 10TH STREET IMPERIAL BEACH, CA 91932 PHONE (760) 726-1340 EXT 1606 LARRY MARTIN PROJECT MANAGER TECHNICIAN		

THIS INFORMATION HAS BEEN PROVIDED FOR CLARIFICATION PURPOSES. THE CONTRACTOR SHALL PROVIDE ANY AND ALL APPURTENANCES, TRENCHING, BACKFILL AND ANY OTHER INCIDENTALS TO MEET OR EXCEED THE SPECIFICATIONS OF THE ITEMS LISTED.

DECLARATION OF RESPONSIBLE CHARGE:

I HEREBY DECLARE THAT I AM THE ENGINEER OF WORK FOR THIS PROJECT, THAT I HAVE EXERCISED RESPONSIBLE CHARGE OVER THE DESIGN OF THE PROJECT AS DEFINED IN SECTION 6703 OF THE BUSINESS AND PROFESSIONS CODE, AND THAT THE DESIGN IS CONSISTENT WITH CURRENT STANDARDS.

I UNDERSTAND THAT THE CHECK OF PROJECT DRAWINGS AND SPECIFICATIONS BY THE CITY OF IMPERIAL BEACH IS CONFINED TO A REVIEW ONLY AND DOES NOT RELIEVE ME AS ENGINEER OF WORK, OR OF MY RESPONSIBILITIES FOR PROJECT DESIGN.

LAWRENCE P. THORNBURGH R.C.E. 49795 DATE
R.C.E. EXPIRATION DATE: 09/30/10

NASLAND ENGINEERING
4740 RUFFNER STREET
SAN DIEGO, CA 92111
(858) 292-7770

NASLAND ENGINEERING		
CIVIL ENGINEERING • SURVEYING • LAND PLANNING 4740 Ruffner Street, San Diego, California, 92111 • 858-292-7770		
REVISION	DATE	BY
ORIGINAL		N.E.
PROJECT ENGR: L. THORNBURGH		
DESIGNED BY: JS		
DRAWN BY: JS		
SCALE: AS SHOWN		
JOB NO. 108-108.1		



CITY OF IMPERIAL BEACH
PROJECT NUMBER _____

STREET IMPROVEMENT PLANS FOR:

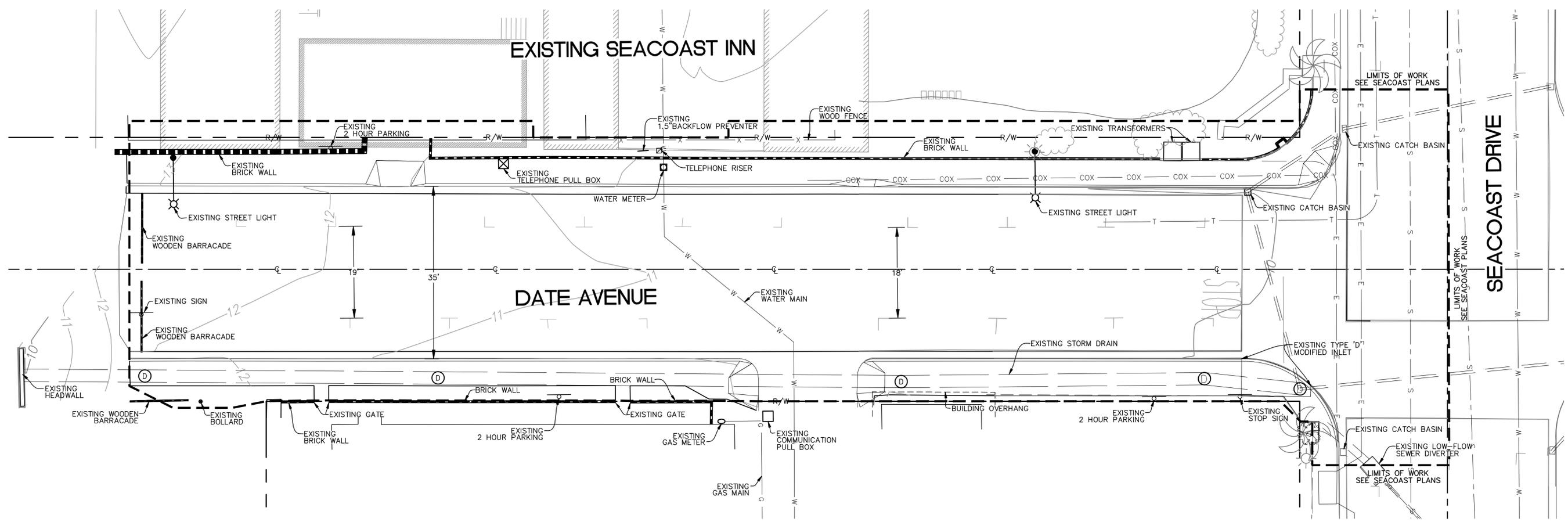
DATE AVENUE
COVER SHEET

CITY OF IMPERIAL BEACH, CALIFORNIA ENGINEERING DEPARTMENT SHEET 1 OF 11 SHEETS		W.O. NO. _____
FOR CITY ENGINEER	DATE	DIVISION HEAD
DESCRIPTION	BY	APPROVED
ORIGINAL	N.E.	
DESIGN ENGINEER		
		179-0444
		NAD 83 COORDINATES
		150-1725
		LAMBERT COORDINATES
CONTRACTOR	DATE STARTED	
INSPECTOR	DATE COMPLETED	

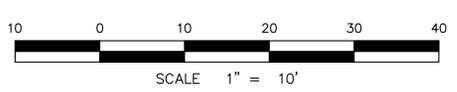
1-D

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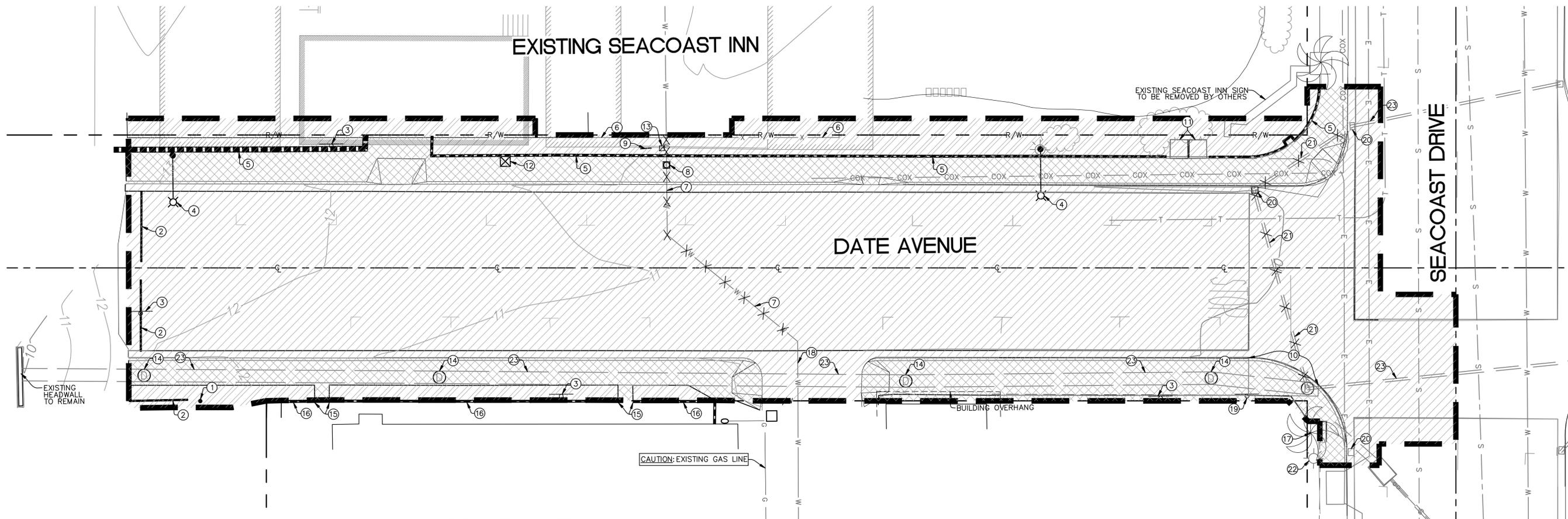


LEGEND:
 --- LIMITS OF WORK
 -R/W- CITY OF IMPERIAL BEACH RIGHT-OF-WAY



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CITY OF IMPERIAL BEACH				
PROJECT NUMBER _____				
STREET IMPROVEMENT PLANS FOR:				
DATE AVENUE				
EXISTING CONDITIONS				
CITY OF IMPERIAL BEACH, CALIFORNIA				w.o. NO.
ENGINEERING DEPARTMENT				
SHEET 2 OF 11 SHEETS				
FOR CITY ENGINEER	BY	DATE	APPROVED	DATE
ORIGINAL	N.E.			
				DIVISION HEAD
				DESIGN ENGINEER
				179-0444
				NAD 83 COORDINATES
				150-1725
				LAMBERT COORDINATES
CONTRACTOR	DATE STARTED	INSPECTOR	DATE COMPLETED	2-D



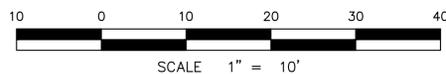
DEMOLITION NOTES:

- REMOVE EXISTING STREET SECTION PAVEMENT
- REMOVE EXISTING SIDEWALK
- CLEARING AND GRUBBING
- EXISTING UTILITY TO BE REMOVED
- SAWCUT EXISTING SIDEWALK, CURB, GUTTER AND A.C. PAVEMENT

- 1 REMOVE EXISTING BOLLARD
- 2 REMOVE EXISTING WOODED BARRICADE
- 3 REMOVE EXISTING TRAFFIC SIGN
- 4 REMOVE EXISTING STREET LIGHT (DO NOT DAMAGE), DELIVER UNDAMAGED STREET LIGHT TO P.W. FACILITY
- 5 REMOVE EXISTING BLOCK WALL
- 6 REMOVE EXISTING WOOD FENCE
- 7 REMOVE EXISTING WATER MAIN
- 8 REMOVE EXISTING WATER METER
- 9 REMOVE EXISTING BACKFLOW PREVENTOR
- 10 REMOVE EXISTING STORM DRAIN INLET
- 11 RELOCATE EXISTING TRANSFORMERS
- 12 REMOVE EXISTING TELEPHONE PULL BOX
- 13 REMOVE EXISTING TELEPHONE RISER
- 14 ADJUST EXISTING MANHOLE TO PROPOSED GRADE
- 15 PROTECT EXISTING GATES
- 16 PROTECT EXISTING BLOCK WALL
- 17 PROTECT EXISTING TREE
- 18 PROTECT EXISTING WATER MAIN
- 19 PROTECT EXISTING TRAFFIC SIGN AND ADJUST TO PROPOSED GRADE
- 20 REMOVE EXISTING CATCH BASIN
- 21 REMOVE EXISTING STORM DRAIN
- 22 PROTECT EXISTING STREET LIGHT
- 23 PROTECT EXISTING STORM DRAIN

NOTE:
SEACOAST INN WILL DEMOLISH EVERYTHING WITHIN THEIR EXISTING RIGHT-OF-WAY PRIOR TO CONSTRUCTION.

LIMITS OF DEMOLITION. ALL EXISTING PAVING, BASE-CONCRETE, SIDEWALK, LANDSCAPING, AND STREETLIGHTS TO BE REMOVED EXCEPT AS NOTED. ALL EXISTING SURFACE UTILITIES TO BE ADJUSTED TO GRADE. UTILITY BOXES TO BE REPLACED WITH GALVANIZED METAL LIDS. EXISTING SIGNAGE TO BE REMOVED, SALVAGED AND REPLACED PER THE DIRECTION OF THE RESIDENT ENGINEER. PRIOR TO SAWCUT, VERIFY LIMITS WITH RESIDENT ENGINEER.



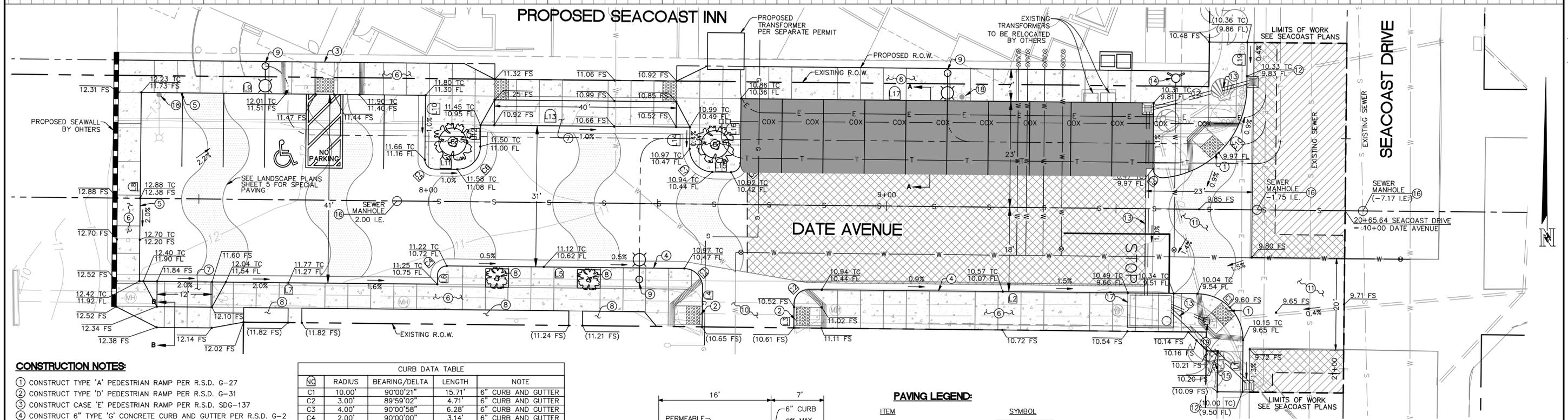
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CITY OF IMPERIAL BEACH
PROJECT NUMBER _____

STREET IMPROVEMENT PLANS FOR:					w.o. NO.
DATE AVENUE DEMOLITION PLAN					
CITY OF IMPERIAL BEACH, CALIFORNIA ENGINEERING DEPARTMENT SHEET 3 OF 11 SHEETS					DIVISION HEAD
FOR CITY ENGINEER	BY	DATE	APPROVED	DATE	
ORIGINAL	N.E.				DESIGN ENGINEER
					179-0444 NAD 83 COORDINATES
					150-1725 LAMBERT COORDINATES
CONTRACTOR	INSPECTOR	DATE STARTED	DATE COMPLETED		3-D

NOT FOR CONSTRUCTION 08/11/2009

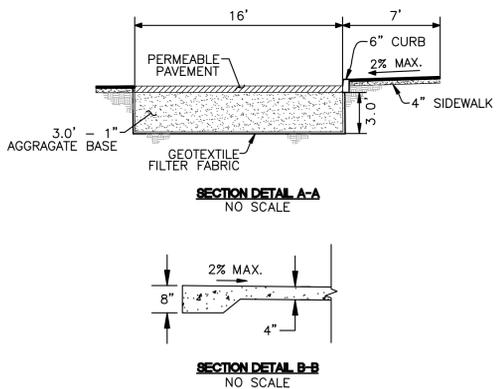
NOT FOR CONSTRUCTION 08/11/2009



CONSTRUCTION NOTES:

1. CONSTRUCT TYPE 'A' PEDESTRIAN RAMP PER R.S.D. G-27
2. CONSTRUCT TYPE 'D' PEDESTRIAN RAMP PER R.S.D. G-31
3. CONSTRUCT CASE 'E' PEDESTRIAN RAMP PER R.S.D. SDG-137
4. CONSTRUCT 6" TYPE 'G' CONCRETE CURB AND GUTTER PER R.S.D. G-2
5. CONSTRUCT 6" CONCRETE CURB PER R.S.D. G-1
6. INSTALL SIDEWALK PER R.S.D. G-7, FINISH PER LANDSCAPE PLANS SHEET X.
7. INSTALL DRIVEWAY PER R.S.D. G-14A
8. LANDSCAPE AREA, SEE DETAILS PER LANDSCAPE PLAN (SHEET 6-7)
9. INSTALL STREET LIGHT FIXTURE PER THE STREET LIGHT PLAN
10. CONSTRUCT ALLEY APRON PER R.S.D. G-17
11. CONSTRUCT MODIFIED CONCRETE CROSS GUTTER PER R.S.D. G-12, FINISH PER LANDSCAPE PLANS SHEET X.
12. INSTALL 18" X 18" CATCH BASIN WITH TRAFFIC-RATED GRATE
13. TRENCH CUT AND INSTALL 8" PVC STORMDRAIN
14. FIRE HYDRANT (BY CAL-AM)
15. PROTECT EXISTING TREE IN PLACE
16. INSTALL SEWER MANHOLE
17. REMOVE AND REPLACE 'TYPE D' CURB INLET PER R.S.D. D-4 SEE DETAIL (SHEET 12) OF SEACOAST PLANS
18. REMOVE EXISTING STREET LIGHT
19. INSTALL PIPE COLLAR PER R.S.D. D-62

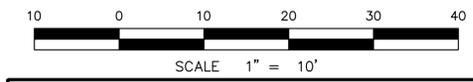
CURB DATA TABLE				
NO	RADIUS	BEARING/DELTA	LENGTH	NOTE
C1	10.00'	90°00'21"	15.71'	6" CURB AND GUTTER
C2	3.00'	89°59'02"	4.71'	6" CURB AND GUTTER
C3	4.00'	90°00'58"	6.28'	6" CURB AND GUTTER
C4	2.00'	90°00'00"	3.14'	6" CURB AND GUTTER
C5	2.00'	90°00'00"	3.14'	6" CURB AND GUTTER
C6	5.00'	90°00'00"	7.85'	6" CURB AND GUTTER
C7	5.00'	90°00'00"	7.85'	6" CURB AND GUTTER
C8	2.00'	90°00'00"	3.14'	6" CURB AND GUTTER
C9	2.00'	95°03'10"	3.32'	6" CURB AND GUTTER
C10	19.85'	84°55'29"	29.42'	6" CURB AND GUTTER
L1	---	N00°35'52"E	11.27'	6" CURB AND GUTTER
L2	---	N89°24'29"W	84.99'	6" CURB AND GUTTER
L3	---	N00°36'29"E	5.33'	6" CURB AND GUTTER
L4	---	N00°36'29"E	8.67'	6" CURB AND GUTTER
L5	---	N89°24'29"W	51.82'	6" CURB AND GUTTER
L6	---	N00°35'31"E	2.00'	6" CURB AND GUTTER
L7	---	N89°24'29"W	65.00'	6" CURB AND GUTTER
L8	---	N00°35'31"E	41.00'	6" CURB
L9	---	N89°24'29"W	62.00'	6" CURB
L10	---	N00°35'31"E	14.00'	6" CURB AND GUTTER
L11	---	N89°24'29"W	5.05'	6" CURB AND GUTTER
L12	---	N00°35'31"E	4.67'	6" CURB AND GUTTER
L13	---	N89°24'29"W	45.67'	6" CURB AND GUTTER
L14	---	N00°35'31"E	4.67'	6" CURB AND GUTTER
L15	---	N89°24'29"W	4.08'	6" CURB AND GUTTER
L16	---	N00°35'31"E	14.00'	6" CURB
L17	---	N89°24'29"W	90.00'	6" CURB
L18	---	N00°35'31"E	14.27'	6" CURB
L19	---	N00°36'41"E	9.85'	6" CURB AND GUTTER



PAVING LEGEND:

ITEM	SYMBOL
A.C. OVERLAY	[Hatched pattern]
A.C. REMOVE AND REPLACE (5.5" A.C./8.5" CLASS 2 BASE)	[Cross-hatched pattern]
4" P.C.C. SIDEWALK UNLESS SPECIFIED OTHERWISE	[Dotted pattern]
PERMEABLE PAVEMENT 3.0"-1" AGGRAGATE BASE)	[Stippled pattern]
SAWCUT LINE	[Dashed line]

- NOTES:**
1. RELOCATE EXISTING UNDERGROUND UTILITIES AS REQUIRED.
 2. CONTRACTOR TO VERIFY HORIZONTAL & VERTICAL LOCATIONS OF ALL EXISTING UTILITIES PRIOR TO COMMENCING CONSTRUCTION OF IMPROVEMENTS SHOWN HEREON.
 3. WATER IMPROVEMENTS TO BE DONE BY OTHERS.
 4. SEE LANDSCAPE PLANS (SHEET 5) FOR SPECIAL PAVING.
 5. ADJUST TO NEW GRADES ALL EXISTING MH COVERS, VAULTS, PULL BOXES, VALVE COVERS, ETC.



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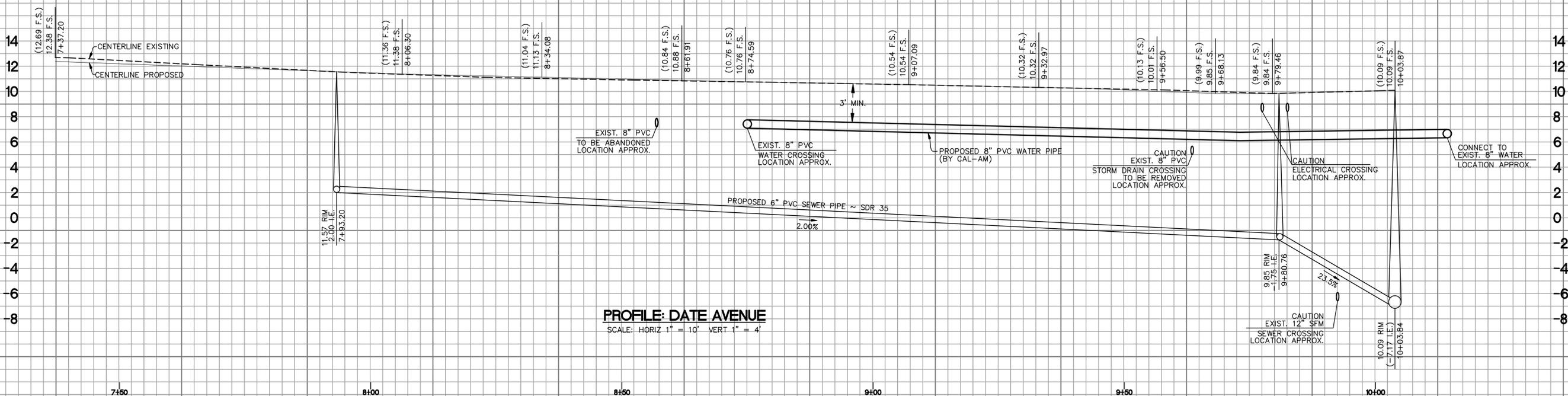
CITY OF IMPERIAL BEACH
PROJECT NUMBER _____

STREET IMPROVEMENT PLANS FOR:
DATE AVENUE
 IMPROVEMENT PLAN

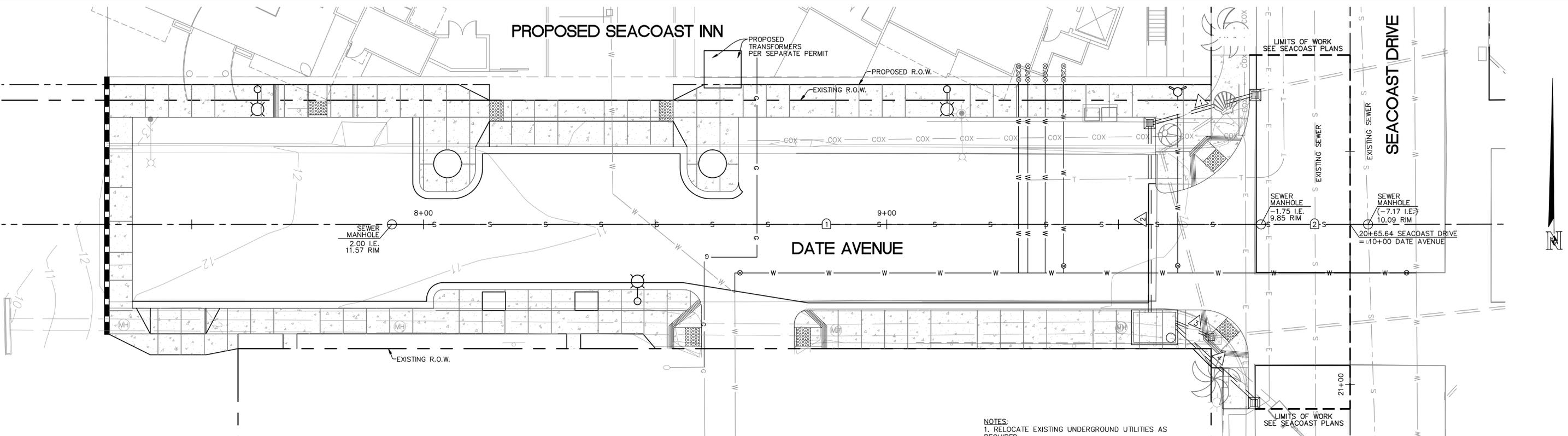
CITY OF IMPERIAL BEACH, CALIFORNIA
 ENGINEERING DEPARTMENT
 SHEET 4 OF 11 SHEETS

FOR CITY ENGINEER	DATE	W.O. NO.
DESCRIPTION	BY	APPROVED
ORIGINAL	N.E.	DATE
		FILMED
		DESIGN ENGINEER
		179-0444
		NAD 83 COORDINATES
		150-1725
		LAMBERT COORDINATES
CONTRACTOR	DATE STARTED	
INSPECTOR	DATE COMPLETED	

4-D



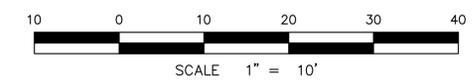
PROPOSED SEACOAST INN



- NOTES:**
1. RELOCATE EXISTING UNDERGROUND UTILITIES AS REQUIRED.
 2. CONTRACTOR TO VERIFY HORIZONTAL & VERTICAL LOCATIONS OF ALL EXISTING UTILITIES PRIOR TO COMMENCING CONSTRUCTION OF IMPROVEMENTS SHOWN HEREON.
 3. WATER IMPROVEMENTS TO BE DONE BY OTHERS.
 4. SEE LANDSCAPE PLANS (SHEET 5) FOR SPECIAL PAVING.
 5. ADJUST TO NEW GRADES ALL EXISTING MH COVERS, VAULTS, PULL BOXES, VALVE COVERS, ETC.

STORM DRAIN SCHEDULE				
NO.	BEARING/DELTA	RADIUS	LENGTH	NOTE
1	N74°49'57"E	8" PVC	22.11'	
2	N00°35'31"E	8" PVC	39.83'	
3	N66°18'45"W	6" PVC	8.43'	
4	N46°44'52"W	8" PVC	23.07'	

SANITARY SEWER SCHEDULE				
NO.	BEARING/DELTA	LENGTH	RADIUS	NOTE
1	N89°24'41"W	187.57'	6" PVC	
2	N89°22'57"W	23.10'	6" PVC	



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CITY OF IMPERIAL BEACH
PROJECT NUMBER _____

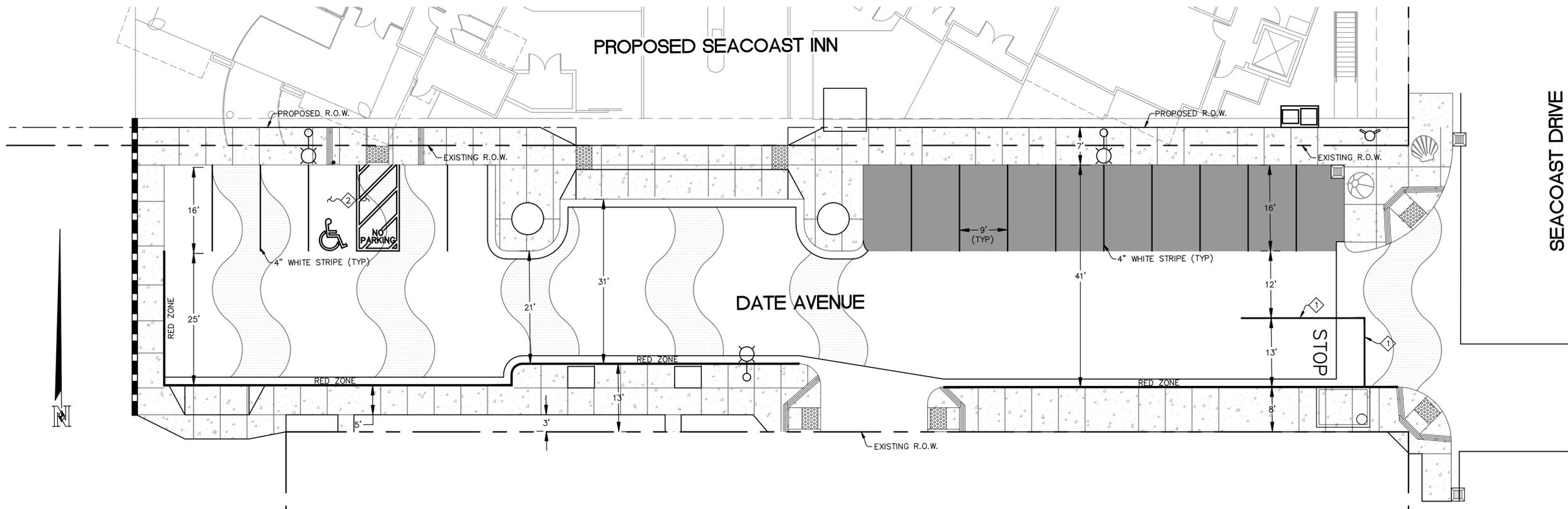
STREET IMPROVEMENT PLANS FOR:
DATE AVENUE
IMPROVEMENT PLAN

CITY OF IMPERIAL BEACH, CALIFORNIA
ENGINEERING DEPARTMENT
SHEET 5 OF 11 SHEETS

FOR CITY ENGINEER	DATE	DIVISION HEAD
DESCRIPTION	BY	APPROVED
ORIGINAL	N.E.	DATE
		FILED
CONTRACTOR	DATE STARTED	DESIGN ENGINEER
INSPECTOR	DATE COMPLETED	179-0444
		NAD 83 COORDINATES
		150-1725
		LAMBERT COORDINATES

5-D

NOT FOR CONSTRUCTION 08/11/2009

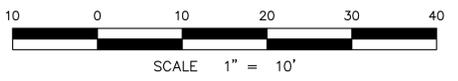


STRIPING AND SIGNAGE NOTES:

1. INSTALLATION OF ALL STRIPING, SIGNS AND PAVEMENT MARKERS SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
2. ALL STRIPING AND SIGNING SHALL CONFORM TO THE MOST RECENT ADOPTED EDITION OF THE FOLLOWING MANUALS:
 - THE MUTCD (MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES) 2003 EDITION.
 - STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, 2000 EDITION.
3. ALL SIGNING AND STRIPING IS SUBJECT TO THE APPROVAL OF THE PUBLIC WORKS DIRECTOR PRIOR TO INSTALLATION AND/OR REMOVAL.
4. CONTRACTOR SHALL REMOVE ALL CONFLICTING STRIPING, PAVEMENT MARKINGS AND LEGENDS BY SANDBLASTING AND/OR GRINDING WITH THE SEAL. ANY DEBRIS SHALL BE PROMPTLY REMOVED BY THE CONTRACTOR.
5. SIGN POSTS SHALL BE INSTALLED WITH SQUARE PERFORATED STEEL TUBING WITH BREAKAWAY BASE PER REGIONAL STANDARD DRAWING M-45.
6. ALL SIGNS SHOWN ON THE STRIPING AND SIGNING PLANS SHALL BE NEW SIGNS PROVIDED AND INSTALLED BY THE CONTRACTOR, EXCEPT FOR THE EXISTING SIGNS SPECIFICALLY INDICATED TO BE RELOCATED OR TO REMAIN.
7. STRIPED CROSSWALKS SHALL HAVE AN INSIDE DIMENSION OF 10 FEET UNLESS INDICATED OTHERWISE.
8. ALL LIMIT LINES/STOP LINES, CROSSWALK LINES, PAVEMENT LEGENDS, AND ARROWS (EXCEPT WITHIN BIKE LANES) SHALL BE THERMOPLASTIC.
9. CONTRACTOR SHALL NOTIFY CITY PUBLIC WORKS DIRECTOR AT (619) 423-8311 A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO AND UPON COMPLETION OF STRIPING AND SIGNING.

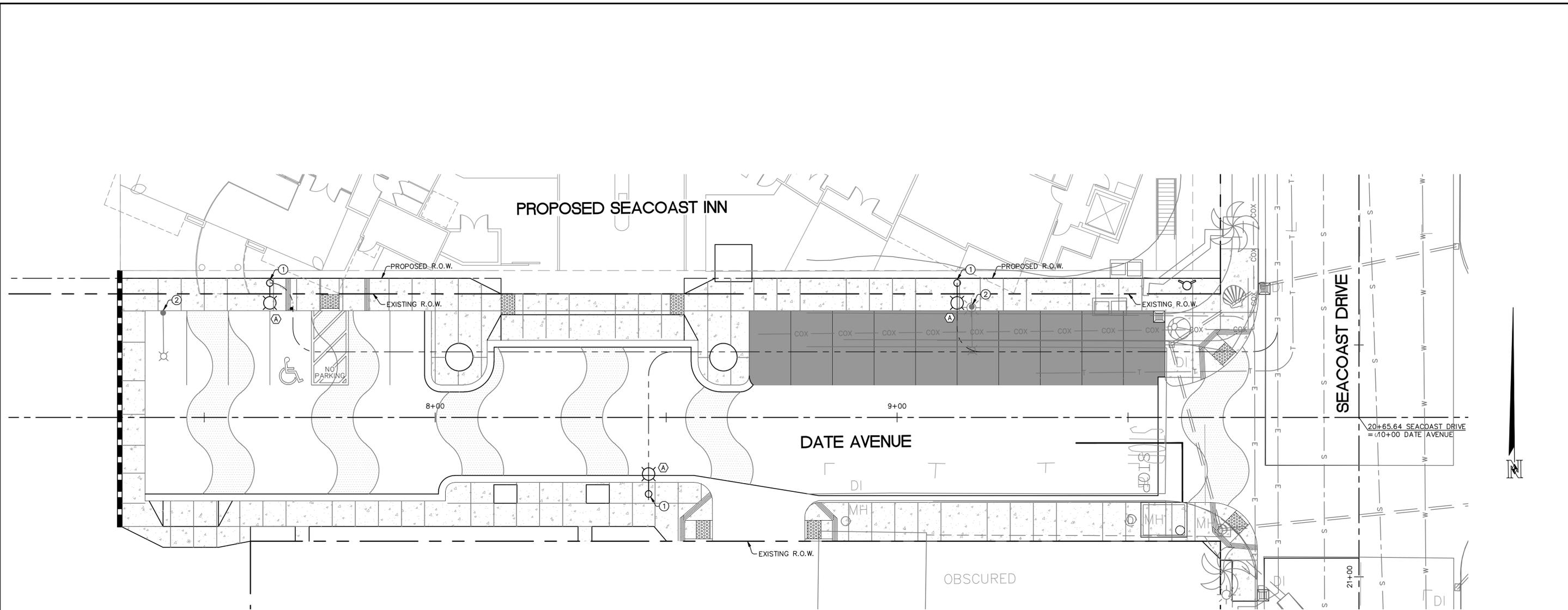
LEGEND:

-  "STOP LINE" PER PAGE 3B-25, SECTION 3B.16 OF THE MUTCD 2003 ED.
-  ADA PARKING STRIPING AND SIGNAGE PER THE CALDAG 2009 GUIDEBOOK.
- STOP "STOP" WORD MARKING PER PAGE 3B-38 OF THE MUTCD 2003 ED.
-  RED CURB MARKING PER PAGE 3A-1, SECTION 3A.04 OF THE MUTCD 2003 ED.



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CITY OF IMPERIAL BEACH				
PROJECT NUMBER _____				
STREET IMPROVEMENT PLANS FOR:				
DATE AVENUE				
STRIPING PLAN				
CITY OF IMPERIAL BEACH, CALIFORNIA ENGINEERING DEPARTMENT SHEET 6 OF 11 SHEETS				W.O. NO. _____
FOR CITY ENGINEER	DATE			
DESCRIPTION	BY	APPROVED	DATE	FILMED
ORIGINAL	N.E.			
				DIVISION HEAD
				DESIGN ENGINEER
				179-0444
				NAD 83 COORDINATES
				150-1725
				LAMBERT COORDINATES
CONTRACTOR _____		DATE STARTED _____		
INSPECTOR _____		DATE COMPLETED _____		
6-D				



LIGHT FIXTURE SCHEDULE

FIXTURE DESIGN'TN	LAMP DESCR	FIXTURE MOUNTING	LAMP DESCR	VA/WATTS	VOLTAGE	MANUFACTURER & CATALOG #	DESCRIPTION
(A)	HIGH PRESSURE SODIUM (HPS)	POLE	250W HPS	295	240V.	ARCHITECTURAL AREA LTG (1) #254h UCL/BL-P	25' SPUN-CAST, ROUND, TAPERED PRECASTED CONCRETE POLE WITH COLOR PER SPECIFICATIONS

- ① PROVIDE LIGHT STANDARD, TYPE (A) WITH PULL BOX AND FOUNDATION.
- ② EXISTING STREET LIGHT STANDARD SHALL BE DISCONNECTED AND REMOVED.

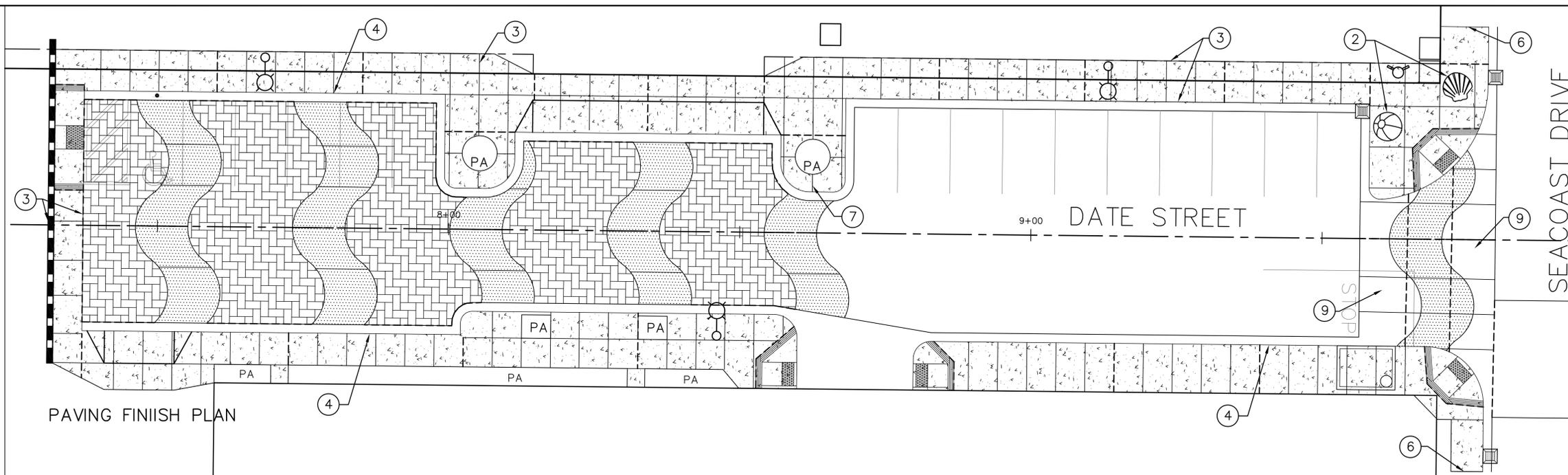


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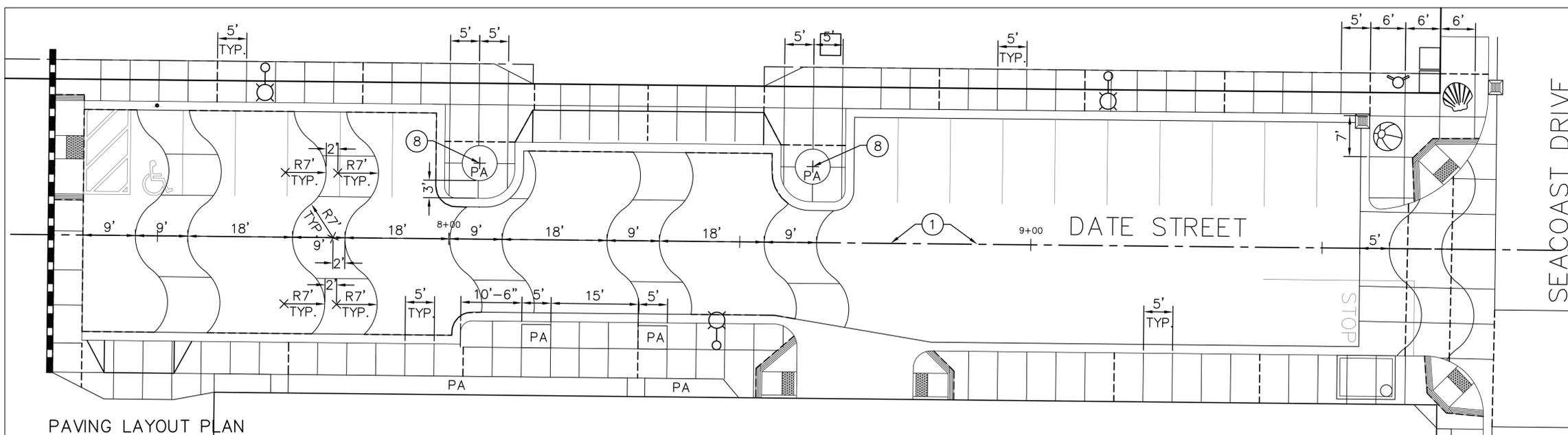
CITY OF IMPERIAL BEACH
PROJECT NUMBER _____

STREET IMPROVEMENT PLANS FOR: DATE AVENUE STREET LIGHTING PLAN				W.O. NO. _____
CITY OF IMPERIAL BEACH, CALIFORNIA ENGINEERING DEPARTMENT SHEET 7 OF 11 SHEETS				
FOR CITY ENGINEER	DATE	DIVISION HEAD		
DESCRIPTION	BY	APPROVED	DATE	DESIGN ENGINEER
ORIGINAL	N.E.			179-0444
				NAD 83 COORDINATES
				150-1725
				LAMBERT COORDINATES
CONTRACTOR	DATE STARTED	INSPECTOR		7-D
	DATE COMPLETED			

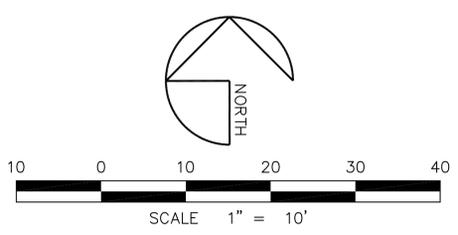
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PAVING FINIISH PLAN



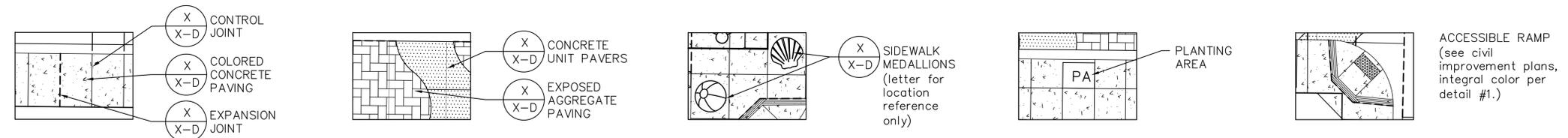
PAVING LAYOUT PLAN



PLAN NOTES

- ① STREET CENTERLINE.
- ② CENTER MEDALLION IN PANEL.
- ③ EXPANSION JOINT AT BACK OF WALL AND BACK OF CURB.
- ④ EXPANSION JOINT AT BACK OF CURB.
- ⑤ EXPANSION JOINT ALONG STREET CENTERLINE AND ADJACENT TO GUTTER IN EXPOSED AGGREGATE PAVING.
- ⑥ SEE CIVIL IMPROVEMENT PLANS FOR LIMITS OF DEMOLITION AND PAVING.
- ⑦ CENTER JOINT LINE ON CENTER OF CIRCLE.
- ⑧ 6 FOOT DIAMETER PLANTER CIRCLE.
- ⑨ SEE CIVIL IMPROVEMENT PLANS FOR PAVING FINISH THIS AREA.

LEGEND



GENERAL NOTES

1. MINIMUM 5'-0" WIDE SIDEWALK AREA REQUIRED BEHIND TOP OF ACCESSIBLE RAMP.
2. SEE SPECIAL PROVISIONS FOR CONCRETE SAMPLE PANEL REQUIREMENTS.
3. SEE SPECIAL PROVISIONS FOR REQUIREMENTS FOR ALL SURFACE UTILITY BOXES. ADJUST ALL EXISTING AND PROPOSED VALVE AND UTILITY BOXES TO PROPOSED GRADES. CONCRETE VALVE AND UTILITY BOXES SHALL MATCH THE COLOR OF THE ADJACENT CONCRETE PAVING.
4. SEE PAVING DETAILS FOR LOCATION AND ALIGNMENT OF EXPANSION JOINTS IF NOT SHOWN ON THE PLANS.
5. PROVIDE TWO (2) SAMPLE PANELS FOR EACH COLOR AND FINISH OF CONCRETE PAVING. SAMPLE PANEL SHALL BE A MINIMUM 6 FOOT BY 6 FOOT SQUARE IN SIZE. THE SAMPLE PANELS SHALL DEMONSTRATE TYPICAL COLOR, FINISH AND JOINT WORKMANSHIP. THE SAMPLE PANELS SHALL BE REVIEWED AND APPROVED PRIOR TO INSTALLING THE PAVING WORK.



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 LANDSCAPE ARCHITECTURE
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 FAX: (619) 296-3702

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REVISION	DATE	BY	PROJECT ENGR.
ORIGINAL		N.E.	

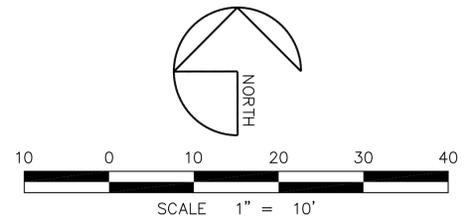
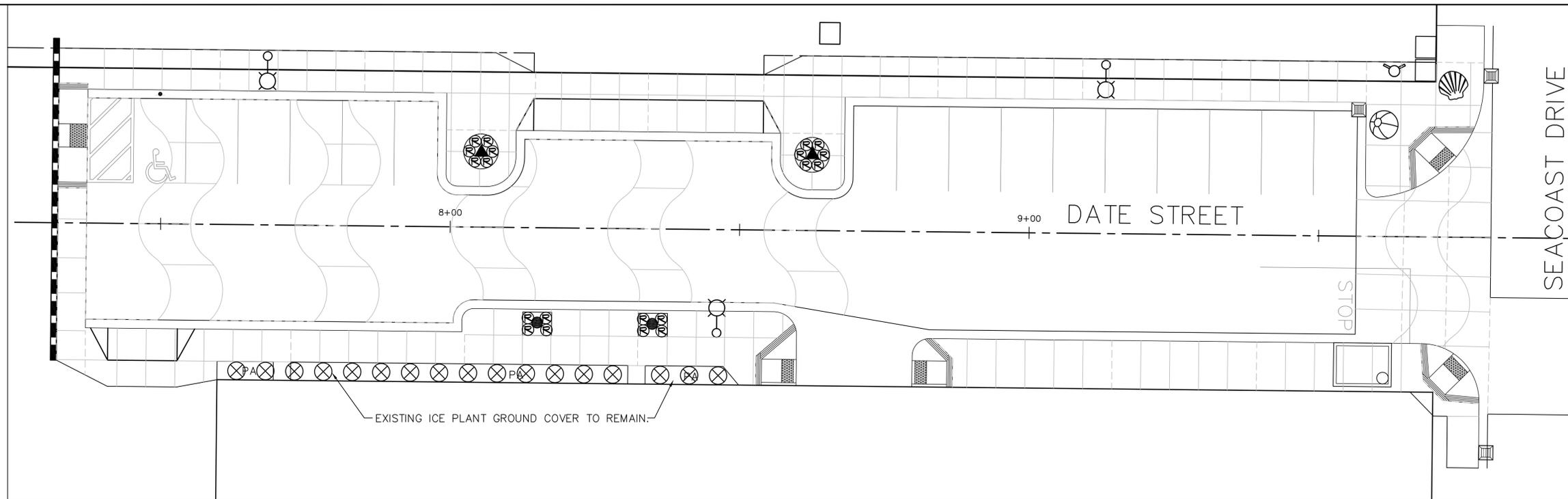
DESIGNED BY: _____
 DRAWN BY: _____
 SCALE: AS SHOWN
 JOB NO. _____



CITY OF IMPERIAL BEACH
 PROJECT NUMBER _____

STREET IMPROVEMENT PLANS FOR:				
DATE STREET				
CITY OF IMPERIAL BEACH, CALIFORNIA ENGINEERING DEPARTMENT SHEET OF SHEETS				W.O. NO. _____
FOR CITY ENGINEER	DATE	APPROVED	DATE	FILMED
DESCRIPTION	BY	APPROVED	DATE	FILMED
ORIGINAL	N.E.			
CONTRACTOR _____				DATE STARTED _____
INSPECTOR _____				DATE COMPLETED _____
DESIGN ENGINEER				DIVISION HEAD
1790-6286				
NAD 83 COORDINATES				
150-1725				
LAMBERT COORDINATES				

NOT FOR CONSTRUCTION 11/12/2008



PLANT MATERIAL LEGEND – TREE / SHRUBS / GROUNDCOVER

	SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	REMARKS	DETAIL
TREES	●	METROSIDEROS EXCELSUS	NEW ZEALAND CHRISTMAS TREE	36" BOX	12' – 14' HT / 5' – 6' SP. STANDARD	A
	▲	WASHINGTONIA ROBUSTA	MEXICAN FAN PALM	25" BTH	STRAIGHT TRUNK, FULL FRONS, MINIMUM 10 INCH DIAMETER TRUNK. NO SCARS ON TRUNK. BTH – BROWN TRUNK HEIGHT.	B
SHRUBS	⊗	CISTUS X PURPUREUS	ROCK ROSE	5 GAL.	FULL, BUSHY, GOOD GREEN COLOR	C
	⊗	RHAPIOLEPSIS INDICA "BALLERINA"	INDIAN HAWTHORN	5 GAL.	FULL, BUSHY, GOOD GREEN COLOR	C

GENERAL NOTES

1. FINE GRADE ALL PLANTING AREAS PRIOR TO THE COMMENCEMENT OF PLANTING OPERATIONS.
2. CONTRACTOR IS RESPONSIBLE FOR PROVIDING PLANT MATERIALS SUFFICIENT TO COVER AREAS SHOWN ON PLANS.
3. INSTALL ALL PLANT MATERIALS IN ACCORDANCE WITH DETAILS. ALL FINISH GRADING AND PLANTING OPERATIONS SHALL BE CARRIED OUT IN ACCORDANCE WITH THE PLAN NOTES, DETAILS AND SPECIAL PROVISIONS.
4. CONTRACTOR SHALL NOTIFY THE RESIDENT ENGINEER 48 HOURS PRIOR TO THE TIME OF DELIVERY OF PLANT MATERIAL TO THE JOB SITE IN ORDER THAT THE ENGINEER CAN DETERMINE THE ACCEPTABILITY OF MATERIAL AT TIME OF DELIVERY.
5. CONTRACTOR SHALL LOCATE PLANT MATERIAL APPROXIMATELY AS SHOWN ON THE PLANTING PLANS AND SHALL OBTAIN APPROVAL FROM THE RESIDENT ENGINEER PRIOR TO REMOVING PLANTS FROM CONTAINERS AND EXCAVATING SOIL.
6. ALL PLANT MATERIAL IN SIMILAR CONTAINERS SHALL BE EVENLY MATCHED.
7. CONTRACTOR SHALL SUBMIT AN AGRICULTURAL SUITABILITY AND FERTILITY ANALYSIS OF FOUR (4) SAMPLE LOCATIONS TO BE DETERMINED BY THE RESIDENT ENGINEER AFTER DEMOLITION AND PRIOR TO PLANTING WORK. PLANTING REQUIREMENTS AND SOIL AMENDMENT SPECIFICATIONS ARE BASED ON A PRELIMINARY ANALYSIS OF ON-SITE SOILS.
8. PRIOR TO ORDERING TREES FOR DELIVERY TO THE SITE THE CONTRACTOR SHALL DIG FOUR (4) TREE PLANTING PITS IN LOCATIONS TO BE DETERMINED BY THE RESIDENT ENGINEER. THE CONTRACTOR SHALL CONDUCT A DRAINAGE TEST BY FILLING THE PIT WITH ONE (1) FOOT OF WATER. UPON APPROVAL OF THE DRAINAGE TEST BY THE RESIDENT ENGINEER THE TREES CAN THEN BE ORDERED FOR DELIVERY TO THE SITE.
9. CONTRACTOR SHALL INSTALL A MINIMUM 3 INCH DEPTH OF DECOMPOSED GRANITE IN ALL TREE WELLS PER DETAIL #8 ON SHEET 15-D.



CITY OF IMPERIAL BEACH
PROJECT NUMBER _____

STREET IMPROVEMENT PLANS FOR:
DATE STREET

CITY OF IMPERIAL BEACH, CALIFORNIA
ENGINEERING DEPARTMENT
SHEET OF SHEETS

W.O. NO. _____

FOR CITY ENGINEER	DATE	DIVISION HEAD
DESCRIPTION	BY	APPROVED
DATE	FILMED	DESIGN ENGINEER
ORIGINAL	N.E.	1790-6286
		NAD 83 COORDINATES
		150-1725
		LAMBERT COORDINATES

CONTRACTOR _____ DATE STARTED _____
INSPECTOR _____ DATE COMPLETED _____

-D



PARTERRE
SITE PLANNING
URBAN DESIGN
LANDSCAPE ARCHITECTURE

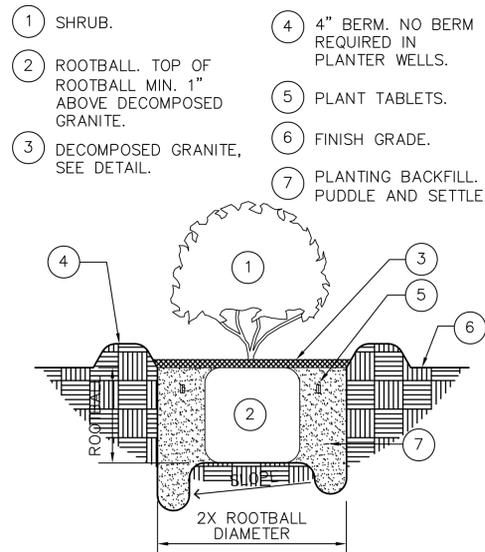
1221 HAYES AVENUE
SAN DIEGO, CALIFORNIA 92108

PHONE: (619) 296-3713
FAX: (619) 296-3702

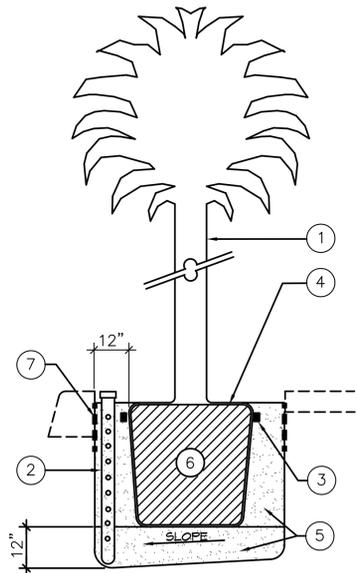
NASLAND ENGINEERING
CIVIL ENGINEERING • SURVEYING • LAND PLANNING
4740 Rufner Street, San Diego, California, 92111 • 858-292-7770

REVISION	DATE	BY	PROJECT ENGR.
ORIGINAL		N.E.	DESIGNED BY: _____
			DRAWN BY: _____
			SCALE: AS SHOWN
			JOB NO. _____

NOT FOR CONSTRUCTION 11/12/2008



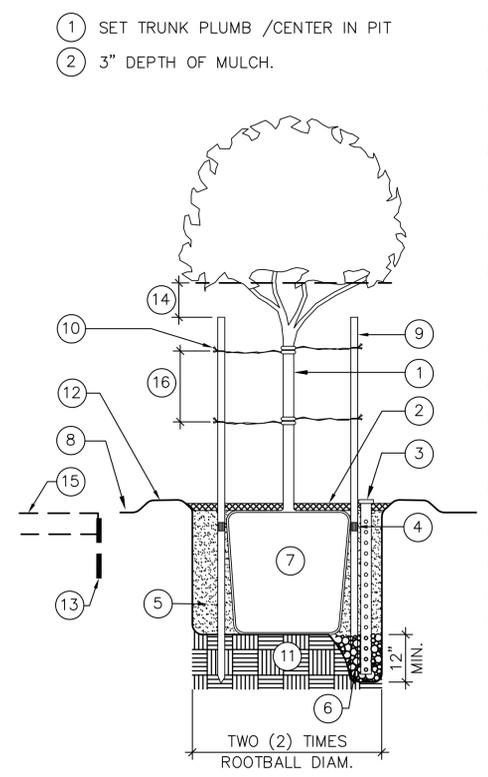
C SHRUB PLANTING
N.T.S.



NOTE: INSTALL "BIOBARRIER ROOT CONTROL SYSTEM ON FOUR (4) SIDES OF ALL TREE ROOTBALLS. INSTALL FABRIC IMMEDIATELY ADJACENT TO CONCRETE CURB AND PAVEMENT EDGE. USE 19.5 INCH WIDE FABRIC. INSTALL PER MANUFACTURER'S REQUIREMENTS.

B FAN PALM IN TREE CUTOUT
N.T.S.

- ① SET TRUNK PLUMB /CENTER IN PIT.
- ② 4" PERFORATED PVC PIPE WITH FILTER FABRIC SOCK. TWO RISERS W/LATERAL IN "U" SHAPE. SET ALONG LOW SIDE OF PIT. INSTALL DRAIN CAPS AT BOTH ENDS. SET DRAIN CAPS AT ELEV. OF PAVING.
- ③ PLANT TABLETS, MAXIMUM 3" DEPTH.
- ④ TOP OF ROOTBALL 3" BELOW TOP OF CURB.
- ⑤ BACKFILL 100% WASHED CONCRETE SAND. ALL BACKFILL TO BE WATER JETTED DURING PLANTING OPERATION.
- ⑥ ROOTBALL.
- ⑦ "BIOBARRIER", SEE NOTE.



A SPECIMEN TREE PLANTING / DOUBLE STAKE
N.T.S.

- ③ 4" ABS FILTER FABRIC WRAPPED PERFORATED STAND PIPE WITH REMOVABLE PVC CAP.
- ④ PLANT TABLETS, DEPTH PER SPECS.
- ⑤ AMENDED BACKFILL SOIL. REMOVE ROCKS 4" AND LARGER.
- ⑥ 1 CU. FT. OF 3/4" GRAVEL AT BASE OF PIPE.
- ⑦ ROOT BALL. TOP OF ROOTBALL MIN. 1" ABOVE FINISH GRADE.
- ⑧ FINISH GRADE.
- ⑨ 2" DIA. LODGE POLE PINE STAKE, 2 EACH 10' MIN., 12' LONG FOR 24" BOX, 14' FOR 36" BOX. SET ONE STAKE PERPENDICULAR TO PREVAILING WIND
- ⑩ "CINCH TIE" BY U.I.T. OR EQUAL.
- ⑪ SET ROOT BALL ON UNDISTURBED NATIVE SOIL.
- ⑫ 3" HIGH BERM IN SHRUB/GROUND COVER AREAS ONLY. NO BERM REQUIRED IN ENCLOSED TREE WELLS.
- ⑬ "BIO BARRIER" ROOT CONTROL SYSTEM, SEE NOTE.
- ⑭ CUT STAKES 6" BELOW CANOPY.
- ⑮ CONC. WALK, STEP, WALL, CURB OR FOUNDATION.

NOTE:
INSTALL STAND PIPE AND GRAVEL AT BASE WITH SPECIMEN (24" BOX & LARGER) TREE ONLY.
INSTALL 10 FOOT LENGTH OF ROOT CONTROL SYSTEM CENTERED ON THE TRUNK FOR ALL TREE ROOTBALLS LOCATED WITHIN 5'-0" OF CONC. WALKS, STEPS, CURBS, WALLS, OR FOUNDATIONS. USE 12 INCH WIDE FABRIC. INSTALL PER MANUFACTURER'S REQUIREMENTS (619) 263-3659.



CITY OF IMPERIAL BEACH
PROJECT NUMBER _____

STREET IMPROVEMENT PLANS FOR:		DATE STREET	
CITY OF IMPERIAL BEACH, CALIFORNIA		W.O. NO. _____	
ENGINEERING DEPARTMENT		DESIGN ENGINEER	
SHEET OF SHEETS		1790-6286	
FOR CITY ENGINEER		150-1725	
DESCRIPTION	BY	APPROVED	DATE
ORIGINAL	N.E.		
CONTRACTOR		DATE STARTED	
INSPECTOR		DATE COMPLETED	



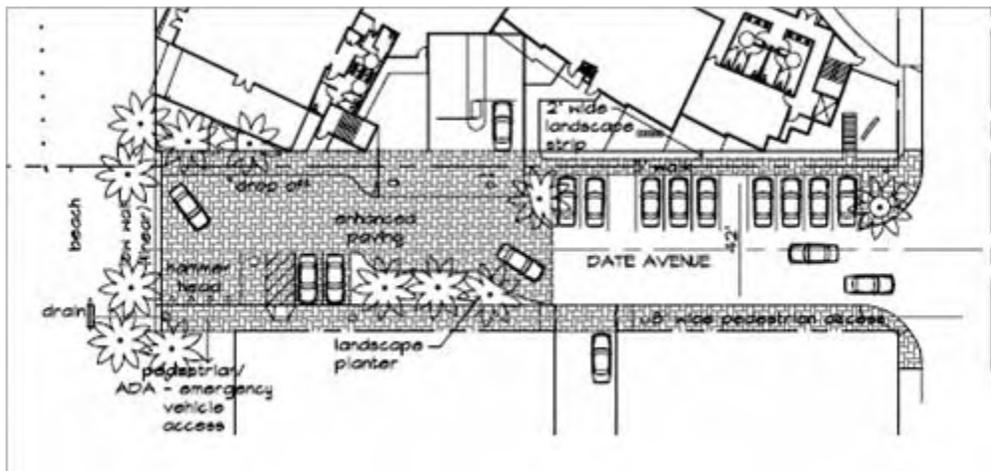
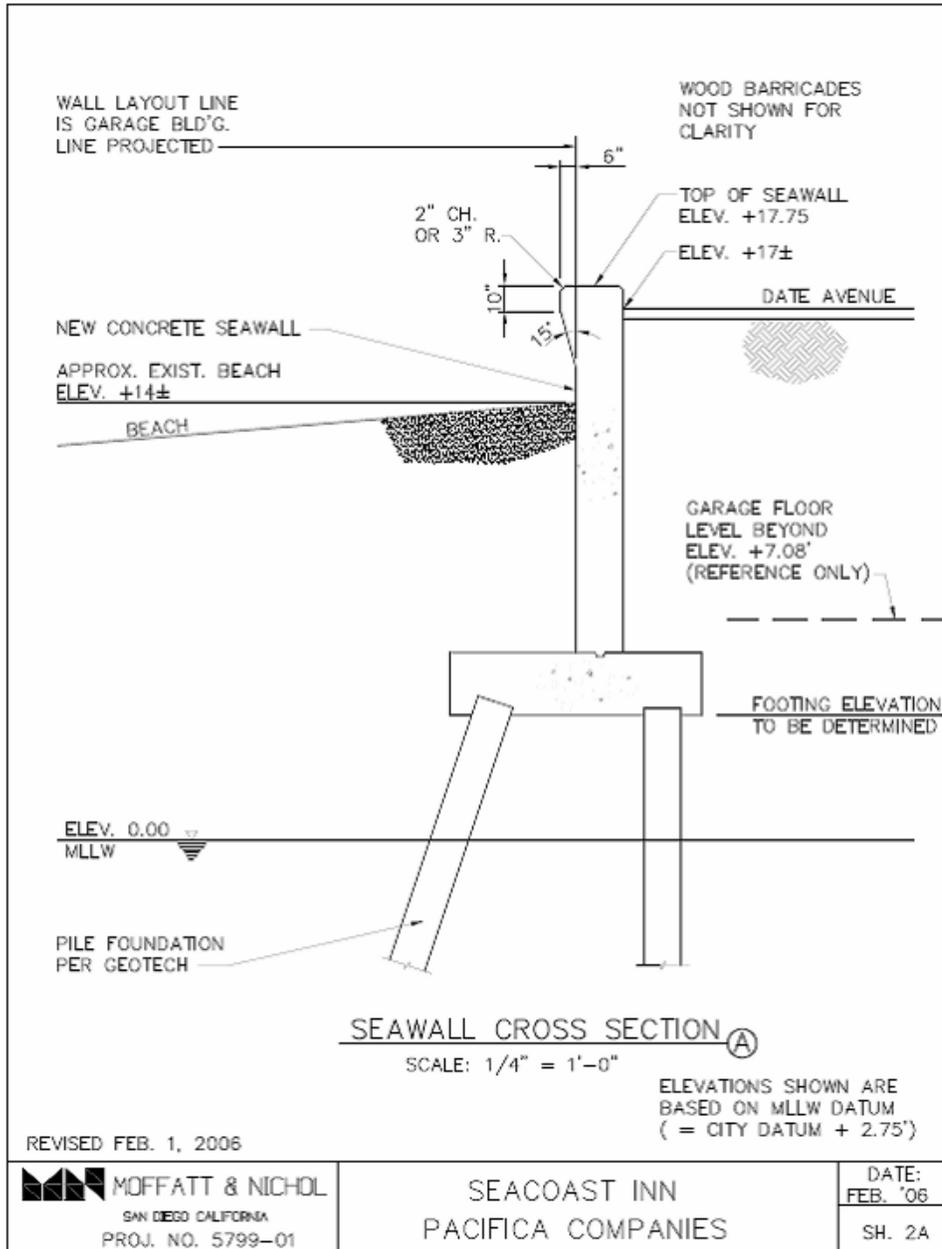
PARTERRE
SITE PLANNING
URBAN DESIGN
LANDSCAPE ARCHITECTURE
1221 HAYES AVENUE
SAN DIEGO, CALIFORNIA 92103
PHONE: (619) 296-3713
FAX: (619) 296-3702

NASLAND ENGINEERING	
CIVIL ENGINEERING • SURVEYING • LAND PLANNING 4740 Rufner Street, San Diego, California, 92111 • 858-292-7770	
REVISION	DATE BY
ORIGINAL	N.E.
PROJECT ENGR: _____	
DESIGNED BY: _____	
DRAWN BY: _____	
SCALE: AS SHOWN	
JOB NO. _____	

EXHIBIT "B"

DATE AVENUE SEAWALL DRAWINGS

[BEHIND THIS PAGE]



ATTACHMENT NO. 5
SCHEDULE OF PERFORMANCE
[behind this page]

ATTACHMENT NO. 5

SCHEDULE OF PERFORMANCE

I. DEVELOPMENT

1. Submission - Preliminary Construction Drawings, and Preliminary Landscaping and Grading Plans. Developer shall prepare and submit to Agency preliminary construction drawings and preliminary landscaping and grading plans for the Property. Within forty-five (45) days of Agency's execution of the DDA and in any event prior to Close of Escrow.
2. Approval - Preliminary Construction Drawings, and Preliminary Landscaping and Grading Plans. Agency shall approve or disapprove the preliminary construction drawings and preliminary landscaping and grading plans for the Property. Within fifteen (15) business days after receipt by Agency.
3. Submission - Final Construction Drawings and Landscaping and Finish Grading Plans. Developer shall prepare and submit the final construction drawings and the final landscaping and finish grading plans for the Property. Within forty-five (45) days after Agency approval of the preliminary construction drawings and in any event prior to Close of Escrow.
4. Approval - Final Construction Drawings and Landscaping and Finish Grading Plans. Agency shall approve or disapprove the final construction drawings and the final landscaping and finish grading plans for the Property. Within fifteen (15) business days after receipt by Agency.
5. Developer's Satisfaction to Conditions Precedent to Close of Financing. Developer shall have satisfied all conditions required in accordance with Section 204.1 of the DDA. At least thirty (30) days prior to the Close of Escrow.
6. Close of Escrow. Close of Escrow shall occur. No later than one hundred and twenty (120) days from the Agency's execution of the DDA, subject to two (2) 30-day extensions by the Executive Director in accordance with

Section 308 of the DDA.

7. Commencement of Construction. Developer shall commence construction of the Improvements, in accordance with the DDA and Scope of Development. Within thirty (30) days of Close of Escrow.
8. Completion of Construction. Developer shall complete construction of the Improvements in accordance with the DDA and Scope of Development. On or before twenty-four (24) months after commencement of construction.

ATTACHMENT NO. 6

PROJECT BUDGET

[behind this page]

ATTACHMENT NO. 6

PROJECT BUDGET

	<u>Totals</u>	<u>Notes</u>
I. Direct Costs		
Off-Site Improvements	\$885,797	\$18 Per SF Site
Demolition	\$150,000	\$3 Per SF Site
On-Site Improvements/Landscaping	\$1,852,192	\$37 Per SF Site
Parking	\$1,462,808	\$12,945 Per Space
Shell Construction	\$11,982,559	\$142 Per SF GBA
Solar Costs	\$166,703	\$2 Per SF GBA
Amenities/FF&E	\$2,039,584	\$26,149 Per Room
Contingency	<u>\$556,000</u>	3.0% of Directs
Subtotal Direct Costs	\$19,095,643	\$226 Per SF GBA (2)
Add: Prevailing Wage Impact	<u>\$1,500,000</u>	7.9% of Directs
Total Direct Costs	\$20,595,643	\$244 Per SF GBA
II. Indirect Costs		
Architecture & Engineering	\$955,000	5.0% of Directs (2)
Permits & Fees (1)	\$218,875	\$3 Per SF GBA
Legal & Accounting	\$50,000	0.3% of Directs (2)
Taxes & Insurance	\$191,000	1.0% of Directs (2)
Developer Fee	\$75,000	0.4% of Directs
Marketing/Lease-Up	\$185,000	\$2,372 Per Room
Contingency	<u>\$50,000</u>	3.0% of Indirects
Total Indirect Costs	\$1,724,875	8.4% of Directs
III. Financing Costs		
Loan Fees	\$224,200	1.1% of Directs
Interest During Construction	\$960,000	4.7% of Directs
Operating Deficit Reserve	<u>\$0</u>	0.0% of Directs
Total Financing Costs	\$1,184,200	5.7% of Directs
IV. Total Development Costs, Excluding Land		
	\$23,504,718	\$279 Per SF GBA
Or Say (Rounded)	\$23,505,000	\$301,000 Per Room

(1) Developer estimate; not verified by City of Imperial Beach or its Redevelopment Agency.

(2) Direct costs before impact of prevailing wages.

ATTACHMENT NO. 7

GRANT DEED

[behind this page]

ATTACHMENT NO. 7

GRANT DEED

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Section 6103

Recording Requested By and
When Recorded Mail to and
Mail Tax Statements to:

Imperial Beach Redevelopment Agency
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

Attention: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 625-262-01

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, IMPERIAL COAST LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP ("Grantor") hereby grants to the IMPERIAL BEACH REDEVELOPMENT AGENCY, a public body corporate and politic ("Grantee") the real property described in the document attached hereto, labeled Exhibit A and incorporated herein by this reference (the "Property").

This Grant Deed can be executed in one or more counterparts with all counterparts taken together constituting a single document.

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

By: PACIFICA – HOSPITALITY GROUP,
a Nevada corporation

Dated: _____

By: _____
Ashok Israni, President

CERTIFICATE OF ACCEPTANCE

Pursuant to California Government Code Section 27281, this is to certify that the interest in real property conveyed by this Grant Deed dated [____], 2011, from _____ (“Grantor”), to the Imperial Beach Redevelopment Agency, a public body, corporate and politic (“Grantee”), is hereby accepted pursuant to authority conferred by the governing board of the Imperial Beach Redevelopment Agency on [____], 2010, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2010

IMPERIAL BEACH REDEVELOPMENT
AGENCY

By: _____

Gary Brown
Executive Director

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2011, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

**LEGAL DESCRIPTION
LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

ATTACHMENT NO. 8
ENVIRONMENTAL INDEMNITY

[behind this page]

ATTACHMENT NO. 8

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this "Indemnity"), dated as of _____, 2011, is made by IMPERIAL COAST, L.P., a California limited partnership (the "Developer"), whose address for purposes of giving notices is 1785 Hancock Street, Suite 100, San Diego, California 92110, in favor of the IMPERIAL BEACH REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency") and the CITY OF IMPERIAL BEACH, whose address for purposes of giving notices is 825 Imperial Beach Boulevard, Imperial Beach, California 91932.

WITNESSETH

WHEREAS, Agency and Developer entered into that certain Disposition and Development Agreement, dated _____, 2010 (the "DDA"), pursuant to which Developer agreed to construct a full service hotel on the Property (the "Project") in accordance with the terms and conditions of the DDA; and

WHEREAS, in furtherance of the DDA, the Developer conveyed fee interest in the Property to the Agency and the Agency leased back the Property to Developer, subject to the terms and conditions of that certain Ground Lease entered into by and between Agency and Developer, dated _____, 2011 ("Ground Lease"); and

WHEREAS, Developer has agreed to execute and deliver to the Agency this Indemnity to induce the Agency to enter into each Ground Lease and the DDA; and

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Developer hereby agrees with the Agency as follows:

SECTION 1. DEFINITIONS

All capitalized terms used in this Indemnity shall have the meanings ascribed to them in the DDA with the same force and effect as if set forth in full below.

SECTION 2. COVENANTS AND INDEMNITY

The following covenants and indemnities are hereby given and made by Developer:

2.1 Covenants.

(a) Developer covenants that it shall (i) comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials, (ii) pay immediately when due the costs of the

removal of, or any other action required by law with respect to, any such Hazardous Materials, and (iii) keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Developer covenants that the Property will not be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except for de minimis quantities used at the Property in compliance with all applicable environmental laws and required in connection with the routine operation and maintenance of the Property (the "De Minimis Exception").

(c) Developer further agrees that, except with respect to the De Minimis Exception, Developer shall not release or dispose of any Hazardous Materials on the Property without the express written approval of the Agency and that any such release or disposal shall be effected in strict compliance with all applicable laws and all conditions, if any, established by the Agency.

(d) The Agency shall have the right, at any time, to conduct an environmental audit ("Agency Audit"), at the Agency's expense, unless Hazardous Materials (other than in connection with the De Minimis Exception) are found, then at Developer's sole cost and expense, and Developer shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the Agency reasonably believes that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior notice has been given to Developer and only in the presence of a representative of Developer. The Agency Audit shall not interfere with occupancy or ongoing work. Agency shall obtain Developer's prior approval of any work plan that involves invasive or destructive testing or work, with Developer's approval to not be unreasonably withheld. Agency shall promptly repair and restore any damage to the Property caused by the Agency's entry. If Agency believes it has found evidence of Hazardous Materials, Agency shall cooperate with the Developer by providing the Developer with complete information, including any inspection logs, reports, etc.

(e) Developer shall not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material and with respect to such material Developer shall remove or cause to be removed any such material. If Developer shall fail to comply with this subsection within the cure period permitted under applicable law, regulation, or order, the Agency may do whatever is necessary to eliminate said substances from the premises or to otherwise comply with the applicable law, regulation, or order, and the costs thereof shall be added to the Obligations (as hereinafter defined) of Developer under this Section 2.

(f) Developer shall immediately advise the Agency in writing of any of the following: (i) any pending or threatened environmental claim against Developer or the Property or (ii) any condition or occurrence on the Property that (A) results in noncompliance by Developer with

any applicable environmental law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Developer.

2.2 Indemnity. Developer shall indemnify, protect, and hold the Agency and City harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the "Obligations") which may at any time be imposed upon, incurred by or asserted or awarded against the Agency and arising from or out of:

- (a) The presence of any Hazardous Materials on, in, under, or affecting all or any portion of the Property or any surrounding areas;
- (b) The enforcement by the Agency of any of the provisions of this Section 2.2 or the assertion by Developer of any defense to its obligations hereunder.

SECTION 3. DEVELOPER'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. Developer hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting the DDA or affecting any of the rights of the Agency with respect thereto. The obligations of Developer hereunder shall be absolute and unconditional irrespective of:

- (a) The validity, regularity, or enforceability of the DDA or any other instrument or document executed or delivered in connection therewith (collectively, the "DDA Documents");
- (b) Any alteration, amendment, modification, release, termination, or cancellation of any of the DDA Documents, or any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the obligations of Developer contained in any of the DDA Documents;
- (c) Any waiver of, or consent to any departure from, any provision contained in the DDA Documents;
- (d) Any exculpatory provision in any of the DDA Documents limiting the Agency's recourse to Developer's interest in the Property;

- (e) Any exchange, addition, subordination, or release of, or non-perfection of any lien on or security interest in, any collateral for the DDA Documents.
- (f) The insolvency or bankruptcy of Developer, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the DDA Documents; or
- (g) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Developer or any other indemnitor or guarantor with respect to the DDA Documents, or any or all of the Obligations.

3.2 Continuation. This Indemnity (a) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations.

SECTION 4. WAIVER

Developer hereby waives the following:

- (a) Promptness and diligence;
- (b) Notice of acceptance and notice of the incurrence of any obligation by Developer;
- (c) Notice of any action taken by the Agency or any other interested party under this Indemnity and/or the DDA Documents (but only to the extent it affects rights under this Indemnity), or under any other agreement or instrument relating thereto;
- (d) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Developer of its Obligations hereunder;
- (e) Any requirement that the Agency protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;
- (f) Any requirement that the Agency exhaust any right or take any action against Developer or any other person or collateral; and
- (g) Any defense that may arise by reason of:
 - (1) The incapacity, lack of authority, death or disability of, or revocation hereof

by, any person or persons;

(2) The failure of the Agency to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or

(3) Any defense based upon an election of remedies by the Agency.

SECTION 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be personally served, mailed by first-class registered mail, return receipt requested, to the address set forth in the first paragraph of this Indemnity, above, or given by telecopier to the telecopier numbers stated below, with confirmations mailed by first class registered mail, return receipt requested to the address set forth above, of the party to whom such notice is to be given (or to such other address as the parties hereto, shall designate in writing):

To Agency: Imperial Beach Redevelopment Agency
825 Imperial Beach Boulevard
Imperial Beach, CA
Attn: Executive Director

To Developer: Imperial Coast, L.P.
1785 Hancock Street, Suite 100
San Diego, CA 92110
Attn: Ashok Israni

Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

SECTION 6. MISCELLANEOUS

6.1 Developer shall make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the Agency at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and signed by Developer and the Agency, and no waiver of any provision of this Indemnity, and no consent to any departure by Developer from any provision of this Indemnity, shall be effective unless it is in writing and signed by the Agency, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the Agency to exercise, and no delay in exercising, any right hereunder or under the DDA Documents (as it relates to rights under this Indemnity) shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agency provided herein and in the DDA Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall be binding upon Developer and Developer's successors and assigns; provided, however, that from and after the effective date of a Transfer, the transferor shall be released from all obligations and shall release any rights it may have from the Agency under this Agreement. This Indemnity shall inure, together with all rights and remedies of the Agency hereunder, to the benefit of the Agency, its respective directors, officers, employees, and agents, any successors to the Agency's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of the Agency's rights and remedies under the DDA Documents, any successors to any such person, and all directors, officers, employees, and agents of all of the aforementioned parties.

6.6 Developer hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in Orange County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Developer irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Developer agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, Developer has duly executed this Indemnity as of the date first set forth above.

IMPERIAL BEACH REDEVELOPMENT
AGENCY

Date: _____

By: _____

Gary Brown
Executive Director

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

By: PACIFICA – HOSPITALITY GROUP, a
Nevada corporation

Dated: _____

By: _____

Ashok Israni, President

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain real property situated in the County of San Diego, State of California, as follows:

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

ATTACHMENT NO. 9
DISBURSEMENT AGREEMENT

[behind this page]

ATTACHMENT NO. 9

DRAFT DISBURSEMENT AGREEMENT

THIS DISBURSEMENT AGREEMENT is made as of _____, 2010 by and among the IMPERIAL BEACH REDEVELOPMENT AGENCY, a public body corporate and politic ("Agency"), IMPERIAL COAST, L.P., a California limited partnership ("Developer"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender").

R E C I T A L S

A. Developer is the owner of certain the real property described in Exhibit "A" attached hereto (the "Property").

B. Developer desires to sell the Property to Agency, and Agency desires to purchase the Property from Developer for the purchase price of FIVE MILLION SEVEN HUNDRED AND SIXTY THOUAND DOLLARS AND NO CENTS (\$5,760,000.00)("Purchase Price") in accordance with the terms of that certain Disposition and Development Agreement by and between Agency and Developer, dated as of _____, 2010 (the "DDA"). DDA as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

C. Agency additionally desires to purchase the Plans from Developer in the amount of THREE HUNDRED AND FIFTY-FOUR THOUSDAND ONE HUNDRED AND NINETY-THREE DOLLARS AND NO CENTS (\$354,193.00)("Plans Price") and pay Developer for the cost of constructing certain off-site public improvements that are required by the City of Imperial Beach as a condition to development of the Property ("Public Improvements") in an amount not to exceed EIGHT HUNDRED AND EIGHTY FIVE THOUSAND SEVEN HUNDRED AND NINETY SEVEN DOLLARS AND NO CENTS (\$885,797.00)("Public Improvement Price"), in accordance with the terms of the DDA.

D. As a condition to Agency's purchase of the Property, Agency has agreed to lease the Property to Developer, and Developer has agreed to lease the Property from the Agency, in accordance with that certain Ground Lease ("Lease"), executed concurrently herewith.

E. As a condition of Agency's purchase of the Property from, and lease back of the Property to, the Developer, Developer has agreed to develop its leasehold interest in the Property as a full service, beach resort hotel with seventy-eight (78) rooms and appurtenant parking facilities (collectively, "the Project").

F. As a further condition of Agency's purchase of the Property from, and lease back of the Property to, the Developer, Developer has agreed to seek construction financing from

Wells Fargo Bank (“Lender”) to Develop the Property in accordance with the DDA and Ground Lease (“Construction Loan”).

NOW, THEREFORE, Agency, Developer and Lender agree as follows:

1. Deposit of Purchase Price.

a. Deposit by Agency of Sale Proceeds. Consistent with the provisions of the DDA, Agency shall cause the Sale Proceeds to be deposited into the Escrow Account for disbursement by Lender in accordance with this Agreement; provided, however, that in the event that Developer elects, by written notice to the Agency and Lender, to proceed with a tax deferred exchange of property, Developer shall cause an amount equivalent to the Sale Proceeds to be deposited into the Escrow Account as a partial contribution of Developer’s Equity (“Exchange Equity”) for disbursement by Lender in accordance with this Agreement.

b. Deposit by Developer of Developer Equity. Consistent with the provisions of the DDA, Developer shall deposit the full amount of equity necessary to complete the Project (“Developer’s Equity”) in accordance with the final Agency approved Project Budget, after taking into account the amount of the Construction Loan Proceeds and the Sale Proceeds (or an equivalent amount of Exchange Equity) that will be available for disbursement by Lender in accordance with this Agreement.

c. Deposit by Agency of Public Improvement Price. Consistent with the provisions of the DDA, Agency shall deposit the Public Improvement Price (“Public Improvement Proceeds”) into the Escrow Account within thirty (30) days after Completion of the Public Improvements for disbursement by Lender in accordance with this Agreement, subject to any withholding authorized under Section 204.2 of the DDA, in which event any amounts withheld by Agency shall be paid by Developer as Developer’s Equity until the withheld amounts are released by Agency in accordance with Section 204.2 of the DDA.

d. Funding of Lender’s Loan Commitment. Lender shall deposit the construction loan proceeds (“Construction Loan Proceeds”) into the Escrow Account, in accordance with the Construction Loan Agreement.

2. Disbursement Procedure.

a. Application for Payment. Disbursements of Project Funds shall be made in accordance with the order of disbursement in subparagraph (b), below. The term “disbursements of Project Funds” shall include, without limitation, disbursement of Developer’s Equity, Sale Proceeds, Public Improvement Proceeds, and Construction Loan Proceeds.

b. Order of Disbursement. Lender shall disburse the Project Funds in the following order:

i. First, Developer’s Equity until fully expended

ii. Second, Sale Proceeds until fully expended, unless Sale Proceeds have been substituted with Developer's Exchange Equity, in which the Developer's Exchange Equity shall be treated as Developer's Equity.

iii. Third, Construction Loan Proceeds

iv. The Public Improvements Proceeds shall be disbursed after deposit into the Escrow Account by Agency in accordance with Section 1(c) of this Agreement.

c. Application of Project Funds. All Project Funds shall be applied only to pay for outstanding Development Costs itemized in the Project Budget (Attachment No. 6 to the DDA) or any revisions agreed to, in writing, by Agency and Developer. Developer shall assume responsibility for payment of all outstanding Development Costs.

3. Inspection of the Project. Agency shall have the right to inspect the Property during construction and agrees to deliver to the Developer copies of any inspection reports. Inspection of the Property shall be for the sole purpose of ensuring compliance with the DDA and Ground Lease and is not to be construed as a representation by Agency that there has been compliance with plans or that the Property will be free of faulty materials or workmanship. The Developer may make or cause to be made such other independent inspections as the Developer may desire for its own protection.

4. Supervision of Construction. Agency shall be under no obligation to perform any of the construction or complete the construction of the improvements on the Property, or to supervise any construction on the Property, and shall not be responsible for inadequate or deficient contractors, subcontractors, materials, equipment or supplies. Agency is not the agent for Developer, neither are Agency and Developer partners or joint venturers with each other.

5. Integrated Agreement. This Agreement is made for the sole benefit and protection of the parties hereto and no other person or persons shall have any right of action or right to rely hereon. As this Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof shall be deemed to exist or bind any party unless in writing and signed by the party to be charged. Notwithstanding the foregoing sentence or any other provision of this Agreement, this Agreement does not supersede and shall not be deemed to amend any of the DDA.

6. Termination of this Disbursement Agreement. This Agreement shall terminate when all of the Project Funds have been fully disbursed.

7. Counterparts. This Agreement may be signed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument with the same effect as if all signatories had executed the same instrument.

8. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

9. Governing Law. This Agreement has been negotiated and entered in the State of California, and shall be governed by, construed and enforced in accordance with the internal laws of the State of California, applied to contracts made in California by California domiciliaries to be wholly performed in California.
10. Titles and Captions. Titles or captions contained herein are inserted as a matter of conveniences and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.
11. Interpretation. No provision in this Agreement is to be interpreted for or against either party because that party or his legal representatives drafted such provision.
12. Waiver; Amendments. No breach of any provision hereof may be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by the parties in interest at the time of the modification.
13. Further Assurances. The parties hereto hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement.
14. Severance. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or enforceable, then such provision will be deemed to be severed and deleted from the agreement as a whole and neither such provision, nor its severance and deletion shall in any way affect the validity of the remaining provisions of this Agreement.
15. Independent Advice of Counsel. The parties hereto and each of them, represent and declare that in executing this Agreement they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any of the parties hereto or by any person representing them, or any of them.
16. Voluntary Agreement. The parties hereto, and each of them, further represent and declare that they carefully read this Agreement and know the contents thereof, and that they sign the same freely and voluntarily.
17. Attorneys' Fees. In the event of any dispute between the parties regarding this Agreement, the prevailing party shall be entitled to recover costs and expenses, including but not limited to reasonable attorneys' fees.
18. No Modification of DDA or Ground Lease. Nothing herein, and no actions by any party hereunder, shall be deemed as a modification or waiver of Agency's rights under the DDA and/or Ground Lease.

IN WITNESS WHEREOF, the Agency, Developer and Lender have executed this Disbursement Agreement as of the date set forth above.

“Agency”

IMPERIAL BEACH REDEVELOPMENT
AGENCY

Dated: _____

By: _____

Gary Brown
Executive Director

“Developer”

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

By: PACIFICA – HOSPITALITY GROUP, a
Nevada corporation

Dated: _____

By: _____

Ashok Israni, President

“Lender”

WELLS FARGO BANK, NATIONAL
ASSOCIATION

By: _____

Name: _____

Its: _____

Exhibit "A"

LEGAL DESCRIPTION OF PROPERTY

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

ATTACHMENT NO. 10

GROUND LEASE

[behind this page]

ATTACHMENT NO. 10

DRAFT

GROUND LEASE

by and between

THE IMPERIAL BEACH REDEVELOPMENT AGENCY,

“Landlord”

and

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

“Tenant”

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GROUND LEASE

This Ground Lease ("Lease") is dated for reference purposes as of the ___ day of _____, 200_, and is entered into by and between the following (collectively, the "Parties"): THE IMPERIAL BEACH REDEVELOPMENT AGENCY, a public body corporate and politic ("Agency" or "Landlord"), and IMPERIAL COAST, L.P., a California limited partnership ("Tenant").

RECITALS

A. The subject property (the "Property") is located in the Palm Avenue/Commercial Redevelopment Project Area, within the City of Imperial Beach, California, on certain real property located at 800 Seacoast Drive.

B. This Ground Lease is entered into pursuant to that certain Disposition and Development Agreement by and between Landlord (as "Agency") and Tenant (as "Developer") dated as of _____, 2010 (the "DDA") for the purpose of providing part of the financing for the redevelopment of the Property with a full service, beach resort hotel with seventy-eight (78) rooms and appurtenant parking facilities (collectively, "the Project"), which shall be operated to meet certain criteria, as more specifically described herein and in the DDA. DDA as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

NOW, THEREFORE, in consideration of the payments to be made hereunder and the covenants and agreements contained herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the real property hereinafter defined as the "Leased Premises" upon the following terms and conditions.

ARTICLE 1 - DEFINITIONS

1.1 Additional Rent. The term "Additional Rent" means all sums of money required to be paid pursuant to the terms of this Lease other than Rent, including, but not limited to, unpaid utilities, unpaid maintenance, unpaid Impositions, or unpaid liens or encumbrances.

1.2 Agreed Rate. The term "Agreed Rate" as used herein shall mean an annual rate of interest equal to the lesser of (i) two percent (2%) above the rate of interest announced from time to time by the Bank of America, Downtown San Diego, Main Branch, as the prime or reference rate (or, in the event said bank ceases to announce a prime or reference rate or is acquired or ceases operations and there is no successor bank, another established and financially secure commercial

bank, having a headquarters in California, selected by Landlord), or (ii) the highest rate permitted by law, if any.

1.3 Bankruptcy Code. The term "Bankruptcy Code" means Title 11 of the United States Code, as amended from time to time.

1.4 Commencement Date. The Commencement Date is the date that the Memorandum of Ground Lease (Attachment No. 11A to the DDA) is fully executed by Landlord and Tenant and recorded in the official records of San Diego County, signifying the commencement of this Lease.

1.5 Covenant Period. The term "Covenant Period" means Term of this Lease.

1.6 Default(s). The term "Default(s)" as used herein shall have the meaning described in Section 14.1.

1.7 Environmental Laws. The term "Environmental Laws" means any federal, state or local environmental, health and/or safety-related law, rule, regulation, requirement, order, ordinance, directive, guideline, permit or permit condition, currently existing and as amended, enacted, issued or adopted in the future. The term Environmental Laws includes, but is not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and similar state or local laws.

1.8 Force Majeure Events. The term "Force Majeure Events" shall have the meaning described in Section 14.8.

1.9 Governmental Restrictions. The term "Governmental Restrictions" as used herein shall mean and include any and all laws, statutes, official policies, ordinances, codes, formal decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorizations of any governmental entity, agency or political subdivision, now in force or hereafter adopted, which are applicable to the Leased Premises or the use thereof as of the date such term is being applied.

1.10 Improvements. The term "Improvements" shall mean and include all buildings, structures, fixtures, excavation, parking areas, walkways, drives, landscape areas, underground installations and all other improvements of whatsoever character constructed on, around, under or over the Leased Premises.

1.11 Institutional Lender. The term "Institutional Lender" means:

(1) a bank, trust company, insurance company, credit union, savings bank, pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a public real estate investment trust is the majority owner), federal or state agency regularly making or guaranteeing mortgage loans, investment bank, subsidiary of a Fortune 500

company (such as AT&T Capital Corporation or General Electric Capital Corporation), real estate mortgage investment conduit, or securitization trust; (2) a trustee or issuer of collateralized mortgage obligations or similar investment entity (provided that such trustee, issuer, or other entity is publicly traded or is sponsored by an entity that otherwise constitutes an Institutional Lender); (3) any entity of any kind actively engaged in commercial real estate financing and having total assets of at least \$1,000,000; or (4) a corporation, other entity, or joint venture that is a wholly owned subsidiary of or is a combination of any one or more of the foregoing entities, including any of the foregoing when acting as trustee for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Institutional Lenders.

1.12 Leased Premises. The term “Leased Premises” as used herein shall have the meaning described in Article 2 below.

1.13 Leasehold Mortgage. The term “Leasehold Mortgage” shall mean any Permitted Mortgage.

1.14 Lease Year. The term “Lease Year” as used herein shall mean each of the consecutive twelve (12) calendar month periods beginning on the first day of the first calendar month following the Commencement Date unless the Commencement Date falls on the first day of a calendar month, in which event the Lease Year shall commence on the Commencement Date. As an example, “Lease Year 55” means the Lease Year commencing after the fifty-fourth (54th) anniversary of the Commencement Date.

1.15 Lender. The term “Lender” shall mean the owner and holder of any Mortgage or Leasehold Mortgage permitted by this Lease.

1.16 Lender’s Affiliate. The term “Lender’s Affiliate” shall mean any affiliate of Lender that takes title to the Leasehold either (i) upon foreclosure under the applicable Leasehold Mortgage or assignment in lieu thereof, or (ii) in connection with a new lease entered into pursuant to Section 8.5 hereof.

1.17 Losses and Liabilities. The term “Losses and Liabilities” as used herein shall mean all liabilities, claims, losses, causes of action, charges, penalties, damages, costs and expenses (including reasonable attorneys’ fees and costs), of whatsoever character, nature and kind, whether to property or person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected, latent or patent.

1.18 Mortgage. The term “Mortgage” as used herein shall mean and include any mortgage, deed of trust, monetary lien, financing conveyance or other voluntary monetary lien of any kind and all appropriate modes of financing real estate ownership, which encumbers Landlord’s

fee estate.

1.19 Operating Year. The term "Operating Year" as used herein shall mean each of the consecutive twelve (12) calendar month periods beginning on the first day of the first calendar month following the date of opening for business of the Seacoast Inn ("Opening Date") unless the Opening falls on the first day of a calendar month, in which event the Operating Year shall commence on the Opening Date. As an example, "Operating Year 15" means the Operating Year commencing after the fourteenth (14th) anniversary of the Opening Date. The Opening Date shall be evidenced by documentation, showing advertisement to the general public of offers to let hotel rooms for rent. In no event shall the Opening Date occur prior to issuance of a permanent certificate of occupancy for the Project.

1.20 Party or Parties. The term "Party" shall refer to one of Landlord or Tenant; the term "Parties" shall refer to both Landlord and Tenant.

1.21 Permitted Exceptions. The term "Permitted Exceptions" shall have the same meaning as set forth in Section 208 of the DDA.

1.22 Rent. The term "Rent" as used herein shall have the meaning described in Section 4.1.

1.23 Representatives. The term "Representatives" as used herein shall mean the agents, contractors, employees (to the extent acting on behalf of such entity and within the scope of its employment or contract).

1.24 Room Revenue. The term "Room Revenue" as used herein shall mean revenues generated from letting of hotel rooms and shall exclude all other revenues, including revenues from beverage and food service, sales of gifts and sundries, use fees, parking fees, management fees, maintenance fees, association fees, spa, and salon services.

1.25 Term. The term "Term" as used herein shall mean the term of this Lease as described in Section 3.1 below.

1.26 Title Insurer. The term "Title Insurer" as used herein shall mean the Stewart Title of California, Inc.

1.27 Title Policy. The term "Title Policy" as used herein shall mean and include the most current form of ALTA owner's policy of title insurance, dated as of the Commencement Date, and with liability in the amount of the value of the land and completed improvements, insuring Tenant as the owner of the leasehold estate under the Lease, subject only to the Permitted Exceptions allowed by Section 208 of the DDA.

1.28 Transfer Documents. The term "Transfer Documents" as used herein shall have the meaning described in Section 9.1.

1.29 Transfer/Transferee. The term "Transfer" as used herein shall mean and include any conveyance, transfer, sale, assignment, lease, license, concession, franchise, gift, hypothecation, Mortgage, pledge, encumbrance, or the like, to any person or entity ("Transferee"), excluding any Leasehold Mortgage which encumbers Tenant's leasehold estate created by this Lease.

1.30 Uncured Default(s). The term "Uncured Default(s)" as used herein shall have the meaning described in Section 14.2.4.

ARTICLE 2 - LEASED PREMISES

2.1 Leased Premises.

The premises demised and leased hereunder ("Leased Premises") consist of the real property located in the City of Imperial Beach ("City"), County of San Diego, State of California, and more particularly described in the Legal Description for that property attached hereto as Exhibit A, and depicted on the Site Map attached hereto as Exhibit B, together with all right, title and interest of Landlord in and to all rights of way or use, servitudes, licenses, easements, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the use of such real property during the Term. The parties agree that Tenant alone shall be entitled to all federal tax attributes of ownership of the Improvements.

2.2 Leased Premises; Condition of Premises; Zoning.

Prior to the Commencement Date, Tenant, at Tenant's sole expense, shall have investigated and approved the physical condition of, and the condition of title with respect to, the Leased Premises and the Improvements. Tenant acknowledges and agrees that Landlord makes no representation or warranty, express or implied, written or oral, with respect to the condition of the Leased Premises or the Improvements, or their fitness or availability for any particular use. Tenant shall provide the Title Policy, insuring Tenant as the owner of the leasehold estate under the Lease, subject only to the Permitted Exceptions.

2.2.1 Landlord makes no representations, express or implied, with respect to the legality, fitness, or desirability of the Leased Premises for Tenant's intended use. If Tenant desires to do so, Tenant shall have the right to conduct its own investigation, to its satisfaction, with respect to any matters affecting Tenant's ability to use the Leased Premises for Tenant's intended use. Landlord shall deliver title to the Leased Premises to Tenant in the condition required by Section 208 of the DDA.

2.2.2 The Leased Premises shall be delivered from Landlord to Tenant in an “as is” physical condition, with no warranty, express or implied by Landlord as to the presence of Hazardous Substances, or the condition of the soil, its geology or the presence of known or unknown faults. If the condition of the Leased Premises is not in all respects entirely suitable for the use or uses to which such Leased Premises will be put, then it is the sole responsibility and obligation of Tenant to place the Leased Premises in all respects in a condition entirely suitable for the development thereof, solely at Tenant’s expense.

2.2.3 Effective on the Commencement Date, Tenant agrees to indemnify, defend and hold harmless Landlord and City of Imperial Beach (“City”), and their respective members, officers, agents, employees, contractors and consultants, in accordance with the Environmental Indemnity (Attachment No. 8 to the DDA).

2.2.4 Effective on the Commencement Date, Tenant waives, releases and discharges the Landlord, the City and their respective members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys’ fees) arising out of or in any way connected with the Landlord’s or Tenant’s use, maintenance, ownership or operation of the Leased Premises, any Hazardous Substances on the Leased Premises, or the existence of Hazardous Substances contamination in any state on the Leased Premises, however the Hazardous Substances came to be placed there, except that arising out of the gross negligence or willful misconduct of the Landlord or its employees, officers or agents. Tenant acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

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

To the extent of the release set forth in this Section 2.2.4, Tenant hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

2.3 Designation as Point of Sale

Tenant and its successors and assigns shall maintain such licenses and permits as may be required by any governmental agency to conduct taxable sales arising from any project on the Property and, to the extent permitted by law, shall designate City of Imperial Beach as the “point of sale” for all taxable sales and lease transactions occurring from any project on the Property in all reports to the California State Board of Equalization in accordance with the Bradley-Burns Uniform

Sales and Use Tax Law (Revenue and Taxation Code 72000 *et seq.*), as it may be amended or substituted from time to time, and on sales tax returns to the State of California for all taxable sales occurring at any project on the Property.

ARTICLE 3 - TERM

3.1 Term

The Term of this Lease shall be that period of time beginning on the Commencement Date and ending at midnight on the fifty-fifth (55th) anniversary of the Commencement Date, unless the Term of this Lease is sooner terminated as provided for herein.

3.2 Reserved.

3.3 Possession; Covenant of Quiet Enjoyment.

3.3.1 Sole possession of the Leased Premises shall be delivered to Tenant on the Commencement Date free and clear of any other tenancies or rights of occupancy or use, and Tenant shall take possession as of that date.

3.3.2 Landlord covenants that, subject to the limitations expressly set forth herein, Tenant, upon Tenant's timely payment of the Rent and performance of Tenant's covenants and obligations under this Lease, may quietly have, hold, and enjoy the Leased Premises during the Term of this Lease, without hindrance or interruption by Landlord or anyone claiming by or through Landlord, subject to Landlord's right to enter upon the Leased Premises as expressly provided herein.

3.4 Reserved.

3.5 Right of Option.

At any time commencing upon Completion and ending upon expiration of the Term, and subject to the Conditions Precedent to Right of Option, below, Tenant shall have the option to purchase the Property for a price equal to ONE DOLLAR AND NO CENTS (\$1.00) ("Option"). The Option shall be exercised in accordance with the procedures set forth in the Option Agreement, substantially in form attached to the DDA as Attachment No. 11. Upon Tenant's acquisition of the Agency's fee interest in the Leased Premises, the Ground Lease shall terminate. Such right also may be exercised by any holder of a Leasehold Mortgage.

3.5.1 Conditions Precedent to Right of Option

Tenant's right to exercise the Option shall be conditioned upon the following events:

i. Commencing upon Completion until on or before Operating Year 10, the City of Imperial Beach's receipt of transient occupancy taxes ("TOT") from the operation of the Hotel on the Property, in the cumulative amount of at least THREE MILLION TWO HUNDRED AND TWO THOUSAND DOLLARS AND NO CENTS (\$3,202,000);

ii. Commencing upon Completion and after Operating Year 10, the City of Imperial Beach's receipt of transient occupancy taxes ("TOT") from the operation of the Hotel on the Property, in the cumulative amount of at least TWO MILLION THREE HUNDRED AND FIFTY ONE THOUSAND DOLLARS AND NO CENTS (\$2,351,000).

ARTICLE 4 - RENT PAYMENTS

4.1 Rent.

The Rent payable for each Lease Year (the "Rent") during the Term shall be as set forth in Section 4.2 hereto. The Rent for a particular Lease Year shall be paid no later than April 30 of the following calendar year during the Term. The Rent shall be prorated on a per diem basis for the first and last partial years of the Term (assuming the Commencement Date is not May 1). The last payment of Rent shall be due within twenty (20) days following the termination of this Lease.

4.2 Rent Amounts.

The Rent shall be ONE DOLLAR AND NO CENTS (\$1.00) per Lease Year.

4.3 Additional Rent.

Tenant shall pay any as Additional Rent any expenses incurred by the Landlord resulting from Tenant's failure to pay or cause to be paid any amounts owed to the Landlord under this Lease or any person or entity, including, but not limited to, unpaid utilities, unpaid maintenance, unpaid Impositions, or unpaid liens or encumbrances.

4.4 Miscellaneous.

All payments of Rent shall be made to Landlord as they become due in lawful money of the United States of America in cash or by corporate check drawn on sufficient available funds, at such place as is designated herein by Landlord for the receipt of notices or such other place as shall be designated to Tenant by Landlord in writing from time to time.

4.5 Triple Net Lease; No Counterclaim, Abatement, etc.

All Rent shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the installments of all Rent throughout the Term, and (unless otherwise expressly provided herein) shall be paid without assertion of any counterclaim, setoff, deduction or defense and, except as otherwise expressly provided herein, without abatement, suspension, deferment, diminution or reduction. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever, including without limitation, any regular or special assessments levied against the Property, or be under any obligation or liability hereunder, except as herein expressly set forth. Landlord shall have no responsibility for any costs of repair, maintenance or replacement whatsoever. Except as otherwise expressly provided herein, this Lease shall continue in full force and effect, and the obligations of Tenant hereunder shall not be released, discharged or otherwise affected, by reason of: (a) any damage to or destruction of the Leased Premises or Improvements or any part thereof or any Taking of the Leased Premises or the Improvements or any part thereof; (b) any restriction or prevention of or interference with any use of the Leased Premises or the Improvements or any part thereof which materially interferes with Tenant's possession or use of the Leased Premises (other than a breach of Landlord's covenant of quiet enjoyment set forth at Section 3.3); (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to Landlord, or any action taken with respect to this Lease by any trustee or receiver of Landlord with respect to this Lease by any trustee or receiver of Landlord, or by any court, in any proceeding; (d) any claim which Tenant has or might have against Landlord; or (e) any failure on the part of Landlord to perform or comply with any of the terms hereof or of any other agreement with Tenant. Except as expressly provided in this Lease, the obligations of Tenant shall be separate and independent covenants and agreements.

ARTICLE 5 - USE OF THE LEASED PREMISES, MAINTENANCE AND HAZARDOUS SUBSTANCES

5.1 Use of the Leased Premises.

5.1.1 Tenant covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that Tenant, such successors and such assignees shall use the Property only for the uses specified in the Seacoast Inn Specific Plan adopted by Ordinance No. 2007-1060 ("Specific Plan"), any development agreements entered into by and between the City and Tenant, including the *Development Agreement by and between the City of Imperial Beach and Imperial Coast Limited Partnership Relative to the Development Known as the Seacoast Inn Development Project*, recorded on December 18, 2007 as Document Number 2007-0778555 in the San Diego County Recorder's Office ("2007 Development Agreement"), the Pedestrian and Vehicular Access Easement Agreement, recorded on _____, 2010 as Document

Number 20107-_____ in the San Diego County Recorder's Office, the Temporary Encroachment Permit recorded on _____, 2010 as Document Number 2010-_____ in the San Diego County Recorder's Office, the Declaration of CC&Rs, the DDA, and this Lease. No change in the use of the Property shall be permitted without the prior written approval of Agency.

5.1.2 Notwithstanding the generality of Section 5.1.1, Tenant, its successors and assigns, shall use the Leased Premises and/or Improvements only for the following uses: operation of a full service four story hotel with a minimum of seventy-eight (78) guest rooms ("Hotel"). The Hotel shall be rated not less than three diamonds by AAA or three stars by the Mobile Travel Guide, and shall also have the following characteristics:

- a) The Hotel shall contain an on-site, full service (sit down) three-meal restaurant and lounge.
- b) The Hotel shall have at least one swimming pool.
- c) The Hotel shall have a fully-equipped exercise room/fitness center.
- d) The Hotel shall have a business center.
- e) The Hotel shall have a minimum of 2,080 square feet of meeting and conference space.

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

5.2 No use of Hazardous Substances on the Leased Premises.

Tenant covenants and agrees that it shall not, and that any Lease shall provide that the Subtenant shall not, treat, use, store, dispose, release, handle or otherwise manage Hazardous

Substances on the Leased Premises except in connection with any construction, operation, maintenance or repair of the Improvements or in the ordinary course of its business, and that such conduct shall be done in compliance with all applicable federal, state and local laws, including all Environmental Laws. Tenant's violation of the foregoing prohibition shall constitute a breach hereunder and Tenant shall indemnify, hold harmless and defend the Landlord for such violation as provided below.

5.3 Notice and Remediation by Tenant.

Tenant shall promptly give the Landlord written notice of any reportable release of any Hazardous Substances, and/or any notices, demands, claims or orders received by Tenant from any governmental agency pertaining to Hazardous Substances which may affect the Leased Premises.

5.4 Environmental Indemnity.

Tenant agrees to indemnify, defend and hold harmless Agency and City, and their respective members, officers, agents, employees, contractors and consultants, in accordance with the Environmental Indemnity (Attachment No. 8 to the DDA). The indemnity provided in this Section shall survive the Termination of the Lease.

5.5 Termination; Subtenants.

The agreements and obligations of Tenant under this Article 5 with regard to indemnification of Landlord shall survive the scheduled termination or sooner expiration of the Term for any reason, for five (5) years and all claims relating thereto must be delivered in writing to Tenant within such period. No action by any subtenant in violation of its Lease shall constitute a cause to terminate this Lease provided that Tenant diligently pursues its available remedies against such subtenant.

ARTICLE 6 – OWNERSHIP OF IMPROVEMENTS

Notwithstanding anything that is or appears to be to the contrary herein, any and all Improvements erected on the Leased Premises as permitted by this Lease, as well as any and all alterations or additions thereto or any other Improvements or fixtures on the Leased Premises, shall be owned by Tenant until the expiration of the Term or sooner termination of this Lease. Upon the expiration or sooner termination of this Lease, all Improvements and all alterations, additions or improvements thereto that are made to or placed on the Leased Premises by Tenant or any other person shall be considered part of the real property of the Leased Premises and shall remain on the Leased Premises and become the property of Landlord; provided that Tenant shall retain ownership of and shall be required to remove furniture, equipment, machinery, trade fixtures and removable personal property except as may be left on the Leased Premises with Landlord's prior written

approval. Except as otherwise expressly provided in this Lease, any non-disturbance agreement approved by Landlord, any easement approved by Landlord, or any written instrument executed by Landlord which expressly states that Landlord is waiving its rights under this Article 6 to receive such Improvements free and clear of all other claims, said Improvements shall become Landlord's property free and clear of any and all rights to possession and all claims to or against them by Tenant or any third person or entity.

ARTICLE 7 - REPAIRS AND MAINTENANCE

7.1 Landlord's Nonresponsibility.

During the Term of this Lease, Landlord shall not be required to maintain or make any repairs or replacements of any nature or description whatsoever to the Leased Premises or the Improvements thereon, except as expressly provided elsewhere herein.

7.2 Tenant's Duty to Maintain Premises.

Except as expressly otherwise provided for herein, throughout the Term of this Lease, Tenant shall, at Tenant's sole cost and expense, maintain or cause to be maintained the Leased Premises and the Improvements now or hereafter located on the Leased Premises in good and clean condition and repair, free of debris, and in compliance with (i) all Governmental Restrictions and (ii) all applicable rules, orders, and regulations of any insurance company insuring all or any part of the Leased Premises or the Improvements thereon or both, and Tenant shall make or cause to be made whatever repairs and replacements are required by such enactments or provisions or future enactments or provisions. Maintenance of the Leased Premises and the Improvements shall include, without limitation, maintenance and irrigation of the off-site landscaping on Date Avenue using Tenant's water supply from the Leased Premises.

7.3 Damage or Destruction.

7.3.1 In the event any of the Improvements are damaged by an insured casualty, Tenant promptly shall remove the debris resulting from such event, and within a reasonable time thereafter shall apply insurance proceeds to the repair or restoration of the Improvements so damaged to their condition immediately prior to such casualty, such repair or restoration to be performed in accordance with all provisions of this Lease.

7.3.2 In the event any of the Improvements are damaged by an uninsured casualty, or the insurance proceeds are insufficient to repair or restore the Improvements to their condition prior to the casualty, Tenant promptly shall remove the debris resulting from such event, and within a reasonable time thereafter shall either (i) repair or restore the Improvements so damaged to the extent economically feasible, such repair or restoration to be performed in accordance with all provisions of this Lease, or (ii) erect other Improvements in such location, provided all provisions of

this Lease are complied with to the extent economically feasible, or (iii) if the damage occurs after the end of the Covenant Period, demolish the damaged portion of such Improvements, restore any remaining Improvements to an architectural whole, remove all rubbish, and pave or plant grass and otherwise restore the area to a neat, orderly, sanitary and attractive condition. Landlord shall have the option to choose among the aforesaid alternatives, subject to rights of permitted Lenders secured by the Lease, but Tenant shall be obligated to perform one of such alternatives, provided that nothing herein obligates Tenant to obtain financing exceeding the insurance proceeds, if any. Tenant shall give notice to Landlord within a reasonable time of which alternative it elects. Nothing contained in subsections 7.3.1 or 7.3.2 shall be construed as permitting the abatement or reduction of Rent, or the termination of this Lease.

7.3.3 Notwithstanding anything to the contrary contained in this Lease, if (i) there is damage to or destruction of the Improvements on the Leased Premises during the last five (5) years of the Term and the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Improvements on the Leased Premises, or (ii) there is damage to or destruction of the Improvements on the Leased Premises which (1) arises from a cause which is not required to be insured against under any provision of this Lease, or (2) arises from a cause which is in fact insured against in compliance with the terms of this Lease, but for which the recoverable proceeds of such insurance are less than 90% of the cost to repair said damage or destruction, and (3) the cost to Tenant (which is not covered by insurance proceeds) of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Improvements on the Leased Premises, or (iii) there is damage to or destruction of the Improvements on the Leased Premises and the Governmental Restrictions then in effect with respect to the Leased Premises prohibit the construction of economically viable replacement Improvements with respect to a use which Tenant either has the right to engage in under this Lease or which Tenant desires to engage in and Landlord will permit to be engaged in, then Tenant shall have the option to terminate this Lease, subject to Tenant's satisfaction of all of the following requirements: (A) Tenant shall, within ninety (90) days after the event giving rise to such right to terminate, give Landlord written notice of its election to terminate ("Notice of Election to Terminate"); and (B) Tenant shall, at the election of Landlord (which election shall be communicated in writing to Tenant ("Demolition Notice") within thirty (30) days of Landlord's receipt of the Notice of Election to Terminate), raze and remove the damaged or destroyed Improvements and any other Improvements on the Leased Premises that Landlord may designate in the Demolition Notice, and shall complete said demolition and removal and shall vacate the Improvements on the Leased Premises within ninety (90) days of Landlord's delivery of the Demolition Notice (which vacation date shall fix the termination date of this Lease); and (C) Tenant shall comply with all provisions of Article 15 of this Lease consistent with this Section 7.3 prior to or concurrent with Tenant's vacation of the Improvements on the Leased Premises. If Tenant fails to satisfy the requirements set forth in (B) or (C) above, the failure to meet such conditions shall not invalidate the termination of this Lease, although, in that event and notwithstanding anything else in this Lease that may be or appear to be to the contrary, Tenant shall remain liable to Landlord in damages for such breach. Any and all property damage insurance

proceeds (exclusive of any proceeds applicable to Tenant's trade fixtures, equipment or personal property that would be retained by Tenant at the end of the Term) paid to Tenant as a result of the damage or destruction giving rise to the termination, shall be distributed to the Parties, and any Lender, as their interest are determined.

7.3.4 Except as expressly provided in this Lease, no deprivation, impairment, or limitation of use resulting from any damage or destruction or event or work contemplated by this Section shall entitle Tenant to any offset, abatement, or reduction in Rent, nor to any termination or extension of the Term hereof.

ARTICLE 8 - LEASEHOLD FINANCING

8.1 Conditions To Obtaining Leasehold Mortgage.

8.1.1 Tenant shall not encumber the estate created by this Lease, except as expressly provided in this Article 8.

8.1.2 Tenant shall have the right, without Landlord's prior written consent, to encumber Tenant's estate created by this Lease with any Leasehold Mortgage; provided, that such Leasehold Mortgage shall meet each of the following terms, conditions and requirements:

(i) The Leasehold Mortgage shall contain provisions requiring that copies of all notices of default under said Leasehold Mortgage must be sent to Landlord;

(ii) The Leasehold Mortgage shall not permit or authorize, or be construed to permit or authorize, any Lender to devote the Leased Premises to any uses, or to construct any Improvements thereon, other than those uses and Improvements provided for and authorized by this Lease; and

(iii) The originator of the loan secured by the Leasehold Mortgage is made by an Institutional Lender.

8.2 Lender's Rights.

So long as any Leasehold Mortgage permitted by this Lease exists, or any Lender (or its nominee) owns all or any portion of the leasehold estate created hereunder, and until such time as the lien (or estate) of any Leasehold Mortgage (or its holder) has been extinguished (which provisions shall be for the benefit of the Leasehold Mortgage):

8.2.1 Notwithstanding anything to the contrary in this Lease, any judicial or non judicial foreclosure by a Lender under any Leasehold Mortgage, or any exercise of rights or remedies under or pursuant to any Leasehold Mortgage, including the appointment of a receiver, shall not in and of itself be deemed to violate this Lease or, in and of itself, entitle Landlord to exercise any rights or remedies;

8.2.2 Following Lender's or Lender's Affiliate's acquisition of Tenant's interest in this Lease pursuant to a foreclosure or an assignment in lieu of foreclosure, the Lender or Lender's Affiliate (as applicable) shall be entitled to assign its interest in this Lease without Landlord's prior consent, subject to compliance with the terms and conditions of this Article 8. All subsequent Transfers by the Transferee of Lender or Lender's Affiliate (as applicable) shall comply with the provisions of this Lease, including all restrictions on Transfer set forth in Article 9 hereof; and

8.2.3 If, in connection with securing by Tenant of any Leasehold Mortgage, the affected Lender requests an amendment with respect to the Lender protection rights set forth in this Article 8, Landlord agrees not to unreasonably withhold its consent to any such amendment; provided, that Landlord shall not be required to consent to such an amendment if it would, in Landlord's reasonable determination, materially impair any of Landlord's rights or materially increase any of Landlord's obligations under this Lease.

8.2.4 Default Notice. Landlord, upon providing Tenant with any "Notice of Default" (as defined below) under this Lease, shall, at the same time, provide a copy of such notice to every Lender who has given written notice to Landlord of its interest in the leasehold estate. From and after such notice has been given to a Lender, such Lender shall have the same period for remedying the Default complained of as the cure period provided to Tenant pursuant to Section 14.2, plus the additional period provided to such Lender as specified below. Regardless of whether a Default exists, Landlord shall accept performance by or at the instigation of such Lender as if the same had been done by Tenant.

8.3 Lender Cure Rights.

Notwithstanding anything to the contrary contained in this Lease, Landlord shall have no right to terminate this Lease on account of an Uncured Default of Tenant unless, following expiration of Tenant's applicable cure period, Landlord first provides each Lender not less than sixty (60) days notice of its intent to terminate, if Tenant's Default can be cured by the payment of money (a "Monetary Default"), and not less than ninety (90) days notice of its intent to terminate, if Tenant's Default is of any other type (a "Non-monetary Default"), and each Lender fails to cure such Monetary Default within sixty (60) days after receipt of such notice or each Lender fails to cure or, in good faith and with reasonable diligence and continuity, commence to cure such Non-monetary Default within said ninety (90) day period. If such Non-monetary Default cannot reasonably be cured by such Lender within said ninety (90) day period (or is such that possession of the Leased

Premises is necessary for Lender to obtain possession and to remedy the Default), the date for termination shall be extended for such period of time as may be reasonably required to remedy such Default, if (a) Lender shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease within sixty (60) days after its receipt of notice of Landlord's intent to terminate, and shall continue to pay currently such monetary obligations as and when the same are due, and (b) Lender continues its good faith and diligent efforts to remedy such nonmonetary Default (including its acquisition of possession of the Leased Premises if necessary to the cure of such Default); provided, however, that in no event shall the Agency be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the Lender's first notice of default. For purposes hereof, commercially reasonable efforts to appoint a receiver, seek relief from the automatic stay provisions of the Bankruptcy Code and generally opposing any plan of reorganization or other proceedings in a proceeding by Tenant under the Bankruptcy Code (if such proceeding does not cure any Tenant Default) shall be deemed "good faith and diligent efforts" as herein used. It is expressly understood and agreed upon that the cure period herein provided for Non-monetary Defaults shall be tolled upon the Tenant being enjoined from pursuing remedies under the Bankruptcy Code or if Lender is otherwise enjoined from pursuing remedies.

8.3.1 Landlord agrees that, notwithstanding anything to the contrary in this Section 8.3, any Non-monetary Default that is not susceptible of cure shall be waived by Landlord upon Lender's or Lender's Affiliate's acquisition of the leasehold estate created hereby (whether by foreclosure or otherwise) or pursuant to a new lease entered into pursuant to Section 8.5, and the cure of all Monetary Defaults and Non-monetary Defaults.

8.3.2 Nothing in this Section 8.3 shall be construed to require a Lender to continue any foreclosure proceeding it may have commenced against Tenant after all Defaults have been cured by Lender or Tenant, and if such Defaults shall be cured and the Lender shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

8.4 Obligations of Lender and Purchaser.

8.4.1 No Lender, acting in such capacity, shall be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Lender, in that capacity, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder, unless and until it acquires the interest of Tenant hereunder. Upon acquiring Tenant's leasehold, a Lender or (to the extent title is taken in an affiliate of Lender) a Lender's Affiliate may, without the consent of Landlord, sell and assign the leasehold estate on such terms and to such persons and entities as are acceptable to such Lender and thereafter be relieved of all obligations on the part of Tenant first arising under this Lease after the date of such sale or assignment; provided, that such assignee of the Lender shall have delivered to Landlord an

assumption agreement as provided by Section 9.1.1(iv) of this Lease. Any such assignee of Lender or Lender's Affiliate (as applicable), or any other assignee of this Lease or of the leasehold estate created hereby by a conveyance in lieu of foreclosure or any purchaser at any foreclosure sale of this Lease or of the leasehold estate hereby created (other than, in any case, the Lender), shall be deemed to be a Transferee of this Lease, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment and, from and after such date, shall be subject to all the terms of this Lease, including all restrictions on further Transfer set forth in Article 9.

8.4.2 Notwithstanding any other provision of this Lease, any bona fide sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage or a bona fide assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of foreclosure of a Leasehold Mortgage (collectively, "Proceedings") shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the leasehold estate hereby created so long as Agency is given timely notice of any default of Tenant and of any such Proceeding and is afforded the cure periods specified in Section 8.14 and so long as any such deed in lieu of foreclosure has not been undertaken for the purpose or with the intent of circumventing any otherwise applicable restrictions upon Transfers of Tenant's interest under this Lease. Notwithstanding the foregoing, any transfer by foreclosure or deed in lieu of foreclosure to Tenant or any Affiliate of Tenant shall not be deemed a permitted sale, transfer or assignment of this Lease and the leasehold estate created hereby.

8.5 New Lease.

Except as expressly provided in the last sentence of this Section, in the event of a termination of this Lease for any reason including, without limitation, by reason of any Default or the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditors rights, or upon a termination of this Lease by Landlord pursuant to any proceeding under the Bankruptcy Code (including without limitation pursuant to Sections 363 and 365 of the Bankruptcy Code), Landlord shall give prompt notice thereof to any Lenders who have requested notice from Landlord in writing and furnished their names and addresses to Landlord.

8.5.1 Upon written request of any such Lender, made at any time within ninety (90) days after the giving of such notice by Landlord, Landlord shall enter into a new lease of the Leased Premises with such Lender within twenty (20) days after the receipt of such request, which new lease shall be effective as of the date of such termination of this Lease and shall be for the remainder of the Term of this Lease, at the rent provided for herein, and upon the same terms, covenants, conditions and agreements as are herein contained; provided that such Lender shall: (i) pay to Landlord at the time of the execution and delivery of said new lease any and all sums for Rent payable by Tenant hereunder to and including the date thereof, less the net amount (i.e., net of all reasonable expenses) of all sums received by Landlord from any Subtenants in occupancy of any

part or parts of the Leased Premises and/or Improvements up to the date of commencement of such new lease; (ii) pay all reasonable costs resulting from the preparation and execution of such new lease; and (iii) on or prior to the execution and delivery of said new lease, agree in writing that promptly following the delivery of such new lease, such Lender will perform or cause to be performed all of the other covenants and agreements herein contained on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of such new lease. Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Leased Premises to such Lender unless Landlord at the time of the execution and delivery of such new lease shall have obtained physical possession thereof.

8.5.2 During the ninety (90) day period commencing from Landlord's notice to Lender under this Section 8.5, Landlord shall not, except with the written consent (which shall not be unreasonably withheld) of each holder of a Leasehold Mortgage, (i) cancel any such direct lease or accept any cancellation, termination, or surrender of subleases (unless such termination shall be effected as a matter of law upon the termination of this Lease, in which case such subleases shall, at Lender's option, be reinstated concurrent with the delivery of such new lease); or (2) enter into any new leases of the Leased Premises or any portion thereof, except with the written consent (which shall not be unreasonably withheld) of each holder of a Leasehold Mortgage.

8.6 New Lease Priority.

8.6.1 It is the intent of the Parties that any new lease made pursuant to Section 8.5 shall have the same priority with respect to any lien, charge or encumbrance on the fee of the Leased Premises as did this Lease and that the Tenant under such new lease shall have the same right, title and interest in and to the Leased Premises as Tenant had under this Lease.

8.6.2 The provisions of this Section 8.6 and Sections 8.4 and 8.5 shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if Sections 8.4, 8.5 and this Section 8.6 were a separate and independent contract made by Landlord, Tenant and such Lender.

8.7 Liability of New Tenant.

The Lender or Lender's Affiliate which becomes the tenant under the Lease pursuant to Section 8.4 or any such new lease made pursuant to Section 8.5 shall be liable to perform the obligations imposed on the Tenant by the Lease or by the tenant by such new lease to the same extent as Tenant hereunder for the period of ownership of Lender or Lender's Affiliate. Notwithstanding the foregoing, a Lender or (to the extent title is taken in an affiliate of Lender) a Lender's Affiliate may, without the consent of Landlord, sell and assign the leasehold estate acquired by foreclosure of the applicable Leasehold Mortgage or assignment in lieu thereof pursuant

to Section 8.4 or created by the new lease entered into pursuant to Section 8.5 on such terms and to such persons and entities as are acceptable to such Lender, subject to Section 9.1. Thereafter, Lender or Lender's Affiliate (as applicable) shall be relieved of all obligations on the part of the "tenant" first arising under this Lease after the date of such sale or assignment; provided, that such assignee of the Lender shall have delivered to Landlord an assumption agreement as provided by Section 9.1.1(iv) of this Lease.

8.8 Further Assurances. Upon request by Tenant or by any existing or prospective holder of a Leasehold Mortgage, Landlord shall deliver to the requesting party such documents and agreements as the requesting party shall reasonably request to further effectuate the intentions of the parties as set forth in this Lease.

8.9 Legal Proceedings.

Landlord shall give each Lender who has given written notice of its interest in the leasehold estate to Landlord prompt notice of any legal proceedings between Landlord and Tenant involving obligations under this Lease. Each said Lender shall have the right to intervene in any such proceeding to protect its interest and be made a party thereto, and the parties hereto do hereby consent to such intervention. In the event that any such Lender shall not elect to intervene or become a party to any such proceedings, Landlord shall give such Lender notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Lenders not intervening after receipt of notice of the legal proceeding. In addition, Landlord further agrees that Lender shall have standing and shall be a party in interest in any case or proceeding commenced by Landlord under the Bankruptcy Code, including without limitation in any proceeding under Section 363 of the Bankruptcy Code to sell the Lease free and clear of the interests of Lessee and Lender or to reject the Lease pursuant to Section 365 of the Bankruptcy Code.

8.10 Notices.

Notices from Landlord to any Lender shall be mailed to the address of the Lender set forth in the Leasehold Mortgage furnished to Landlord or at such other address as may have been furnished to Landlord by such Lender. All notices from the Lender to Landlord shall be mailed to the address designated pursuant to the provisions of Section 17.6 or such other address as Landlord may designate in writing from time to time. All notices to a Lender or to Landlord shall be given in the manner described in Section 17.6 and shall in all respects be governed by the provisions of such Section.

8.11 Encumbrance of Landlord's Fee Estate.

Neither Tenant nor any Lender or Leasehold Mortgagee has any rights to encumber or any interest in Landlord's fee estate in the Property. To the extent Landlord encumbers Landlord's fee

estate, Landlord shall specifically provide that the leasehold estate created hereby shall be superior to any such financing. Further, Landlord shall give notice to Tenant and all holders of a Leasehold Mortgage and, upon request of any of the foregoing, Landlord shall require the holder of any Mortgage to enter into a non disturbance and attornment agreement with Tenant and each such holder of a Leasehold Mortgage providing for the continuation of this Lease (including any options to purchase the Landlord's fee interest hereunder) upon any foreclosure under such Mortgage.

8.12 Amendments, Modifications and Surrender.

No cancellation, termination (including Tenant's termination of this Lease pursuant to any express right of termination in this Lease or under applicable law), surrender, acceptance of surrender, abandonment, amendment, modification, or rejection of this Lease, or subordination of this Lease to any Mortgage or other encumbrance on the Landlord's fee estate, shall bind a Lender under a Leasehold Mortgage if done without such Lender's consent. Nothing in this paragraph shall limit the right of Landlord to terminate this Lease upon occurrence of a Tenant's Default and the expiration of all applicable cure rights in favor of a Lender under a Leasehold Mortgage pursuant to Section 8.3 hereof; subject however to (i) provisions of this Lease that limit the right of Landlord to terminate this Lease on account of Tenant Defaults not susceptible of cure; and (ii) the right of any Lender under a Leasehold Mortgage to obtain a new lease as provided for in Section 8.5 of this Lease.

8.13 Insurance and Condemnation.

In the event of any casualty or condemnation affecting all or any portion of the Leased Premises, notwithstanding any other provision to the contrary herein contained, the insurance or condemnation proceeds shall be delivered to Lender and disbursed upon the terms and subject to the conditions set forth in the applicable Leasehold Mortgage. If, and only to the extent, there are any remaining casualty or condemnation proceeds, such proceeds shall be disbursed to Landlord and allocated between Landlord and Tenant as provided in the Lease (with, in the instance of application by Lender of any such proceeds, Tenant's allocated amount reduced by the amount retained and so applied by Lender).

8.14 Landlord Right to Cure.

Notwithstanding anything to the contrary contained in this Lease, Lender shall have no right to complete a foreclosure on account of an uncured default of Tenant ("Uncured Loan Default") unless Lender, following expiration of Tenant's applicable cure period under the Leasehold Mortgage, first provides Landlord not less than sixty (60) days notice of its intent to foreclose, if Tenant's Uncured Loan Default can be cured by the payment of money ("Tenant Monetary Default"), and not less than ninety (90) days notice of its intent to foreclose, if Tenant's Uncured Loan Default is of any other type ("Tenant Non-monetary Default"), and Landlord fails to cure such

Tenant Monetary Default within sixty (60) days after receipt of such notice or Landlord fails to cure such Tenant Non-monetary Default within a period of ninety days (90) days. Nothing herein shall be deemed to restrict Lender's rights to initiate statutory foreclosure proceedings or obtain a receiver during Lender's cure period. If all Uncured Loan Defaults have been cured by Landlord in accordance with this Section, the Leasehold Mortgage shall be reinstated in accordance with California Civil Code Section 2924c. Nothing herein shall be construed or deemed as an obligation by Landlord to cure any Uncured Loan Default.

ARTICLE 9 - ASSIGNMENT AND TRANSFER

9.1 Transfer of the Lease, the Leased Premises or the Improvements Thereon.

(1) Transfer(s) occurring prior to Completion shall be made in accordance with Section 107 of the DDA. Transfer(s) occurring after Completion shall be subject to the prior written consent of Landlord, which consent will not be unreasonably withheld or delayed; provided, however, that notwithstanding anything to the contrary herein, Tenant may Transfer its interest in the Lease to Permitted Transferees under the same terms and conditions as set forth under Section 107 of the DDA.

(2) For Transfers to a Person other than a Permitted Transferee, Landlord shall have the right to consider the following factors in determining whether or not to consent to any proposed Transfer of Tenant's rights under or interest in this Lease, the Leased Premises, or the Improvements constructed thereon: (1) The financial condition of the proposed Transferee and its ability to perform all of the financial and other obligations of Tenant under this Lease, (2) the Transferee's business reputation, and (3) the Transferee's ability to demonstrate its capability to manage or provide for the management of the Improvements located on the Leased Premises.

(3) Upon any approved or Permitted Transfer of this Lease or the Leased Premises (other than for security purposes), said Transferee shall expressly assume in writing liability for all of Tenant's obligations accruing under this Lease after the date of such Transfer. Except as to any Permitted Transferee (as defined in the DDA), Tenant shall not be released of its obligations under this Lease unless either (A) pursuant to the process described in subparagraph (ii) immediately above, Tenant has demonstrated to Landlord's reasonable satisfaction that Transferee's net worth at the time of the Transfer is equal to or greater than the net worth of Tenant as of the Commencement Date (adjusted to correspond to any changes in the CPI since the Commencement Date), or (B) an individual(s) or an entity(ies) with substantially equal or greater net worth than that of Tenant, has guaranteed Tenant's obligations under this Lease. If Transferee's net worth satisfies the foregoing test, then Tenant (as well as former Tenants still liable hereunder) shall be released of all liability under this Lease accruing after the date of such Transfer.

(4) At any time Tenant desires to effect a Transfer which requires Landlord's consent

pursuant to clause (ii) or (iii) above, Tenant shall request consent from Landlord in writing and shall submit to Landlord in connection with such request all proposed agreements and documents (collectively, the "Transfer Documents") memorializing, facilitating and/or evidencing such proposed Transfer, as well as all other information Tenant reasonably believes is necessary for Landlord to properly evaluate the proposed Transferee pursuant to the criteria set forth in Section 9.1.1(a)(ii) and, if applicable, Section 9.1.1(a)(iii) above. Landlord agrees to advise Tenant in writing of its decision on Tenant's request for consent to such Transfer, as promptly as possible, and, in any event, not later than thirty (30) days after Landlord receives all of the items required by the preceding sentence. If such request is denied, Landlord shall state the reasons for such denial in its notice of denial of Tenant's request. If Landlord fails to respond to Tenant's request within thirty (30) days after its receipt of all of the items required above, Tenant's request shall be deemed disapproved. Upon a deemed disapproval, Tenant may deliver a notice to Landlord which states that there has been a deemed disapproval, requesting that Landlord consent to the proposed Transfer, stating that Landlord must consent to or deny the proposed Transfer within thirty (30) days after Landlord's receipt of this notice, and that failure by Landlord to either consent to or deny such Transfer within such 30 day period will result in deemed consent. If Landlord fails to consent to or deny the proposed Transfer within such second thirty (30) day period, the Transfer shall then be deemed approved by Landlord.

9.2 Transfer of Tenant's Interest in Lease and Tenant's Ownership.

The restrictions on Transfer contained in this Article 9 shall be binding on any successors, heirs or permitted Transferees of Tenant. The provisions of this Article 9 shall apply to each successive Transfer and Transferee in the same manner as initially applicable to Tenant under the terms set forth herein.

ARTICLE 10 - TAXES AND IMPOSITIONS

10.1 Tenant To Pay Impositions.

10.1.1 In addition to the Rent and other payments required to be paid under this Lease, Tenant shall pay or cause to be paid any and all taxes (including possessory interest taxes) and assessments (collectively, "Impositions") levied or assessed from the Commencement Date until the termination of this Lease by any governmental agency or entity on or against the Leased Premises or any portion thereof, or on or against any interest in the Leased Premises (including the leasehold interest created by this Lease), or any Improvements or other property in or on the Leased Premises. The timely payment of the Impositions is a material term of this Lease, and, to the extent the above-referenced items are payable to Landlord or its successors or assigns, they shall constitute Additional Rent hereunder.

10.1.2 If, by law, any such Imposition is payable, or may, at the option of Tenant be

paid, in installments, Tenant may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in such installments as those installments respectively become due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

10.2 Proration of Impositions.

All Impositions levied or assessed on or against the Leased Premises shall be prorated, based on a 365-day year, between Landlord and Tenant as of the Commencement Date of this Lease, and as of the expiration or earlier termination of this Lease. On service of written request by Landlord, Tenant shall promptly pay to Landlord Tenant's share of such Impositions paid by Landlord on Tenant's behalf and, on service of written request by Tenant, Landlord shall promptly pay to Tenant Landlord's share of such Impositions paid by Tenant on Landlord's behalf.

10.3 Payment Before Delinquency.

Subject to Section 10.4, any and all Impositions and installments of Impositions required to be paid by Tenant under this Lease shall be paid by Tenant prior to delinquency, and, upon Landlord's written request, copies of the official and original receipt for the payment of each such Imposition or installment thereof or other reasonably satisfactory evidence of payment shall promptly be given to Landlord.

10.4 Contest of Imposition.

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

Tenant agrees that any such permitted proceedings shall be begun without undue delay after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch. Tenant shall give Agency prompt notice in writing of any such contest at least ten (10) days before filing any contests, except for related to the welfare exemption. Tenant may only exercise its right to contest an imposition hereunder if the subject legal proceedings shall operate to prevent the collection of the imposition so contested, or the sale of the Leasehold and/or Improvements, or any part thereof, to satisfy the same, and only if Tenant shall, prior to the date such imposition is due and payable, have given such reasonable security as may be required by Agency from time to time in

order to insure the payment of such imposition to prevent any sale, foreclosure or forfeiture of the Leased Premises, or any part thereof, by reason of such nonpayment. In the event of any such contest and the final determination thereof adversely to Tenant, Tenant shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Tenant and, after such payment and discharge by Tenant, Agency will promptly return to Tenant such security as Agency shall have received in connection with such contest.

Agency shall cooperate reasonably in any such contest permitted by this Section 10.4, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Tenant shall be prosecuted by Tenant at Tenant's sole cost and expense; and Tenant shall indemnify and save harmless Agency against any and all loss, cost or expense of any kind, including, but not limited to, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by Agency in connection therewith.

10.5 Tax Returns And Statements.

Tenant shall, as between Landlord and Tenant, have the duty of attending to, preparing, making, and filing any statement, return, report, or other instrument required or permitted by law in connection with the determination, equalization, reduction, or payment of any Imposition that is or may be levied on or assessed against the Leased Premises, or any portion thereof, or any interest therein, or any Improvements or other property on the Leased Premises.

10.6 Possessory Interest Taxes.

Landlord is a public entity, and as such, Landlord's underlying fee in the Leased Premises is, or may be, exempt from property tax assessments. In accordance with California Revenue and Taxation Code Section 107.6(a), Landlord states that by entering into this Lease, a Possessory interest in Tenant subject to property taxes will be created. Tenant or any other party in whom the Possessory interest is vested may be subject to the payment of property taxes levied on such interest. In addition, pursuant to Health and Safety Code Section 33673, the Leased Premises shall be assessed and taxed in the same manner as privately owned property, and Tenant shall pay taxes upon the assessed value of the entire Leased Premises and not merely the assessed value of its leasehold interest; provided however, that Landlord recognizes that Tenant will apply for and may receive a welfare exemption for all or a portion of the Improvements.

ARTICLE 11 - UTILITY SERVICES

11.1 Tenant's Responsibility.

During the Term of this Lease, Tenant shall pay, or cause to be paid, and shall indemnify, defend and hold Landlord and the property of Landlord harmless from all charges for water, sewage, gas, heat, air conditioning, light, power, steam, telephone service and all other services and utilities used, rendered or supplied to, on or in the Leased Premises during the Term.

11.2 Landlord Has No Responsibility.

Landlord shall not be required to furnish to Tenant or any other occupant of the Leased Premises during the Term of this Lease, any water, sewage, gas, heat, air conditioning, light, power, steam, telephone, or any other utilities, equipment, labor, materials or services of any kind whatsoever.

ARTICLE 12 - INSURANCE

12.1 Fire and Extended Coverage Insurance.

Throughout the term of this Lease, Tenant, at no cost or expense to Landlord, shall keep or cause to be kept, for the mutual benefit of Landlord and Tenant, a policy of standard fire insurance, with extended coverage and vandalism and malicious mischief endorsements, excluding earthquake insurance. The amount of insurance required hereunder shall in no event be less than one hundred percent (100%) of the full replacement cost of the Improvements on the Leased Premises (exclusive of foundations and footings), including tenant improvements or betterments. Tenant shall not be obligated to obtain flood insurance as part of the extended coverage required hereunder. Coverage shall be "property broad form" and shall include rent interruption insurance, which insurance shall also cover all real estate taxes and insurance costs for the purposes of continuing rental payments to the landlord for the duration of the Lease. Coverage shall not include a coinsurance penalty provision.

12.2 Commercial General Liability Insurance.

Tenant, commencing on the Commencement Date and continuing throughout the Term hereof, shall maintain or cause to be maintained, at no cost or expense to Landlord, comprehensive broad form commercial general liability insurance or an equivalent owner contractor protective policy insuring against claims and liability for personal injury, death, or property damage arising from the use, occupancy or condition of the Leased Premises, the Improvements thereon, which insurance shall provide combined single limit protection of at least Four Million Dollars (\$4,000,000) for bodily injury or death to one or more persons, and at least Four Million Dollars (\$4,000,000) for property damage, which limits shall be increased by Tenant from time to time based

upon Tenant's reasonable assessment of the limits carried by prudent and responsible property owners of similar property in the geographic area of the Leased Premises.

12.3 Worker's Compensation Insurance.

Tenant shall carry worker's compensation insurance for any employees it has as required by the State of California, and employer's liability insurance with a liability insurance minimum of \$1,000,000 per accident for bodily injury or disease.

12.4 Course of Construction Insurance.

Course of construction insurance coverage for all risk of loss shall be maintained at one hundred percent of the completed value basis on the insurable portion of the work including materials at the project site, stored off the project site, or in transit. Tenant shall include the interests of the Landlord and subcontractors in the work and shall insure against the perils of physical loss or damage. Nothing in this Article, however, shall be construed to relieve the Tenant of full responsibility for loss of or damage to materials not yet incorporated in the work or the Tenant's tools and equipment used to perform the work, whether on the project site or elsewhere, or to relieve the Tenant of any other responsibility under the Lease. If the Landlord is damaged by the failure of the Tenant to purchase or maintain such insurance, the Tenant shall bear all losses attributable thereto and indemnify the Landlord therefrom.

12.5 Business Automobile Liability Insurance.

If not covered by its other insurance policies, Tenant shall carry business liability insurance on an occurrence form covering owned, hired, leased and non-owned automobiles used by or on behalf of the Tenant and providing insurance for bodily injury, property damage and contractual liability.

12.6 Policy Form, Content And Insurer.

12.6.1 All insurance required by the provisions of this Lease shall be carried only with insurance companies licensed to do business in this state with Best's Financial Rating of A VII or better or otherwise acceptable to Landlord.

12.6.2 All such policies required by the provisions of this Lease shall be nonassessable and shall contain language to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by Landlord, (ii) the policies cannot be canceled or materially changed except after thirty (30) days notice by the insurer to Landlord and (iii) Landlord shall not be liable for any premiums or assessments. The insurer under the policy of property insurance for the Leased Premises shall also waive its rights of subrogation against Landlord and Landlord's Representatives.

12.6.3 All deductibles or self-insured retentions shall be commercially reasonable for companies of similar net worth as Tenant.

12.6.4 Upon Tenant's execution and delivery of this Lease, Tenant shall deliver to Landlord certificates of insurance evidencing the insurance coverages specified in this Article. Tenant shall thereafter deliver to Landlord original certificates and amendatory endorsements evidencing the insurance coverages required by this Article upon renewal of any insurance policy. Full copies of the policies shall be made available to Landlord upon request. Tenant may provide any insurance required under this Lease by blanket insurance covering the Leased Premises and any other location or locations, provided that the specific policy of blanket insurance proposed by Tenant provides the coverages required by this Lease taking into account the other properties, persons and risks covered by such blanket policy. All policies shall name Landlord and each Lender as an additional insured or loss payee (as applicable) as their interests may appear, and shall contain the following special endorsements:

"The Imperial Beach Redevelopment Agency, the City of Imperial Beach, and their officers, employees and agents, are hereby declared to be additional insureds under the terms of this policy as to the activities of Landlord, Tenant and its sublessees, if any.

"This insurance policy will not be canceled without 30 days prior written notice to the Trustees and the Corporation. The Redevelopment Agency of the City of Imperial Beach is not liable for the payment of premiums or assessments on this policy."

12.6.5 For any claims related to this project, the Tenant's insurance coverage shall be primary insurance as respects the Landlord. Any insurance or self-insurance maintained by the Landlord shall be excess of the Tenant's insurance and shall not contribute with it.

12.6.6 Tenant shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all requirements stated herein.

12.7 Waiver of Subrogation.

Landlord and Tenant hereby release the other and its Representatives from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any insured loss or damage to the Leased Premises, any Improvements thereon, or any of Landlord's or Tenant's property thereon caused by or arising from a fire or any other event even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

12.8 Indemnification.

12.8.1 Tenant shall indemnify, defend and hold harmless the Landlord, the City and their respective members, officers, employees, agents, contractors and consultants, and the property of Landlord, including the Leased Premises, from and against any and all Losses and Liabilities of every nature arising out of or in connection with the use, occupancy or enjoyment of the Leased Premises by Tenant or any person thereon or holding under Tenant arising from any action, inaction, events or facts occurring during the Term from any cause; provided, that nothing in this Section 12.8.1 or this Lease shall be construed to require Tenant to rebuild the Improvements or to pay charges to Landlord in connection therewith as a result of damage to or destruction of the Improvements or any Taking of the Improvements except to the extent expressly provided in the other Sections of this Lease. The above indemnification includes, without limitation, any Losses and Liabilities arising by reason of:

(1) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatever while such person or property is in or on the Leased Premises;

(2) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by either (A) the condition of the Leased Premises or some Improvements on said premises, or (B) some act or omission on the Leased Premises by Tenant or any person in, on, or about the Leased Premises with the permission and consent of Tenant;

(3) Any work performed on the Leased Premises or materials furnished to said premises at the insistence or request of Tenant or any person or entity acting for or on behalf of Tenant; or

(4) Tenant's failure to perform any provision of this Lease or to comply with any Governmental Restriction.

However, the foregoing indemnification shall not extend to any Loss or Liability to the extent (1) it arises out of the gross negligence or intentional or willful misconduct of Landlord or its Representatives.

ARTICLE 13 - CONDEMNATION

13.1 General.

If any portion of or interest in the Leased Premises shall be condemned (including, without

limitation, inverse condemnation) or taken by any public authority or by any other person or entity with the power of condemnation, by eminent domain or by purchase in lieu thereof (a "Taking"), and such Taking renders the Leased Premises unsuitable in the commercially reasonable judgment of Tenant for Tenant's business operations, Tenant may terminate this Lease by giving notice to Landlord, such termination to be effective as of the date specified in such notice. If this Lease is not terminated, Tenant's condemnation award shall be used for the purpose of repairing or restoring the Improvements in accordance with Section 7.3.

13.2 Award.

Whether or not this Lease is terminated as a result of any Taking, Landlord and Tenant shall together make one claim for an award for their combined interests in the Leased Premises including an award for severance damages if less than the whole shall be so taken. The condemnation proceeds shall be distributed to Landlord and Tenant as their respective interests appear. Both parties shall have the right to appear in and defend against such action as they deem proper in accordance with their own interests at their own expense. To the extent possible, the parties shall cooperate to maximize the condemnation proceeds payable by reason of the condemnation. Issues between Landlord and Tenant required to be resolved pursuant to this Article shall be joined in any such condemnation proceeding to the extent permissible under then applicable procedural rules of such court of law or equity for the purpose of avoiding multiplicity of actions and minimizing the expenses of the parties. If this Lease is not terminated pursuant to this Article, it shall continue, except that commencing with the date on which Tenant is deprived of the use of any portion of the Leased Premises or of any rights under this Lease, Rent shall be abated or reduced according to the extent to which Tenant is deprived of the use or benefit of the Leased Premises or of any rights under this Lease. If the Taking occurs in the last five (5) years of the Term, either Landlord or Tenant, by written notice to the other, may terminate this Lease, such termination to be effective as of the date that the condemnor acquires title to all or a portion of the Leased Premises.

13.3 Taking for Temporary Use.

If there is a Taking of the Leased Premises for temporary use for a period equal to or less than eight (8) months, this Lease shall continue in full force and effect, Tenant shall continue to comply with Tenant's obligations under this Lease not rendered physically impossible by such Taking, neither the Term nor the Rent shall be reduced or affected in any way, but the Rent shall continue at the level of the last Rent paid prior to the Taking (including any subsequent increases in such Rent provided for under this Lease), and Tenant shall be entitled to any and all Awards for the use or estate taken. If any such Taking is for a period extending beyond such eight (8) month period, the Taking shall be treated as a total, substantial or partial taking, as appropriate.

ARTICLE 14 - DEFAULT

14.1 Default.

The occurrence of any one or more of the following events shall, after the giving of the Notice of Default required by Section 14.2 or 14.4, constitute a default ("Default(s)") under this Lease by Tenant or Landlord, as applicable:

14.1.1 any failure by Tenant to pay the Rent or make any other payment required to be made by Tenant hereunder, on the date the payment is due; or

14.1.2 any breach by Tenant of its obligations under the Specific Plan, 2007 Development Agreement, or DDA, including, without limitation, failure to construct the Project in accordance with the Schedule of Performance or the Scope of Development, and the failure to cure such default under the terms of such documents; or

14.1.3 any breach by Tenant of its obligations under Section 5.1 of this Lease, including, without limitation, the Tenant's failure to continuously operate the Hotel; or

14.1.4 a failure by Tenant or Landlord to observe and perform any other condition, restriction, covenant, obligation or provision of this Lease to be observed or performed by Tenant or Landlord, as applicable.

14.2 Notice of Default; Tenant's Right to Cure.

14.2.1 If Tenant has committed or permitted to exist a breach of any provision of this Lease or has committed or permitted any other breach described above in Section 14.1, Landlord shall give notice of said breach ("Notice of Default") to Tenant.

14.2.2 Tenant shall be in default hereunder from Landlord if Rent for the prior calendar year is not paid by the twentieth (20th) day of July of each year of the Term or Extended Term, if applicable (or if the twentieth day falls on a Saturday or Sunday, the first Monday following the twentieth (20th) day of July).

14.2.3 If the alleged Default is nonpayment of Rent, Additional Rent, Impositions or other sums to be paid by Tenant as provided in this Lease, Tenant shall have thirty (30) days after the Notice of Default is given to cure the Default. For any other Default, Tenant shall, after the Notice of Default, promptly and diligently commence curing the Default and shall have thirty (30) days after the Notice of Default to complete the cure of said Default; provided, however, that if the nature of said Default is such that the same cannot reasonably be cured within said thirty (30) day

period, Tenant shall have such additional time as is reasonably necessary to cure such Default, but in any event no more than one hundred and twenty (120) days of receipt of the Notice of Default.

14.2.4 As used in this Lease, the term "Uncured Default" shall mean any Default by Tenant which continues uncured, following the giving of a Notice of Default as required by this Lease, for the entire cure period applicable to that Default under the provisions of this Lease.

14.2.5 Cures offered on behalf of Tenant by the limited partner of Tenant shall be received by Landlord as if offered by Tenant itself hereunder.

14.3 Landlord's Right to Cure Tenant's Defaults.

After expiration of the applicable time granted to Tenant for curing a particular Default and upon not less than five (5) business days' notice (unless a longer period of time is otherwise expressly provided by this Lease, in which case such longer period shall apply), Landlord may, at Landlord's election, make any payment (other than Rent payable to Landlord) required of Tenant under this Lease or perform or comply with any covenant or condition imposed on Tenant under this Lease, and the amount so paid, plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Agreed Rate, from the date of payment, performance, or compliance until the date of repayment by Tenant, shall be due and payable by Tenant on the first day of the next calendar month following any such payment, performance or compliance by Landlord as Additional Rent hereunder. No such act shall constitute a waiver of any Default or of any remedy for Default or render Landlord liable for any loss or damage resulting from any such act (except to the extent such loss or damage arises from Landlord's or Landlord's Representatives' negligence or intentional or willful misconduct).

14.4 Notice of Landlord's Default; Tenant Waiver.

14.4.1 If Landlord has committed a breach under this Lease, as described in Section 14.1, Tenant shall deliver a Notice of Default to Landlord. Each Notice of Default shall specify the alleged Default.

14.4.2 Landlord shall, after notice, promptly and diligently commence curing the Default and shall have sixty (60) days after notice is given to complete the cure of said Default; provided, however, that if (i) the nature of said Default is such that the same cannot reasonably be cured within said sixty (60) day period, and (ii) Landlord shall have in good faith commenced and diligently and continuously pursued such cure, then Landlord shall have such time as is reasonably necessary to complete the cure of said Default. If it is determined that Landlord is liable to Tenant for damages pursuant to this Lease Landlord shall pay such damages to Tenant in accordance with such judgment within 30 days after such determination. Tenant shall have no right to offset any amount of damages owed by Landlord to Tenant against the Rent owed by Tenant to Landlord under

this Lease. If any amount owed to the Tenant by Landlord is not paid when due, interest shall accrue on such amount at the Agreed Rate from the date due until the date that such amount is paid. After expiration of the applicable time for Landlord to cure a particular Default and upon not less than five (5) business days' notice (unless a longer period of time is otherwise expressly provided by this Lease, in which case such longer period shall apply), Tenant may, at Tenant's election, make any payment required of Landlord under this Lease or perform or comply with any covenant or condition imposed on Landlord under this Lease, and the amount so paid, plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Agreed Rate, from the date of payment, performance, or compliance until the date of repayment by Landlord, shall be due and payable by Landlord on the first day of the next calendar month following any such payment, performance or compliance by Tenant. No such act shall constitute a waiver of any Default or of any remedy for Default or render Tenant liable for any loss or damage resulting from any such act (except to the extent such loss or damage arises from Tenant's or Tenant's Representatives' negligence or intentional or willful misconduct).

14.5 Landlord's Remedies.

14.5.1 In the event of any Uncured Default, then, subject to the rights of a Lender expressly set forth in this Lease, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such termination, in which event the Parties shall have no further obligation to one another under this Lease.

14.5.2 Notwithstanding the provisions of this Article 14 above to the contrary, if, within ten (10) days of Tenant's receipt of a Notice of Default with respect to a Non-monetary Default by Tenant, Tenant shall in good faith notify Landlord in writing that it disputes the existence of such Non-monetary Default and that it requests a determination of the existence or non-existence of such Non-monetary Default, then Landlord may not exercise its right to terminate this Lease pursuant to this Article 14 on account of such Non-monetary Default of Tenant until the expiration of the applicable cure period measured as if such cure period commenced upon the earlier of (i) the date of the determination that such Non-monetary Default exists, or (ii) the failure by Tenant to diligently and continuously pursue the legal proceeding. Subject to the rights of Lenders, if there is no express cure period for the default set forth in the Notice of Default, then the cure periods shall be the same as those provided in Section 14.2.3 herein. The exercise of Tenant's rights pursuant to this paragraph shall not impair or delay the ability of Landlord to exercise any rights or remedies other than to delay Landlord's right to terminate this Lease.

14.5.3 In the event the Uncured Default consists of Tenant's failure to pay Rent to Landlord, Landlord shall also have the right to pursue all of its legal and equitable remedies against Tenant for collection of such amounts, including without limitation the remedy described in California Civil Code Section 1951.4 which provides that a lessor may continue a lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if the lessee has the right

to sublet or assign, subject only to reasonable limitations.

14.5.4 Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage, deed of trust, or bonded indebtedness. Accordingly, if any installment of Rent shall not be received by Landlord or its designee within ten (10) days after Rent is due, or if any Additional Rent or Impositions shall not be received by Landlord within twenty (20) days after the Notice of Default is given, then without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge to Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

14.6 Tenant Remedies; Remedies Cumulative.

Except as otherwise expressly provided in this Lease, Tenant shall have all rights and remedies at law or equity upon the occurrence of an Uncured Default by Landlord hereunder including, but not limited to, the remedies provided under California Civil Code Sections 1951.2 (pursuant to California Civil Code Section 1951.2, the damages Landlord may recover against Tenant include, but are not limited to, the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award, exceeds the amount of such rental loss for the same period that the Tenant proves could be reasonably avoided). Each right and remedy of Landlord and Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease except as otherwise limited by this Lease, and the exercise or the beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease, except as otherwise limited by this Lease, shall not preclude the simultaneous or later exercise by Landlord or Tenant of any or all other rights or remedies provided for in this Lease, except as otherwise limited by this Lease.

14.7 No Waiver.

Landlord's or Tenant's failure to enforce any provision of this Lease with respect to a Default hereunder shall not constitute a waiver of Landlord's or Tenant's right to enforce such provision or any other provision with respect to any future Default. The acceptance of Rent by Landlord shall not be deemed a waiver of Landlord's right to enforce any term or provision hereof. The waiver of any term or condition of this Lease shall not be deemed to be a waiver of any other term or condition hereof or of any subsequent failure of any term or condition hereof.

14.8 Delays in Performance.

The time within which the Parties hereto shall be required to perform any obligation under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to an act of God, strikes, lockouts, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, application of governmental restrictions, regulations or controls not contemplated by this Lease or otherwise reasonably foreseeable, court order, delays or inaction of independent contractors, remediation of Hazardous Substances located upon the Leased Premises, litigation brought against the Leased Premises or a Party without that Party's consent, or other like events which are completely and strictly beyond a Party's control (the "Force Majeure Events"). The additional grace period or extension of time provided above shall be equal to the period of delay caused by the above-described event, which period shall commence to run from the time of the commencement of the cause for delay and shall terminate upon termination of that cause. A Party wishing to invoke this Section must notify in writing the other Party to this Lease of that intention within sixty (60) days of the commencement of any such cause for delay and shall, at that time, specify the reasons therefor, the specific provision of this Lease which will be delayed as a result, and the period of such extension, if known, or if not known, a reasonable estimate thereof.

ARTICLE 15 - EXPIRATION; TERMINATION

At the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord possession of the Leased Premises free and clear of all liens, encumbrances and Mortgages other than those, if any, created by Landlord, those which both extend beyond the Term or Extended Term, if applicable, of this Lease and were expressly approved in writing by Landlord, or those which encumbered the Leased Premises prior to the Commencement Date of this Lease. Tenant shall leave the Leased Premises and any other property surrendered in its then existing "as is" condition. As provided above at Article 6, all property that Tenant is required to surrender shall become Landlord's property at termination or expiration of this Lease. In addition, Tenant shall surrender to Landlord all residential leases, and all records related to the residential leases and compliance with the Agreement Affecting Real Property. All property that Tenant is not required to surrender but that Tenant does abandon by failure to remove said property within sixty (60) days after the expiration or earlier termination of this Lease shall, at Landlord's election, become Landlord's property. At Landlord's request Tenant shall execute and deliver to Landlord assignments of leases and a quitclaim deed, both in commercially reasonable form and as prepared by Landlord. By the quitclaim deed Tenant shall quitclaim any right, title or interest which Tenant may have or claim to have in the Improvements.

ARTICLE 16 – NO DISCRIMINATION

16.1 Tenant herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this Lease is made and accepted upon and subject to the following conditions: 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 Property, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property.

16.2 Tenant, its successors and assigns, shall refrain from restricting the rental, sale, or lease of the Property or any portion thereof, on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and contract entered into with respect to the Property, or any portion thereof, after the date of this Lease shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

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

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

premises herein leased.”

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

ARTICLE 17 - MISCELLANEOUS

17.1 Landlord’s Representations and Warranties.

Landlord covenants, represents and warrants to Tenant, as of the date of execution of this Lease, as follows:

17.1.1 Landlord is a public body corporate and politic under the laws of the State of California, has full legal right, power, and authority to enter into this Lease and to carry out and consummate all transactions contemplated by this Lease, and by appropriate corporate action has duly authorized the execution and delivery of this Lease. Further, Landlord will take those actions required to remain in good standing under the laws of the state of California during the term of this Lease.

17.1.2 To Landlord’s actual knowledge, the execution, delivery and performance of this Lease by Landlord does not result in a material violation of, or constitute a material default under, any provision of any existing agreement, judgment or court order.

17.1.3 Except as revealed in writing by Landlord to Tenant, Landlord has not been served with any pending, and knows of no threatened, litigation or claims against the Leased Premises or against Landlord in connection with the Leased Premises which would have an adverse effect on the transactions contemplated herein.

17.1.4 Copies of all documents heretofore delivered by Landlord to Tenant are true, correct and complete copies of such documents in all material respects.

17.1.5 Landlord makes no representation or warranty as to the condition of the title to the Leased Premises except as provided in Section 208 of the DDA.

17.2 Tenant's Representations and Warranties.

Tenant covenants, represents and warrants to Landlord, as of the date of execution of this Lease, as follows:

17.2.1 Tenant is a limited partnership or corporation duly formed and in good standing under the laws of the State of California, has full legal right, power, and authority to enter into this Lease and to carry out and consummate all transactions contemplated by this Lease, and by appropriate action has duly authorized the execution and delivery of this Lease. Further, Tenant will take those actions required to remain in good standing under the laws of the state of California during the term of this Lease.

17.2.2 The representatives of Tenant executing this Lease are fully authorized to execute the same.

17.2.3 This Lease has been duly authorized, executed, and delivered by Tenant, and will constitute a legal, valid, and binding agreement of Tenant.

17.2.4 Except as may be revealed in writing by Tenant to Landlord, Tenant has not been served with any pending, and knows of no threatened, litigation or claims against Tenant which would have an adverse effect on the transactions contemplated herein.

17.2.5 Copies of all documents heretofore delivered by Tenant to Landlord are true, correct and complete copies of such documents in all material respects;

17.3 Survival of Representations, Warranties and Covenants.

The respective representations, warranties and covenants contained herein shall survive the Commencement Date and continue throughout the Term.

17.4 Further Assurances.

Each party hereto will promptly execute and deliver without further consideration such additional agreement, assignments, endorsements and other documents as the other party hereto may reasonably request to carry out the purposes of this Lease.

17.5 Estoppel Certificate.

Within thirty (30) days after request by Landlord or Tenant (which request may be from time to time as often as reasonably required by Landlord or Tenant) Landlord or Tenant shall execute and deliver to the other, without charge, a statement (the "Estoppel Certificate") in the form of Exhibit D

attached hereto or in such other similar form as Landlord or Tenant may reasonably request. Any such statement may be conclusively relied upon by any Lender, Subtenant or prospective purchaser of the Leased Premises.

17.6 Notices.

All notices, requests, demands and other communications under this Lease shall be in writing and shall be deemed to have been given on (a) the date of service if served personally on the Party to whom notice is to be given, (b) the date of actual or attempted delivery provided such attempted delivery is made on a business day, if served by Federal Express, Express Mail or another like overnight delivery service, (c) the date of actual delivery as shown by the addressee's registry or certification of receipt or the date of addressee's refusal to accept delivery, if mailed to the person to whom notice is to be given, by first class U.S. mail, registered or certified, postage prepaid, return receipt requested and properly addressed as follows (or to such other address as either Party may from time to time direct by written notice given in the manner herein prescribed), or (d) (except for Permitted Lenders) one day after receipt of a confirmed facsimile transmission provided any such communication is concurrently given by one of the above methods:

If to Landlord: The Imperial Beach Redevelopment Agency
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attn: Executive Director
Tel: 619-423-0314
Fax: 619-628-1395

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

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

17.7 Attorneys' Fees.

In the event that either Party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Lease or as a consequence of any breach by the other party of its obligations under this Lease, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees (including allocable costs for any in-house counsel) and out-of-pocket expenditures paid by the losing Party. The attorneys' fees so recovered shall include fees for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit on this Lease shall be entitled to its attorneys' fees incurred in any post judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Lease into any judgment on this Lease.

17.8 Headings.

The headings used in this Lease are inserted for reference purposes only and do not affect the interpretation of the terms and conditions hereof.

17.9 Rights of Successors.

All of the rights and obligations of the Parties under this Lease shall bind and inure to the benefit of their respective heirs, successors and assigns; provided, however, that nothing in this Section 17.9 shall be construed to limit or waive the provisions concerning restrictions on Transfer set forth in Article 9 hereof.

17.10 Amendments in Writing.

This Lease cannot be orally amended or modified. Any modification or amendment hereof must be in writing and signed by the Party to be charged.

17.11 No Brokers.

Each Party shall defend, indemnify, and hold the other harmless from all costs and expenses, including attorneys' fees, arising out of any and all claims for broker's agent's or finder's fees or commissions in connection with the negotiation, execution or consummation of this transaction incurred as a result of any statement, representation or agreement alleged to have been made or entered into by the indemnifying Party. Neither Tenant nor Landlord is entitled to receive any brokerage commission as a consequence of this transaction.

17.12 Negation of Partnership.

Nothing in this Lease shall be construed to render Landlord, a partner, joint venturer, or associate in any relationship or for any purpose with Tenant, other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other.

17.13 Time of Essence.

Time is of the essence of each provision in this Lease, subject to delays caused by any of the force majeure events set forth in Section 14.8.

17.14 Interpretation.

When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The term "Person" as used in this Lease means a natural person, corporation, limited liability company, association, partnership, organization, business, trust, individual, or a governmental authority, agency, instrumentality or political subdivision, and whenever the word "day" or "days" is used herein, such shall refer to calendar day or days, unless otherwise specifically provided herein. Whenever a reference is made herein to a particular Section of this Lease, it shall mean and include all subsections and subparts thereof. The word "include" or "including" shall describe examples of the antecedent clause, and shall not be construed to limit the scope of such clause.

17.15 Applicable Law; Severability.

The interpretation and enforcement of this Lease shall be governed by the laws of the State of California. Should any part, term, portion or provision of this Lease, or the application thereof to any person or circumstances be held to be illegal or in conflict with any Governmental Restrictions, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

17.16 Exhibits.

All exhibits referred to in this Lease are attached hereto and incorporated herein by reference.

17.17 Short Form of Lease.

Prior to Agency's conveyance of the Leased Premises to Tenant, the Parties shall execute and thereafter record with the County Recorder of San Diego County a Memorandum of Lease, attached

hereto as Exhibit C, giving notice of the existence of this Lease and the Term hereof.

17.18 Landlord's Rights of Inspection.

Landlord and its authorized Representatives shall have the right during business hours, upon not less than twenty-four (24) hours' oral or written notice to Tenant (except that in the case of an emergency, the existence of which shall be determined by Landlord in its reasonable discretion, no advance notice shall be required) to enter upon the Leased Premises for purposes of inspecting the same and exercising its rights under this Lease, provided that such inspections shall not unreasonably interfere with Tenant's or its Subtenant's construction or business activities. Tenant has the right to designate representatives to accompany the Landlord's representatives on such inspections. Landlord agrees to coordinate with Tenant to schedule such inspections so that Tenant's representatives may attend the inspections, in the discretion of such Tenant.

17.19 Nonmerger of Fee and Leasehold Estates.

If both Landlord's and Tenant's estates in the Leased Premises become vested in the same owner (other than by termination of this Lease following an Uncured Default hereunder, subject to the rights, if any, of a Lender pursuant to Article 8 above), this Lease shall not be terminated by application of the doctrine of merger except at the express election of Landlord and with the consent of each Lender holding a Leasehold Mortgage.

17.20 Counterparts.

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

17.21 Interest On Past Due Obligations.

Except where another rate of interest is specifically provided for in this Lease, any amount due from either Party to the other under this Lease which is not paid within ten (10) days after receipt of written notice that such amount is due (or in the case of Rent, within three (3) days after such Rent is due), shall bear interest at the Agreed Rate from the date such amount was originally due to and including the date of payment.

17.22 Holding Over.

Any holding over by Tenant after the expiration of the Term shall be construed as a tenancy from month to month and shall be subject to all of the terms and conditions which are provided for in this Lease except that the Rent shall be in an amount equal to 150% of the Rent in effect immediately prior to the expiration of the Term.

17.23 Access for Lender.

Landlord and Tenant authorize each holder of a Leasehold Mortgagee to enter the Leased Premises as necessary to effect such Lender's cure rights hereunder, to take any action(s) reasonably necessary to effect such cure, to preserve and protect the Leased Premises and to otherwise exercise its right and remedies under such Lender's Leasehold Mortgage. A Leasehold Mortgagee's rights

under this paragraph or exercise of such rights shall not constitute control of the Leased Premises or mean that such Lender has possession of the Leased Premises or liability to Landlord or Tenant.

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

SIGNATURES ON NEXT PAGE

TENANT:

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

By: PACIFICA – HOSPITALITY GROUP, a
Nevada corporation

Dated: _____

By: _____
Ashok Israni, President

LANDLORD:

IMPERIAL BEACH REDEVELOPMENT AGENCY

Dated: _____

By: _____
Gary Brown
Executive Director

APPROVED AS TO FORM
AND LEGALITY

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Susan Y. Cola

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PREMISES

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

EXHIBIT B

SITE MAP

EXHIBIT C

MEMORANDUM OF LEASE

OFFICIAL BUSINESS

Document entitled to free
recording per Government
Code Section 6103.

Recording Requested by and
When Recorded Mail to:

THE IMPERIAL BEACH REDEVELOPMENT AGENCY
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attn: Executive Director

MEMORANDUM OF LEASE

1. Parties. This Memorandum of Lease is entered into by IMPERIAL BEACH REDEVELOPMENT AGENCY ("Landlord"), and IMPERIAL COAST, L.P., a California limited partnership ("Tenant"). The Lease (as defined below) was executed by Landlord on _____. The "Commencement Date" of the Lease is the date this Memorandum of Lease is recorded in the official records.

2. Grant of Lease: Term. For good and valuable consideration received, Landlord leases to Tenant, and Tenant leases from Landlord, that certain real property (the "Property") located in the City of Imperial Beach, County of San Diego, State of California, described in Exhibit A attached hereto and incorporated herein by this reference, for a term ("Term") commencing on the Commencement Date and ending on the fifty-fifth (55th) anniversary of the Commencement Date. All of the terms, provisions and covenants of the Lease are incorporated in this Memorandum of Lease by reference as though written out at length herein, and the Lease and this Memorandum of Lease shall be deemed to constitute a single instrument or document.

3. Purpose of Memorandum of Lease. This Memorandum of Lease is prepared for recordation purposes only, and it in no way modifies the terms, conditions, provisions and covenants of the Lease. In the event of any inconsistency between the terms, conditions, provisions and covenants of this Memorandum of Lease and the Lease, the terms, conditions and covenants of the

Lease shall prevail.

The parties hereto have executed this Memorandum of Lease on the dates specified immediately below their respective signatures.

“Landlord”

IMPERIAL BEACH REDEVELOPMENT AGENCY

Dated: _____

By: _____

Gary Brown
Executive Director

“Tenant”

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

By: _____

Name: _____

Its: _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT D

Estoppel Certificate

The undersigned, as Tenant [Landlord] under that lease dated _____ (the "Lease") made between IMPERIAL BEACH REDEVELOPMENT AGENCY ("Landlord"), and IMPERIAL COAST, L.P., a California limited partnership ("Tenant"), hereby certifies as follows:

(1) That Tenant has entered into occupancy of the premises described in said lease (the "Leased Premises");

(2) That the Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way, except as follows: _____;

(3) That the Commencement Date of the Lease is _____;

(4) That there is an unexpired term thereunder of _____ years;

(5) That to the knowledge of the undersigned there are no defaults by either Tenant or Landlord thereunder, except as follows: _____;

(6) That no rents have been prepaid, other than as provided in the Lease.

EXECUTED THIS _____ day of _____, _____.

[Tenant] [Landlord]

By: _____
Print Name: _____
Its: _____

By: _____
Print Name: _____
Its: _____

ATTACHMENT NO. 10A
MEMORANDUM OF GROUND LEASE

[behind this page]

GOVERNMENT BUSINESS
Free Recording Requested (Govt. Code §6103)

Recording Requested by
and When Recorded Return to:

City of Imperial Beach Redevelopment Agency
825 Imperial Beach Boulevard
Imperial Beach, California 91932
Attention: Executive Director

SPACE ABOVE LINE FOR RECORDER'S USE

APN:

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is entered into by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY ("Agency") and IMPERIAL COAST, LP., a California limited partnership ("Lessee").

RECITALS

A. Agency and Lessee have entered into that certain Ground Lease dated for reference purposes _____, 2011 (the "Lease") pursuant to which Agency leased to Lessee and Lessee leased from Agency certain real property more particularly described in Exhibit "A" and incorporated herein by reference (the "Property").

B. Agency and Lessee desire to execute this Memorandum to provide constructive notice of the Lease to third parties.

OPERATIVE PROVISIONS

1. Lease Commencement/Term. Agency leases the Property to Lessee for a term commencing on _____, 200_ and continuing thereafter for fifty-five (55) years, unless earlier terminated as provided in the Lease.

2. Lease Terms. The terms and provisions of the Lease are hereby incorporated into this Memorandum of Lease by this reference.

3. Assignment. Lessee's rights under the Lease shall not be assigned except in compliance with the terms of the Lease.

4. Successors and Assigns. This Memorandum of Lease and the Lease shall bind and inure to the benefit of the parties and their respective, permitted heirs, successors in interest and assigns, subject, however, to the terms of the Lease concerning assignment. The provisions of this Memorandum of Lease are solely for the purpose of providing notice of the Lease and, in the event of any conflict between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall prevail.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the date below.

"Agency"

IMPERIAL BEACH REDEVELOPMENT
AGENCY

Date: _____

By: _____

Gary Brown
Executive Director

APPROVED AS TO FORM
AND LEGALITY:

Agency General Counsel

By: _____
Jennifer Lyon

APPROVED AS TO FORM:
KANE, BALLMER & BERKMAN

Agency Special Counsel

By: _____
Susan Y. Cola

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

By: PACIFICA – HOSPITALITY GROUP,
a Nevada corporation

Dated: _____

By: _____
Ashok Israni, President

EXHIBIT A

Legal Description

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ATTACHMENT NO. 11

OPTION TO PURCHASE LEASEHOLD INTEREST

[behind this page]

ATTACHMENT NO. 11

OPTION AGREEMENT
FOR
PURCHASE OF LEASEHOLD INTEREST
AND JOINT ESCROW INSTRUCTIONS

To: _____

(“Escrow Holder” and “Title Company”)

Escrow No.: _____
(“Escrow”)

_____, California _____
Attn.: _____, Escrow Officer
Telephone: (____) _____ - _____
Facsimile: (____) _____ - _____

This Option Agreement for Purchase of Leasehold Interest and Joint Escrow Instructions (“Agreement”), dated for reference purposes _____, 20__, is made by and between IMPERIAL COAST, LP., a California limited partnership (“Developer”), and THE IMPERIAL BEACH REDEVELOPMENT AGENCY, a public body, corporate and politic (“Agency”).

RECITALS

A. This Option Agreement for Purchase of Leasehold Interest is entered into pursuant to that certain Disposition and Development Agreement dated as of _____, 2010, (“DDA”). The DDA provides for the redevelopment of the Property with a full service hotel (“Project”), as more specifically described in the DDA. DDA as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

B. In accordance with the DDA, the Developer and Agency have also entered into that certain Ground Lease by and between Developer (as “Developer”) and Agency (as “Agency”) dated _____, 2011, a memorandum of which has been recorded concurrently herewith, wherein Developer acquired a leasehold interest in the Property (“Leasehold Interest”).

C. Subject to the terms and conditions of this Agreement, and in accordance with the DDA, Developer desires to acquire an option to purchase Agency’s fee interest in the Property from Agency and Agency desires to grant to Developer an option to purchase Agency’s fee interest in the Property from Developer.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Agency agree as follows:

TERMS AND CONDITIONS

1. Option; The Property. At any time commencing upon Completion and ending upon expiration of the Term, and subject to the Conditions Precedent to Right of Option, below, Developer shall have the option ("Option") to purchase all of Agency's right, title and interest in and to the fee interest in the Property more particularly described on Exhibit "A," attached hereto and incorporated herein by this reference, together with all of Agency's right, title and interest in and to all Improvements, easements, appurtenances, and other intangible property of Developer to said land (collectively, the "Property"), for a price equal to ONE DOLLAR AND NO CENTS (\$1.00)("Option Price"). The Option shall be exercised in accordance with the procedures set forth in this Option Agreement, a memorandum of which has been recorded in the official records on _____, 201_, as Instrument No. _____ of the County Recorder of the County of San Diego, California. Upon Developer's acquisition of the Property, the Ground Lease shall terminate.

2. Exercise of Developer's Option

2.1 Exercise of Option. To exercise the Option, Developer shall deliver written notice to Agency or its successor assignee ("Option Notice"), stating that Developer elects to purchase the Property upon the terms and conditions set forth in this Agreement.

2.2 Conditions Precedent to Right of Option

Developer's right to exercise the Option shall be conditioned upon the following events:

i Commencing upon Completion until on or before Operating Year 10, the City of Imperial Beach's receipt of transient occupancy taxes ("TOT") from the operation of the Hotel on the Property, in the cumulative amount of at least THREE MILLION TWO HUNDRED AND TWO THOUSAND DOLLARS AND NO CENTS (\$3,202,000);

ii. Commencing upon Completion and after Operating Year 10, the City of Imperial Beach's receipt of transient occupancy taxes ("TOT") from the operation of the Hotel on the Property, in the cumulative amount of at least TWO MILLION THREE HUNDRED AND FIFTY ONE THOUSAND DOLLARS AND NO CENTS (\$2,351,000);

2.2 Opening of Escrow. Subject to Paragraphs 2.1 and 2.2, above, Agency and Developer shall deliver to Escrow Holder a fully-executed duplicate original of this Agreement within five (5) business days after the Option Notice Date (as defined below). As used in this Agreement, the term "Option Notice Date" shall mean the date on which Developer shall have delivered the Option Notice to Agency, provided that in no event shall the Option Notice Date be later than the expiration of the Term. When this Agreement, fully signed, is delivered to Escrow Holder, Escrow shall be deemed opened ("Opening of Escrow"). Escrow

Holder shall immediately notify Agency and Developer, in writing, of the date of Opening of Escrow.

3. Prior to Opening of Escrow, Developer, at Developer's sole expense, shall have investigated and approved the physical condition of, and the condition of title with respect to, the Property and the Improvements. Developer acknowledges and agrees that Agency makes no representation or warranty, express or implied, written or oral, with respect to the condition of the Property or the Improvements, or their fitness or availability for any particular use. Developer shall obtain a Title Policy (either CLTA or ALTA, at Developer's option) insuring Developer's fee interest in the Property. Agency shall not be responsible for ensuring condition of title or removing any exceptions.

3.1 Agency makes no representations, express or implied, with respect to the legality, fitness, or desirability of the Property for Developer's intended use. If Developer desires to do so, Developer shall have the right to conduct its own investigation, to its satisfaction, with respect to any matters affecting Developer's ability to use the Property for Developer's intended use.

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

3.3 Developer agrees to indemnify, defend and hold harmless Agency and City, and their respective members, officers, agents, employees, contractors and consultants, in accordance with the Environmental Indemnity (Attachment No. 8 to the DDA).

3.4 Developer waives, releases and discharges the Agency, City, and their respective members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the Agency's or Developer's use, maintenance, ownership or operation of the Property, any Hazardous Substances on the Property, or the existence of Hazardous Substances contamination in any state on the Property, however the Hazardous Substances came to be placed there, except that arising out of the gross negligence or willful misconduct of the Agency and City, or their respective employees, officers or agents. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if

known by him or her must have materially affected his or her settlement with the debtor.”

To the extent of the release set forth in this Section 2.2.4, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

4. Closing of Escrow.

4.1 Closing Date.

4.1.1 Subject to the satisfaction of the Conditions Precedent to Right of Option, Escrow shall close on or before 5:00 p.m. on the sixtieth (60th) day after the Option Notice Date (the “Closing Date”).

4.1.2 The terms “Close of Escrow” and/or “Closing” are used in this Agreement to mean the time and date (which shall be as provided in Paragraph 4.1.1) on which the Grant Deed (as defined in Paragraph 4.3.1) is filed for recording by Escrow Holder in the Office of the San Diego County Recorder.

4.2 Deposits to be Made by Developer. On or before the Close of Escrow, Developer shall deliver to Escrow Holder:

4.2.1 Immediately available funds in a total amount equal to the Option Price and any other sums payable by Developer hereunder.

4.2.2 Any additional funds and/or instruments, properly executed and acknowledged by Developer, as appropriate, as may be necessary to comply with this Agreement.

4.3 Deposits to be Made by Agency. At or before 5:00 p.m. on the last business day immediately before the Close of Escrow, Agency shall deliver to Escrow Holder:

4.3.1 A grant deed conveying Agency’s interest in the Property, properly executed and acknowledged by Agency in the form of Exhibit “B”;

4.3.2 A Certification of Non-Foreign Status certifying, pursuant to Internal Revenue Code Section 1445, that Agency is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations), along with California Form 593-C.

4.3.3 Any additional instruments, signed and properly acknowledged by Agency if appropriate, as may be necessary to comply with this Agreement.

5. Title Policy.

5.1 At Close of Escrow, Title Company shall issue to Developer the title policy described in Paragraph 4.3 above (the "Title Policy"), with liability in the amount of the fair market value of the, covering the Property and insuring fee title vested in Developer.

6. Termination and Cancellation of Escrow.

6.1 If Escrow fails to close by the Closing Date, then Escrow shall terminate automatically without further action by Escrow Holder or any party. Termination of Escrow, as provided in this Paragraph 7.1, shall be without prejudice to whatever legal rights Agency or Developer may have against each other which may otherwise arise from the DDA in connection with that termination.

6.2 If the Close of Escrow fails to occur because of either party's default, the defaulting party shall be liable for all Escrow cancellation and Title Company charges, in addition to any other damages or remedies due the non-defaulting party. If Close of Escrow fails to occur for any other reason, Developer shall pay any Escrow and Title Company cancellation charges, and this Agreement shall terminate.

7. Developer's Representations and Warranties. Developer hereby represents and warrants to Developer as follows, which representations and warranties are true in all material respects as of the date hereof and such representations and warranties shall be true on the Close of Escrow:

7.1 Authority. Developer has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The individuals executing this Agreement on behalf of Developer have the legal power, right and actual authority to bind Developer to the terms and conditions of this Agreement.

7.2 Requisite Action. As of the date hereof, all requisite action has been taken by Developer in connection with the entering into of this Agreement and the consummation of the transactions contemplated hereby.

7.3 Validity. This Agreement and all documents required hereby to be executed by Developer are and shall be valid, legally binding obligations of and enforceable against Developer in accordance with their terms.

8. Agency's Representations and Warranties. Agency hereby agrees and represents and warrants to Developer as follows, which representations and warranties are true in all respects as of the date hereof and shall be true on the Close of Escrow:

8.1 Authority. Agency has the legal power, right and authority to own property and to enter into this Agreement and the documents referenced herein, and to consummate the transactions contemplated hereby. The individuals executing this Agreement and the documents referenced herein on behalf of Agency have the legal power, right and actual authority to bind Agency to the terms and conditions hereof and thereof.

8.2 Requisite Action. As of the date hereof, all requisite action (corporate, partnership or otherwise) has been taken by Agency in connection with the entering into of this Agreement and the documents referenced herein, and the consummation of the transactions contemplated hereby.

8.3 Validity. This Agreement and all documents required hereby to be executed by Agency are and shall be valid, legally binding obligations of and enforceable against Agency in accordance with their terms.

9. Brokerage Commissions. Developer hereby represents and warrants to Agency that Developer has made no statement or representation to, nor entered into any agreement with, any broker, salesman or finder in connection with the transactions contemplated by this Agreement. Agency hereby represents and warrants to Developer that Agency has made no statement or representation to, nor entered into any agreement with, any broker, salesman or finder in connection with the transactions contemplated by this Agreement. Each party agrees to indemnify, defend, protect and hold the other harmless from and against any claim, loss, damage, cost or liability for any broker's commission or salesman's or finder's fee asserted as a result of its own act or omission in connection with this transaction.

10. General Provisions.

10.1 Assignment. This Agreement shall be binding upon and shall inure to the benefit of Agency and Developer and their respective representatives, successors and assigns as may be permitted, if at all, below. Agency shall have the right to assign this Agreement or any interest or right under this Agreement or under the Escrow or to appoint a nominee to act as Agency under this Agreement. Developer shall have the right assign this Agreement and its rights, duties and obligations hereunder in accordance with the DDA and Ground Lease.

10.2 Attorneys' Fees. In any action between the parties arising out of this Agreement or the Escrow, or in connection with the Property, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief or other relief, to its reasonable costs and expenses, including, without limitation, costs and reasonable attorneys' fees fixed by the court.

10.3 Approval and Notices. Any notice, demand, approval, consent or other communication required or desired to be given under this Agreement in writing may be given by personal service, fax (with a hard copy to follow immediately), recognized overnight air courier or by certified mail and shall be directed to the party involved at the address indicated below:

DEVELOPER : Imperial Coast, LP
1785 Hancock Street, Suite 100
San Diego, CA 92110
Attention: Ashok Isrami

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

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

Any notice, demand, approval, consent or other communication given: (a) personally shall be deemed to have been given upon receipt, (b) by recognized overnight air courier, freight prepaid, shall be deemed to have been given on the next business day, (c) by certified mail shall be deemed to have been given on the third business day after it was deposited in the U.S. mail, certified and postage prepaid. Notices shall be deemed to have been validly given if given by either Agency's or Developer's respective counsel in the manner set forth above. In any case, in order for such notice, demand, approval, consent or other communication to be given, the same shall be addressed to the party to be served at said address or at such other address of which that party may have given notice under the provisions of this paragraph.

10.4 General Escrow Provisions. Developer and Agency agree that this Agreement shall also constitute instructions to Escrow Holder. In addition, the parties agree to execute and deliver to Escrow Holder, such reasonable and customary escrow instructions in the usual form of Escrow Holder for the purpose of consummating the transaction contemplated by this Agreement; provided, however, that any standard extension provisions in such escrow instructions shall not apply, and in the event of any conflict or inconsistency between the provisions of such escrow instructions and the provisions of this Agreement, the provisions of this Agreement shall control. Escrow Holder shall perform all customary functions of an escrow holder to consummate this transaction, including, among other duties, calculation of the prorations and closing costs required by this Agreement, as well as serving as depository for all funds, instruments and documents needed for the Close of Escrow. If the requirements relating to the duties or obligations of Escrow Holder are unacceptable to Escrow Holder, or if Escrow Holder requires additional instructions, the parties agree to make any deletions, substitutions and additions, as counsel for Agency and Developer shall mutually approve, and which do not materially alter the terms of this Agreement. Any supplemental instructions shall be signed only as an accommodation to Escrow Holder and shall not be deemed to modify or amend the rights of Agency or Developer, as between Agency and Developer, unless those signed supplemental instructions expressly so provide.

10.5 Prorations; Refundable Deposits. Property taxes and assessments on the Property, and any rents, utilities and maintenance and other income and operating expenses for the Property, shall be paid by Developer as of Close of Escrow, based on the most current statements and information available to Escrow Holder. Developer shall be responsible for the lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California for acts or events occurring on or after Close of Escrow.

10.6 Payment of Costs. Developer shall pay all closing costs, including without limitation, escrow fees, recording fees, title premiums.

10.7 Escrow Holder Authorized to Complete Documents. If necessary, Escrow Holder is authorized to insert the date Escrow closes as the date of documents conveying interests therein.

10.8 Recordation of Documents. Upon Close of Escrow, Escrow Holder shall cause the Grant Deed, and any other recordable instruments to be filed for recordation in the Office of the San Diego County Recorder. Escrow Holder shall supply Developer and Agency with conformed copies of documents submitted for recording.

10.9 Delivery of Documents and Funds. Upon Close of Escrow, Escrow Holder shall deliver to Developer and to Agency all documents and funds to which each is entitled and for whose benefit those documents and funds were delivered to Escrow Holder.

10.10 Performance by Escrow Holder. Escrow Holder is to be concerned only with those paragraphs under this Agreement where Escrow Holder is given instructions to perform certain acts or with those paragraphs where escrow holders generally and reasonably would be expected to act.

10.11 Damage or Destruction; Condemnation. In the event any of the Property is damaged or destroyed by any casualty or by a partial taking or condemnation under the provisions of applicable eminent domain law after the date hereof but prior to the Closing Date, Developer's obligations to repair or replace any such damage or destruction shall be in accordance with the DDA and Ground Lease.

10.12 Interpretation. This Agreement shall be construed under the laws of the State of California in effect at the time of the signing of this Agreement. Each party acknowledges that it has been represented by independent counsel in connection with this Agreement and that this Agreement is the result of negotiations between the parties hereto. Any uncertainty or ambiguity shall not be construed against Agency because Agency's counsel, as a matter of convenience or otherwise, prepared this Agreement in its final form.

10.13 Titles, Captions and Paragraphs. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. References to paragraph numbers are to paragraphs as numbered in this Agreement unless expressly stated otherwise.

10.14 Gender, Etc. 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. As used in this Agreement, the terms “including” and “include” shall have their most comprehensive meanings and shall be deemed to mean “including, without limitation” and “include, without limitation,” respectively.

10.15 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.

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

10.17 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.

10.18 Merger of Prior Agreements and Understandings. This Agreement, together with the DDA and the Ground Lease, contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force.

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

10.20 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding Agreement.

10.21 Exhibits Incorporated by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference.

10.22 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day Escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, in which case the time shall be extended to the next business day.

10.23 Further Actions. Each party agrees to sign such other and further instruments and documents and take such other and further actions as may be reasonably necessary or proper in order to accomplish the intent of this Agreement.

10.24 Preliminary Change of Developer ship Report. Developer shall be fully responsible for all matters in connection with the filing of a Preliminary Change of Ownership Report in accordance with the California Revenue and Taxation Code Section 480.3.

10.25 No Recordation. Neither this Agreement nor any memorandum hereof shall be recorded or filed except for the Memorandum to be recorded pursuant to Paragraph 11.28.

10.26 No Third Party Beneficiaries. This Agreement does not create, and it shall not be construed as creating, any rights enforceable by any person or entity not a party to this Agreement except to the extent such person or entity is the beneficiary of any indemnity, waiver or release contained herein.

10.27 Memorandum of Option. Concurrently with the execution of this Agreement, Agency and Developer shall execute in a form suitable for recordation a Memorandum of Option disclosing the grant of the Option to Developer and Developer's right to purchase the Property pursuant to this Agreement, such Memorandum of Option to be in the form of Exhibit "C," attached hereto.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date set forth next to their respective signatures below.

IMPERIAL BEACH REDEVELOPMENT
AGENCY

Dated: _____

By: _____
Gary Brown
Executive Director

APPROVED AS TO FORM
AND LEGALITY

Agency General Counsel

By: _____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Susan Y. Cola

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

By: PACIFICA – HOSPITALITY GROUP, a Nevada
corporation

Dated: _____

By: _____
Ashok Israni, President

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

EXHIBIT "B"

FORM OF GRANT DEED

OFFICIAL BUSINESS

Document entitled to free
recording per Government Code
Sections 6103 and 27383

Imperial Beach Redevelopment Agency
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attn: Executive Director

(Space Above Line for Recorder's Use Only)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the IMPERIAL BEACH REDEVELOPMENT AGENCY, a public body, corporate and politic ("Grantor"), acting to carry out the Redevelopment Plan for the Palm/Commercial Redevelopment Project ("Redevelopment Plan") under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*), hereby grants to IMPERIAL COAST, L.P., a California limited partnership ("Grantee"), the real property ("Property") described in the exhibit attached hereto labeled Exhibit A and incorporated herein by this reference.

1. **General.** Said Property is conveyed in accordance with and subject to that certain Disposition and Development Agreement by and between Grantor ("Agency" therein) and Grantee ("Developer" therein) dated as of _____ 2010 ("DDA"), which document is a public record on file in the Office of the City Clerk of the City of Imperial Beach, and is by reference hereto incorporated herein as though fully set forth herein. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the DDA.
2. **Recorded Entitlement Documents.** Grantee acknowledges and agrees that any and all conditions of approval for the development of the Property, including the Development Agreement, the Specific Plan, the Temporary Encroachment Permit, the Vehicular and Pedestrian Access Easement Agreement, the Declaration of CC&Rs, the Resort Covenants, and any recorded map pertaining to the Property shall run with the Property and shall, therefore, be obligations of Grantee, its successor and assigns, and every successor in interest to the Property, or any part thereof.

3. **Uses.**

a. Grantee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof (collectively referenced as “Grantee”), that for a period of 30 years, commencing from the execution of the DDA (“Covenant Period”), Grantee shall operate the Hotel on the Property in accordance with the Specific Plan, the Development Agreement, the Declaration of CC&Rs, the Resort Covenants, and this Grant Deed. No change in the use of the Property shall be permitted without the prior written approval of Agency.

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

- i) The Hotel shall contain an on-site, full service (sit down) three-meal restaurant and lounge.
- ii) The Hotel shall have at least one swimming pool.
- iii) The Hotel shall have a fully-equipped exercise room/fitness center.
- iv) The Hotel shall have a business center.
- v) The Hotel shall have a minimum of 2,080 square feet of meeting and conference space.

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

d. **Payment of Taxes and Assessments.** Until the date of expiration of the effectiveness of the Redevelopment Plan, Grantee and its successors and assigns shall pay when due all real estate taxes and assessments assessed and levied on the Property or any portion thereof or any improvements thereon or any interest therein.

e. **Designation as Point of Sale.** Until the expiration of the effectiveness of the Redevelopment Plan, Grantee and its successors and assigns shall maintain such licenses and permits as may be required by any governmental Grantor to conduct taxable sales arising from any project on the Property and, to the extent permitted by law, shall designate City of Imperial Beach as the “point of sale” for all taxable sales and lease transactions occurring from any project on the Property in all reports to the California State Board of Equalization in accordance with the Bradley-Burns Uniform Sales and Use Tax Law (Revenue and Taxation Code 72000 *et seq.*), as it may be amended or substituted from time to time, and on sales tax returns to the State of California for all taxable sales occurring at any project on the Property. A breach of the foregoing by a third party, including any tenant or concessionaire on the Property, shall not be a breach by Grantee.

4. **Maintenance of the Property.** Grantee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that, until the expiration of the effectiveness of the Redevelopment Plan, Grantee and its successors and assigns shall maintain, repair and operate the Property, and all other improvements constructed or to be constructed thereon (including landscaping, lighting and signage) in a first-quality condition (which condition shall mean with the facilities and amenities in the condition existing as of the certificate of occupancy for a particular project, and with no obligation to upgrade or update the facilities or amenities or install new facilities and amenities except to the extent such facilities and amenities are destroyed, damaged and/or removed), free of debris, waste and graffiti. Maintenance of the Property shall include, without limitation, maintenance and irrigation of the off-site landscaping on Date Avenue using Owner’s water supply from the Property.

5. **Obligation to Refrain from Discrimination.** In perpetuity, Grantee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that in perpetuity there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed; religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

6. **Form of Nondiscrimination and Nonsegregation Clauses.** In perpetuity, Grantee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that in perpetuity Grantee shall refrain from restricting the rental, sale or lease of the Property on the basis of the race, color, creed, religion, sex, marital status, national origin or ancestry of any person. Grantee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that all deeds, leases or contracts entered into relating to the sale, transfer, or leasing of land or any interest therein shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on

account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

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

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

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

7. **Effect of Covenants.** The covenants established in this Grant Deed shall, without regard to technical classification and designation, be binding on Grantee and any successor in interest to the Property or any part thereof for the benefit and in favor of City, Grantor, and their respective successors and assigns. This Grant Deed, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. All conditions, covenants and restrictions contained in this Grant Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Grantor, its successors and assigns, and the City, and its successors and assigns, against Grantee, its successors and assigns, to or of the Property conveyed herein or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof.

8. **Time of Essence.** Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Grant Deed.

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

10. **Merger.** This Grant Deed shall merge the Grantee's leasehold interest in the Leased Premises with Grantee's fee interest in the Property upon Grantor's conveyance of this Grant Deed to Grantee.

11. **Counterparts.** This Grant Deed may be executed by each party on a separate signature page, and when the executed signature pages are combined with the balance of this Grant Deed, it shall constitute one single instrument.

SIGNATURES ON NEXT PAGE

Grantee hereby accepts the written deed, subject to all of the matters hereinbefore set forth.

GRANTOR

IMPERIAL BEACH REDEVELOPMENT
AGENCY

Dated: _____

By: _____
Gary Brown
Executive Director

APPROVED AS TO FORM
AND LEGALITY

Agency General Counsel

By: _____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Susan Y. Cola

GRANTEE

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

By: PACIFICA – HOSPITALITY GROUP, a Nevada
corporation

Dated: _____

By: _____
Ashok Israni, President

EXHIBIT "A"
LEGAL DESCRIPTION TO GRANT DEED

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "C"

FORM OF MEMORANDUM OF OPTION

OFFICIAL BUSINESS

Document entitled to free recording
per Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

REDEVELOPMENT AGENCY OF
THE CITY OF IMPERIAL BEACH
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attn: Executive Director

ABOVE SPACE FOR RECORDER'S USE ONLY

MEMORANDUM OF OPTION

THIS MEMORANDUM OF OPTION (this "Memorandum") is made as of _____, 2011, by and between Imperial Coast, LP, a California limited partnership ("Developer"), and the Imperial Beach Redevelopment Agency, a public body, corporate and politic, ("Agency"). All capitalized terms used and not otherwise defined in this Memorandum, but defined in the Option Agreement (as defined below), shall have the same meaning in this Memorandum as in the Option Agreement.

RECITALS

A. Developer and Agency have entered into that certain Option Agreement For Purchase of Real Property and Joint Escrow Instructions dated _____, 201_ (the "Option Agreement"), pursuant to which Agency has granted to Developer the option to purchase ("Option") the real property more particularly described in Exhibit "A" attached hereto, together with all improvements thereon (the "Property").

B. Pursuant to the Option Agreement, the parties now desire to enter into this Memorandum to provide record notice of the Option Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, it is hereby agreed as follows:

AGREEMENT

1. Option to Purchase. Agency hereby grants to Developer the option to purchase the Property ("Option") for the price and upon all of the terms and conditions set forth in the Option Agreement, which Option Agreement is incorporated herein by this reference.

2. Term of Option. Subject to all of the terms and conditions contained in the Option Agreement, the Option may be exercised at any time after Completion and ending upon expiration of the Term after the termination of the Covenant Period (as those capitalized terms are defined in the Ground Lease, a memorandum of which has been recorded in the official records on ____201__, as Instrument No. _____, of the County Recorder in the County of San Diego), upon notice by Agency to Developer as specified in the Option Agreement.

3. Purpose of Memorandum of Option. This Memorandum is prepared for the purpose of recordation only, and in no way modifies the provisions of the Option Agreement. In the event that any provisions of this Memorandum are inconsistent with provisions of the Option Agreement, the provisions in the Option Agreement shall prevail.

4. Governing Law. This Memorandum shall be construed and enforced in accordance with the laws of the State of California.

5. Counterparts. This Memorandum may be executed in several counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, each of the parties hereto has executed this instrument as of the date first above written.

IMPERIAL BEACH REDEVELOPMENT
AGENCY

Dated: _____

By: _____

Name: _____

Title: _____

SIGNATURES CONTINUED ON NEXT PAGE

APPROVED AS TO FORM AND LEGALITY

Agency General Counsel

By: _____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Susan Y. Cola

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

By: PACIFICA – HOSPITALITY GROUP, a Nevada
corporation

Dated: _____

By: _____
Ashok Israni, President

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

ATTACHMENT NO. 11A

MEMORANDUM OF OPTION TO PURCHASE LEASEHOLD INTEREST

[behind this page]

ATTACHMENT NO. 11A

MEMORANDUM OF OPTION

TO PURCHASE LEASEHOLD

OFFICIAL BUSINESS

Document entitled to free recording
per Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

IMPERIAL BEACH REDEVELOPMENT AGENCY
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attn: Executive Director

ABOVE SPACE FOR RECORDER'S USE ONLY

MEMORANDUM OF OPTION

THIS MEMORANDUM OF OPTION (this "Memorandum") is made as of _____, 201_, by and between Imperial Coast, LP, a California limited partnership ("Owner"), and the Imperial Beach Redevelopment Agency, a public body, corporate and politic, ("Agency"). All capitalized terms used and not otherwise defined in this Memorandum, but defined in the Option Agreement (as defined below), shall have the same meaning in this Memorandum as in the Option Agreement.

RECITALS

A. Owner and Agency have entered into that certain Option Agreement For Purchase of Real Property and Joint Escrow Instructions dated _____, 201_ (the "Option Agreement"), pursuant to which Owner has granted to Agency the option to purchase ("Option") the real property more particularly described in Exhibit "A" attached hereto and all improvements, easements, appurtenances, and other intangible property appurtenant thereto (the "Property").

B. Pursuant to the Option Agreement, the parties now desire to enter into this Memorandum to provide record notice of the Option Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, it is hereby agreed as follows:

AGREEMENT

1. Option to Purchase. Owner hereby grants to Agency the option to purchase the Property ("Option") for the price and upon all of the terms and conditions set forth in the Option Agreement, which Option Agreement is incorporated herein by this reference.

2. Term of Option. Subject to all of the terms and conditions contained in the Option Agreement, the Option may be exercised at any time after Completion, upon notice by Agency to Owner as specified in the Option Agreement.

3. Purpose of Memorandum of Option. This Memorandum is prepared for the purpose of recordation only, and in no way modifies the provisions of the Option Agreement. In the event that any provisions of this Memorandum are inconsistent with provisions of the Option Agreement, the provisions in the Option Agreement shall prevail.

4. Governing Law. This Memorandum shall be construed and enforced in accordance with the laws of the State of California.

5. Counterparts. This Memorandum may be executed in several counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, each of the parties hereto has executed this instrument as of the date first above written.

IMPERIAL BEACH REDEVELOPMENT AGENCY

Dated: _____

By: _____

Gary Brown
Executive Director

SIGNATURES CONTINUED ON NEXT PAGE

APPROVED AS TO FORM AND LEGALITY

Agency General Counsel

By: _____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Susan Y. Cola

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

By: PACIFICA – HOSPITALITY GROUP, a Nevada
corporation

Dated: _____

By: _____
Ashok Israni, President

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

ATTACHMENT NO. 12
ATTORNMENT AGREEMENT

[behind this page]

ATTACHMENT NO. 12

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Section 6103

Recording Requested By and
When Recorded Mail to:

Redevelopment Agency of the
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attention: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT OF NONDISTURBANCE AND ATTORNMENT

THIS AGREEMENT is made as of _____, 201_, by and among THE IMPERIAL BEACH REDEVELOPMENT AGENCY (hereinafter referred to as "Landlord"), IMPERIAL COAST, LP., a California limited partnership (hereinafter referred to as "Tenant") and WELLS FARGO BANK, NATIONAL ASSOCIATION (hereinafter referred to as "Lender").

RECITALS

A. Landlord and Tenant have entered into that certain Ground Lease dated as of _____ (the "Ground Lease"), pursuant to which Landlord has leased to Tenant certain real property (the "Property") located in the City of Imperial Beach, California, described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. Concurrently with the execution of the Ground Lease, Tenant, as borrower, and Lender have executed and entered into a financing agreement and instruments pursuant to which Lender will provide financing to Tenant (the "Loan Documents"), secured by a deed of trust and/or other security instruments on Tenant's leasehold interest in the Property (the "Security Instruments").

C. The parties hereto now desire to enter into this Agreement so as to clarify their rights, duties and obligations under the Ground Lease and the Loan Documents and to further provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreement of the parties hereto to the terms and conditions hereinafter contained, the parties hereto agree as follows:

1. Landlord hereby certifies to Lender that (a) the Ground Lease is in full force and effect and has not been modified, supplemented, altered or superseded in any way except as expressly provided herein; (b) Tenant is not in default in the payment, performance or observance of any covenant or condition to be performed or observed by the lessee under the Ground Lease, nor has any event occurred which with the giving of notice or the passage of time or both would constitute such a default; (c) no event has occurred which authorizes or, with the giving of notice or the passage of time or both, will authorize Landlord to terminate the Ground Lease; (d) the execution and delivery by Tenant of the Loan Documents will constitute neither a breach of Tenant's obligations as lessee under the Ground Lease nor an event of default thereunder; (e) title to all improvements located on the Property is vested in Tenant; and (f) there is no mortgage, deed of trust or similar encumbrance encumbering the fee estate in the Property.

2. Landlord hereby acknowledges and agrees that Lender is an "Institutional Lender" (as such term is defined in the Ground Lease) and as such, is entitled to the rights, privileges and protections afforded under the Ground Lease, including, without limitation, Article 8 of the Ground Lease.

3. In the event Tenant shall default in its obligations under the Loan Documents, which results in a foreclosure of the Lender's Security Instruments by Lender or a transfer by deed in lieu of foreclosure or other conveyance, as provided therein, then Landlord, Tenant and Lender do hereby agree that the Ground Lease and all terms, provisions, covenants and agreements thereof shall survive any such default in and foreclosure of the Security Instruments, and the Ground Lease shall remain in full force and effect, in accordance with and subject to all of its terms, provisions, agreements and covenants. Lender agrees, in that event, to attorn to Landlord and to recognize Landlord as the lessor under the Ground Lease. Landlord shall, in such event, exercise and undertake all of the rights and obligations of the lessor in and under the Ground Lease. From and after the time of attornment, Lender or its designee, as lessee, shall keep, observe and perform all of the terms, covenants and conditions to be kept by the lessee pursuant to the Ground Lease, and Landlord shall have the same remedies for nonperformance or default of any agreement or term of the Ground Lease as it would had or would have had as lessor under the Ground Lease if Lender had not foreclosed on the Security Instruments.

4. In the event Lender or its designee becomes the lessee as provided in Section 1 of this Agreement, Lender or such designee shall thereupon have the option to obtain a new lease by providing the Landlord with a written request for a new lease. Within thirty (30) days after

receipt of written request by Landlord or its designee for a new lease, the Landlord shall enter into a new lease with respect to the Property with Lender or its designee. Such new lease shall be effective as of the date of execution by the Landlord and shall be for the remainder of the term of the Ground Lease, and upon the agreements, terms, covenants and conditions thereof.

- i. For and during the term of the Ground Lease, Landlord agrees that, prior to terminating the Ground Lease or taking any proceedings to enforce any such termination thereof for any reason other than the expiration of the term of the Ground Lease, Landlord shall give Lender, at the same time it gives Tenant notice thereof, prior notice in writing of such termination, specifying the reason for such termination. Such notice shall be given to Lender in the manner provided in the Ground Lease at the following address:

Attention:

or at such other address as Lender shall provide Landlord in writing in the same manner.

- ii. Subject only to the due execution and delivery of documents, Landlord hereby approves of the Loan Documents, and Lender hereby approve of the Ground Lease.
- iii. No provision contained herein shall be deemed an amendment or modification of any provisions contained in the Loan Documents or the Ground Lease, including, without limiting the generality of the foregoing, any rights given thereunder to Tenant to terminate the Ground Lease.
- iv. Upon the execution of this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors, transferees and assigns.

[signatures appear on next two pages]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove set forth.

IMPERIAL BEACH REDEVELOPMENT
AGENCY ("LANDLORD")

Date: _____

By: _____
Chairman

ATTEST:

Agency Secretary

REVIEWED AND APPROVED
AS TO FORM:

Agency General Counsel

By: _____
Jennifer Lyon

APPROVED AS TO FORM:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Susan Y. Cola

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

By: PACIFICA – HOSPITALITY GROUP, a Nevada
corporation

Dated: _____

By: _____
Ashok Israni, President

WELLS FARGO BANK, NATIONAL
ASSOCIATION

Date: _____

By: _____
Name
Title

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

ATTACHMENT NO. 13

TITLE REPORT

[behind this page]



Stewart Title of California, Inc
 7676 Hazard Center Dr., 14th Floor
 San Diego, CA 92108
 (619) 692-1600 Phone

PRELIMINARY REPORT

Order Number : 149570
 Title Unit Number : 7034
 Your File Number : Seacoast Inn
 Buyer/Borrower Name: : Imperial coast Limited Partnership

In response to the above referenced application for a Policy of Title Insurance, Stewart Title of California, Inc. hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referenced to as an Exception on Schedule B or not excluded from coverage pursuant to the printed Schedules, Conditions, and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on covered Risks of said policy or policies are set forth in Exhibit A attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limits of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters, which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report, (and any supplements or amendments thereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance a binder or commitment should be requested.

Dated as of: September 1, 2010 at 7:30 a.m.

Update No. Two

Frank Green, Title Officer

When replying, please contact:

Stewart Title of California, Inc. San Diego Division
 7676 Hazard Center Dr., 14th Floor San Diego, CA 92108
 fgreen@stewart.com (619) 692-1600 (619) 615-2389 Fax www.stewartsd.com

PRELIMINARY REPORT

The form of Policy of Title Insurance contemplated by this report is:

- California Land Title Association Standard Coverage Policy
- American Land Title Association Owners Policy
- American Land Title Association Residential Title Insurance Policy
- American Land Title Association Loan Policy
- CLTA/ALTA Homeowners Policy
- ALTA Short Form Residential Loan Policy (06/16/07)
- 2006 ALTA Loan Policy
- Mapping File

SCHEDULE A

The estate or interest in the land hereinafter described or referred to covered by this report is:

Fee

Title to said estate or interest at the date hereof is vested in:

Imperial Coast Limited Partnership, a California Limited Partnership

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lots 1 to 15, inclusive, in Block 7, in South San Diego Beach, in the City of Imperial Beach, County of San Diego, State of California, according to map thereof no. 1071, filed in the Office of the County recorder of San Diego County, July 6, 1907.

Also all of that certain alley in said block 7 lying and being east of and adjacent to Lots 1 and 7, inclusive, in said block and west of and adjacent to Lots 8 and 12 in said block, and also all of the other certain alley of said block, lying between Lots 8, 9, 10 and 11 on the south and Lots 12, 13, 14, and 15 on the north.

Also all that portion of Ocean Boulevard described as follows:

Commencing at the southwest corner of said block 7, and running thence northerly along the west line of said block as shown upon said map to the northwest corner thereof; thence at right angles westerly to the high tide line of said Pacific Ocean; thence southerly along said high tide line to a point opposite and directly west of the southwest corner of said block; thence east to said southwest corner of said block and being all that portion of said boulevard lying between said block 7 and the high tide of the Pacific Ocean, and extending in a general northerly direction from said south line of said block projected westerly to said high tide line, to the north line of said block projected westerly to said high tide line. Said alleys and said portion of Ocean Boulevard were vacated and closed to public use on December 9, 1908, by an order of the Board of Supervisors of San Diego County, recorded in book 27, page 432 and page 433 of the records of said supervisors office.

Except any portion thereof lying below the mean high tide line of the Pacific Ocean.

(End of Legal Description)

SCHEDULE B

At the date hereof, exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy or policies would be as follows:

Taxes:

- A. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes, to be levied for the fiscal year 2010-2011 which are a lien not yet payable.
- B. General and Special City and/or County taxes, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2009-2010:
- | | | |
|------------------------------|----------------|------|
| 1 st Installment: | \$15,932.34 | Paid |
| 2 nd Installment: | \$15,932.34 | Paid |
| Land: | \$1,548,064.00 | |
| Improvements: | \$310,547.00 | |
| Exemption: | \$0.00 | |
| Code Area: | 14018 | |
| Assessment No.: | 625-262-01-00 | |
- C. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the revenue and taxation code of the State of California.

Exceptions:

1. Any adverse claim based upon the assertion that:
 - (a) some portion of said land has been created by artificial means, or has accreted to such portion so created.
 - (b) some portion of said land has been brought within the boundaries thereof by an evulsive movement of the Pacific Ocean, or has been formed by accretion to any such portion.Rights and easements for navigation and fishery which may exist over that portion of said land lying beneath the waters of the Pacific Ocean.
2. Any rights in favor of the public which may exist on said land for parking, beach or recreational uses, if said land or portions thereof were at any time used by public for such purposes.
3. The fact that said land lies within the boundaries of the Imperial Beach Beachfront Development Project No. 1 as disclosed by instrument recorded December 20, 1973 as File No. 73-0351037 of Official Records.
4. An agreement to which reference is made for full particulars dated March 22, 1985, by and between Allen Graham, Inc., and Cox Cable Company, regarding "A Cable System", recorded September 4, 1985, as Instrument/File No. 85-323180 of Official Records.
5. An agreement to which reference is made for full particulars dated December 18, 2007, by and between Imperial Coast Limited Partnership, a California Limited Partnership and the City of Imperial Beach, a Municipal Corporation, regarding "Development Agreement", recorded December 18, 2007, as Instrument/File No. 2007-0778555 of Official Records.

(End of Exceptions)

File Number: 149570

Page 4 of 6

necessary to fulfill payoff requirements, including of taxes, must be received at the time of closing.

ment that a copy of the partnership agreement of Imperial Coast Limited Partnership modifications thereto be furnished to the company.

CALIFORNIA "GOOD FUNDS" LAW

California Insurance Code Section 12413.1 regulates the disbursement of escrow and sub-escrow funds by title companies. The law requires that funds be deposited in the title company escrow account and available for withdrawal prior to disbursement. Funds received by Stewart Title of California, Inc. via wire transfer may be disbursed upon receipt. Funds received via cashier's checks or teller checks drawn on a California Bank may be disbursed on the next business day after the day of deposit. If funds are received by any other means, recording and/or disbursement may be delayed, and you should contact your title or escrow officer. All escrow and sub-escrow funds received will be deposited with other escrow funds in one or more non-interest bearing escrow accounts in a financial institution selected by Stewart Title of California, Inc.. Stewart Title of California, Inc. may receive certain direct or indirect benefits from the financial institution by reason of the deposit of such funds or the maintenance of such accounts with the financial institution, and Stewart Title of California, Inc. shall have no obligation to account to the depositing party in any manner for the value of, or to pay to such party, any benefit received by Stewart Title of California, Inc.. Such benefits shall be deemed additional compensation to Stewart Title of California, Inc. for its services in connection with the escrow or sub-escrow.

If any check submitted is dishonored upon presentation for payment, you are authorized to notify all principals and/or their respective agents of such nonpayment.

Wire Instructions

If you anticipate having funds wired to Stewart Title of California, Inc., our wiring information is as follows:

Additional Note: Direct wire transfers to:

Union Bank
530 "B" Street
San Diego, CA 92101

Routing Number: 122-000-496
Credit to Stewart Title of California, Inc.
Account Number: 9120054632
Reference Order Number: 149570
Title Unit Number: 2259
Title Officer Name: Frank Green

When instructing the financial institution to wire funds, it is very important that you reference Stewart Title of California, Inc.'s order number.

Should you have any questions in this regard please contact your title officer immediately.

EXHIBIT A (Revised 11-17-04)

CLTA PRELIMINARY REPORT FORM (Revised 11-17-06)

SCHEDULE B

**CLTA PRELIMINARY REPORT FORM
LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS**

**CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY – 1990
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.

CLTA Preliminary Report Form

- 4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
 - 5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
- The following matters are expressly excluded from the coverage of this policy and the company will not pay loss or damage, costs, attorneys' fees, or expenses, which arise by reason of:

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10/22/03)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE
EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

- 1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
 - a. building
 - b. zoning
 - c. Land use
 - d. improvements on the Land
 - e. Land division
 - f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

- 2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.

- 3. The right to take the Land by condemning it, unless:
 - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
 - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.

- 4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.

- 5. Failure to pay value for Your Title.

- 6. Lack of a right:
 - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

* For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A. The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar
Limit of Liability		
Covered Risk 14:	1% of Policy Amount or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 15:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 16:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 18:	1% of Policy Amount or \$2,500.00 (whichever is less)	\$5,000.00

AMERICAN LAND TITLE ASSOCIATION
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)
EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

CLTA Preliminary Report Form

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- land use
- improvements on the land
- land division
- environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:

- a notice of exercising the right appears in the public records on the Policy Date
- the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking

3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- to any land outside the area specifically described and referred to in Item 3 of Schedule A

OR

- in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)
WITH ALTA ENDORSEMENT - FORM 1 COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at date of policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at date of policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at date of policy, but not excluding from coverage any taking which has occurred prior to date of policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
(a) created, suffered, assumed or agreed to by the insured claimant;
(b) Not known to the company, not recorded in the public records at date of policy, but known to the insured claimant and not disclosed in writing to the company by the insured claimant prior to the date the insured claimant became an insured under this policy;
(c) resulting in no loss or damage to the insured claimant;
(d) attaching or created subsequent to date of policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to the assessments for street improvements under construction or completed at date of policy); or
(e) resulting in loss or damage, which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at date of policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to date of policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at date of policy the insured has advanced or is obligated to advance.

CLTA Preliminary Report Form

7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- I. The transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - II. The subordination of the interest of the insured mortgagee as a result of the application of the doctrine or equitable subordination; or
 - III. The transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely recorded the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy forms may be issued to afford either standard coverage or extended coverage. In addition to the above exclusions from coverage, the exceptions from coverage in a standard coverage policy will include the following General Exceptions:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) unpatented mining claims; (b) reservations or exceptions in patents or in acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

2006 ALTA LOAN POLICY (06-17-06) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
6. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
 3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
 4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
 5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
 6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or

- (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the company will not pay loss or damage, cost, attorneys' fees or expenses, which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at date of policy. (B) any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at date of policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at date of policy, but not excluding from coverage any taking which has occurred prior to date of policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (A) Created, suffered, assumed or agreed to by the insured claimant;
 - (B) Not known to the company, not recorded in the public records at date of policy, but known to the insured claimant and not disclosed in writing to the company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (C) Resulting in no loss or damage to the insured claimant;
 - (D) Attaching or created subsequent to date of policy; or
 - (E) Resulting in loss or damage, which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors rights laws, that is based on:
 - I. The transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - II. The transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (A) To timely record the instrument of transfer; or
 - (B) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy forms may be issued to afford either standard coverage or extended coverage. In addition to the above exclusions from coverage, the exceptions from coverage in a standard coverage policy will include the following general exceptions:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) unpatented mining claims; (b) reservations or exceptions in patents or in acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that s notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting In no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
 - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.

CLTA Preliminary Report Form

7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.

8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:

(a) The time of the advance; or

(b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of Interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.

9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

ATTACHMENT NO. 14

RELEASE OF CONSTRUCTION COVENANTS

[behind this page]

ATTACHMENT NO. 14

OFFICIAL BUSINESS

Document entitled to free recording
per Government Code Section 6103

Recording Requested By and
When Recorded Mail to:

Imperial Beach Redevelopment Agency
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attention: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**RELEASE OF CONSTRUCTION COVENANTS
(PARCEL __)**

WHEREAS, Imperial Coast, LP, a California limited partnership (the "Developer") is the owner of a leasehold interest in that certain real property situated in the City of Imperial Beach, California described in Exhibit "A" which is attached hereto and made a part hereof (the "Site"), and has agreed to construct certain improvements thereon (the "Improvements"); and

WHEREAS, pursuant to the Disposition and Development Agreement ("DDA") entered into by and between the Imperial Beach Redevelopment Agency (the "Agency") and the Developer dated for reference purposes _____, 201_, the Agency has agreed to furnish the Developer with a Release of Construction Covenants ("Release") upon the completion of construction and development of the Improvements, and such certificate is to be in such form as to permit it to be recorded in the Recorder's Office of San Diego County; and

WHEREAS, the DDA states that the Release shall be conclusive determination of satisfactory completion of the construction and development of the Improvements as required by Sections 302 - 308 of the DDA; and

WHEREAS, the Agency has each determined that the construction and development of the Improvements on the Site as required by the DDA has been satisfactorily completed.

NOW THEREFORE, it is hereby acknowledged and agreed by the parties hereto that:

1. The Agency hereby certifies that the construction and development of the Improvements on the Site has been fully and satisfactorily performed and completed as required by the DDA.

2. Nothing contained in this instrument shall modify any provisions of the DDA.

IN WITNESS WHEREOF, the Agency has executed this Release this ____ day of _____, _____.

IMPERIAL BEACH REDEVELOPMENT
AGENCY ("AGENCY")

Date: _____

By: _____
Chairman

ATTEST:

Agency Secretary

REVIEWED AND APPROVED
AS TO FORM:

Agency General Counsel

By: _____
Jennifer Lyon

APPROVED AS TO FORM:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Susan Y. Cola

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

By: PACIFICA – HOSPITALITY GROUP, a Nevada
corporation

Dated: _____

By: _____
Ashok Israni, President

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ATTACHMENT NO. 15
GUARANTY AGREEMENT

[behind this page]

ATTACHMENT NO. 15

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (the "Guaranty") is made and entered into by _____ ("Guarantor") to and for the benefit of the Imperial Beach Redevelopment Agency ("Agency"), and its successors and assigns.

RECITALS

A. WHEREAS, Agency is the owner of that certain real Property in the City of Imperial Beach more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

B. WHEREAS, Agency and Imperial Coast, LP, a California limited partnership ("Developer") entered into that certain Disposition and Development Agreement, dated _____, 2010 (the "DDA"), pursuant to which Developer agreed to construct a full service hotel on the Property (the "Project") in accordance with the terms and conditions of the DDA; and

C. WHEREAS, in accordance with the DDA, Agency and Developer have entered into that certain Ground Lease, dated _____, 2011, pursuant to which Developer has leased the Property from the Agency, in furtherance of the objectives of the DDA; and

D. WHEREAS, pursuant to the DDA, the Agency agreed to convey the leasehold interest in the Property in consideration for Developer's agreement and covenant to develop a full service hotel on the Property one in conformance with the DDA; and

E. WHEREAS, Guarantor has a substantial financial interest in the business and affairs of Developer and it will receive substantial economic benefit should Developer be permitted to develop the Property in the manner and in accordance with the terms of the DDA; and

F. WHEREAS, Guarantor acknowledges that this Guaranty is required by Agency as a condition precedent and as a material inducement to Agency to enter into the DDA.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration given by Agency to Guarantor, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of and to induce Agency to enter into the DDA and convey the leasehold interest in the Property to Developer, Guarantor does hereby irrevocably warrant, guarantee and agree as follows:

1. Guarantor acknowledges receipt of a copy of the DDA and all of the instruments described therein and/or attached thereto. The DDA is incorporated herein by this reference as though fully set forth herein. DDA as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the DDA.

2. If, for any reason, Developer and/or any Assignee (hereinafter referenced collectively as "Developer") should fail to perform any of the Developer's obligations under the DDA, including but not limited to failure to complete the Project on or before the dates required by the DDA in all respects and in accordance with and in the manner set forth in the DDA and the plans and specifications approved by the Agency and City (collectively, "the Performance Obligations"), then Agency at its option, and upon thirty (30) days written notice to Guarantor, shall call upon Guarantor and Guarantor shall assume each and all of the outstanding obligations of Developer constituting the Performance Obligations, and shall promptly commence and diligently prosecute to completion all such Performance Obligations in accordance with the terms of the DDA.

3. Guarantor waives (a) any right to require that any action be brought against Developer or any other person, or to require that resort be first had to any security for the performance of Developer's obligations prior to the enforcement of this Guaranty by Agency, and (b) any right to pursue any remedy in Developer's power whatsoever; and if any right of action shall accrue to Agency by reason of the failure of Developer to perform any obligation or pay any sum of money required of Developer pursuant to the DDA then, unless such default shall be cured by the Guarantor as aforesaid, Agency, at its election, may proceed against: (i) Guarantor, together with Developer (ii) against Guarantor, and Developer, severally; or (iii) Guarantor only, in each case, without having commenced any action or having obtained any judgment against Developer and whether or not Developer is a party in any such action.

4. The joint and several obligations of Guarantor shall not be discharged, impaired or otherwise affected by (a) any sale, transfer, assignment, pledge, surrender, indulgence, forbearance, alteration, substitution, exchange, change in, amendment, revision, modification or other disposition of the DDA, Property, and/or Project; (b) the acceptance by Agency of any security for or other guarantors with respect to the Performance Obligations; (c) any failure, negligence or omission on the part of Agency to enforce the terms of the DDA or otherwise protect the Property and/or Project; or (d) the release by Agency of any security for the performance of the Performance Obligations or the release by Agency of any person (including any other guarantor) from liability upon the Performance Obligations; it being expressly understood and agreed that the undertakings, liabilities and obligations of Guarantor shall not be affected, discharged, impaired or varied by any act, omission or circumstance whatsoever (whether or not specifically enumerated herein) except the due and punctual performance of the Performance Obligations.

5. Guarantor hereby expressly waives (a) notice of acceptance of this Guaranty; (b) all notices to which Guarantor might otherwise be entitled, except as required herein; (c) any defense arising (i) by reason of any disability of Developer or (ii) by reason of the cessation from any cause whatsoever (except a defense available to Developer under the DDA) of the liability of Developer other than full performance of the Performance Obligations; (d) diligence in enforcement and any and all formalities which might otherwise be legally required to charge Guarantor with liability; and (e) all diligence in collection or protection and all presentment, demand, protest and notice of protest, notice of dishonor and notice of default.

6. In the event that Guarantor should fail to fully perform the Performance Obligations promptly as herein provided, Agency shall have the following remedies:

- a. At its option and without any obligation so to do, but upon prior thirty (30) days written notice to Guarantor, proceed to perform and/or pay on behalf of Guarantor any and all of the Performance Obligations; and Guarantor shall, upon demand, immediately pay to Agency all such sums expended by Agency in such performance on behalf of Guarantor; and/or
- b. Require performance by Guarantor of all of the Performance Obligations (or any part thereof) pursuant to the terms hereof, by action at law or in equity or both, and further to collect in any such action compensation for all loss, cost, damage, injury and expense sustained or incurred by Agency as a consequence of such breach.

7. Guarantor acknowledges, understands and agrees that these obligations are independent of Developer's obligations and separate actions may be brought against Guarantor (whether action is brought against Developer or whether Developer is joined in the action). To the extent permitted by law, Guarantor waives benefit of any statute of limitations affecting its liability. Guarantor's liability is not contingent on the genuineness or enforceability of the Agreements.

8. This Guaranty is a guaranty of the performance and payment of certain obligations contained and provided for herein by Guarantor, and Guarantor shall be personally liable for any claims by Agency against Developer with respect to the Performance Obligations. Nothing contained herein shall limit or otherwise impair Guarantor's obligation to pay to Agency, upon demand, all fees and costs (including, without limitation, attorneys' fees and disbursements) incurred by Agency in instituting and/or maintaining any action for damages or specific performance against Guarantor pursuant to the terms of this Guaranty.

9. Guarantor represents and warrants to Agency as follows:

- a. No consent of any other person, including, without limitation, any creditors of Guarantor, and no license, permit, approval or authorization of, exemption by, any

governmental authority is required by Guarantor in connection with this Guaranty or the execution, delivery, performance, validity or enforceability of this Guaranty and all obligations required hereunder. This Guaranty has been duly executed and delivered by Guarantor, and constitutes the legally valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms and any ongoing reporting requirements, notices, registrations, filings or declarations required by any governmental entity or other third party shall not in any way affect the binding obligations of Guarantor hereunder.

- b. The execution, delivery and performance of this Guaranty will not violate any provision of any existing law or regulation binding on Guarantor, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on Guarantor, or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which Guarantor is a party or by which Guarantor or any of Guarantor's assets may be bound, and will not result in, or require, the creation or imposition of any lien on any of Guarantor's properties, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.
- c. Guarantor has full authority to execute this Guaranty and comply with its terms, and knows of no defense whatsoever to any action, suit or proceeding, at law or otherwise, that may be instituted on this Guaranty.

10. No failure on the part of Agency to pursue any remedy hereunder or under the DDA shall constitute a waiver on its part of the right to pursue said remedy on the basis of the same or a subsequent breach.

11. Guarantor shall promptly advise Agency in writing of any material adverse change in its business or financial condition.

12. Until the Performance Obligations have been performed in full, Guarantor shall have no right of subrogation, and hereby waives any right to enforce any remedy that Agency now has or may hereafter have against Developer and waives the benefit of, and any right to participate in, any security now or hereafter held by Agency from Developer, except to the extent such security remains after full performance of the Performance Obligations.

13. This Guaranty shall terminate upon completion of the Performance Obligations in accordance with the DDA.

14. This Guaranty shall be binding upon Guarantor jointly and severally, and its successors and assigns.

15. Each reference herein to "Agency" shall be deemed to include the Agency and each of its successors and assigns; and all of the provisions of this Guaranty shall run in favor of said named Agency and its said successors and assigns.

16. Guarantor agrees that it will reimburse Agency for all expenses, including reasonable attorneys' fees, incurred by Agency in enforcing Developer's performance of the Performance Obligations or incurred by Agency in the enforcement of this Guaranty. Any sums required to be paid by Guarantor to Agency pursuant to the terms hereof shall bear interest at the rate of three percent (3%) over the Bank of America reference rate (up to the maximum rate permitted by law) on the due date from the date said sums shall be due to Agency until the same shall have been paid in full.

17. This Guaranty shall be governed by and construed in accordance with the laws of the State of California.

18. In addition to any other rights or remedies, the parties hereto may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Guaranty. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in any other appropriate court of that county, or in the Federal District Court in the Southern District of California.

19. In the event that any legal action is commenced by Guarantor against Agency, service of process on Agency shall be made by personal service upon the Executive Director of the Agency, or in such other manner as may be provided by law. In the event such legal action is commenced by Agency against Guarantor, service of process on Guarantor shall be made by personal service upon _____, and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

20. Time is of the essence hereof.

21. If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, provisions, covenants and conditions hereof, and all applications thereof not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

In witness thereof, Guarantor has caused this Guaranty to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on (date) _____, 2011.

NAME OF CORPORATION
NAME AND POSITION OF OFFICIAL
EXECUTING PERFORMANCE
GUARANTEE AGREEMENT ON

BEHALF OF GUARANTOR
Name,

ATTESTATION INCLUDING APPLICATION
OF SEAL BY AN OFFICIAL OF
GUARANTOR AUTHORIZED TO AFFIX
CORPORATE SEAL

Agency hereby accepts this Guaranty in accordance with the terms and conditions
contained herein.

IMPERIAL BEACH REDEVELOPMENT
AGENCY

Dated: _____

By: _____
Gary Brown
Executive Director

APPROVED AS TO FORM
AND LEGALITY

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Susan Y. Cola

ATTACHMENT NO. 16
ASSIGNMENT AND ASSUMPTION AGREEMENT

[behind this page]

ATTACHMENT NO. 16

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made as of _____, 201_ by and between IMPERIAL COAST, LP, a California limited partnership ("Assignor"), and _____ ("Assignee").

RECITALS

A. Assignor has certain rights and obligations (the "Rights" and the "Obligations," respectively) with regard to the real property more fully described in Exhibit "A", which is attached hereto and incorporated herein by this reference.

B. Such Rights and Obligations are described in that certain Disposition and Development Agreement ("DDA") entered into by and between the Imperial Beach Redevelopment Agency (the "Agency") and the Assignor ("Developer" therein) on _____, 2010, which document is a record on file in the offices of the City Clerk of the City of Imperial Beach and the Secretary of the Agency. The DDA is incorporated herein by this reference as though fully set forth herein. DDA as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the DDA.

C. Pursuant to the DDA, Assignor has the right and desires to assign the Rights and Obligations to Assignee, and Assignee desires to assume the Rights and Obligations.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee hereby agree as follows

1. **Assignment.** Effective as of the date of this Assignment, which shall occur concurrently with the full execution of this Assignment by the Assignor, Assignee, and Agency, Assignor hereby assigns all of the Rights to Assignee.

2. **Acceptance and Assumption.** Assignee hereby accepts the assignment of the Rights from Assignor and assumes all of the Obligations arising from and after the date of this Assignment. Assignor and Assignee acknowledge that such assignment and acceptance shall not relieve Assignor of its duty to comply with the Obligations. Assignee agrees to perform all of the Obligations in accordance with the DDA.

3. Assignee Address. The principal address of Assignee for purposes of the DDA is as follows:

4. Miscellaneous.

(a) This Assignment shall be determined in accordance with and governed by the laws of the State of California.

(b) This Assignment may be executed in counterparts, each of which shall be deemed an original and which, when taken together, shall constitute a complete instrument.

(c) Each party agrees to perform any further acts, and to execute and deliver any further documents that may be reasonably necessary or required to carry out the intent and provisions of this Assignment and the transactions contemplated hereby.

(d) This Assignment shall bind and inure to the benefit of the respective heirs, personal representatives, grantees, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be signed by their duly authorized officers as of the day and year first written above.

ASSIGNOR:

ASSIGNEE:

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

By: PACIFICA-HOSPITALITY GROUP, a Nevada corporation

By: _____

Ashok Israni, President

By: _____
Name:
Title:

CONSENT TO ASSIGNMENT AND ASSUMPTION

In reliance upon the assumption by _____, as Assignee, of all Rights and Obligations pursuant to the foregoing Assignment and Assumption Agreement, the IMPERIAL BEACH REDEVELOPMENT AGENCY does hereby consent to and approve of the assignment of the Rights and Obligations by IMPERIAL COAST, LP, a California limited partnership, to Assignee. Approval thereof by the Agency shall not be construed to relieve or release IMPERIAL COAST, LP from its duty to comply with any of its Obligations.

IMPERIAL BEACH REDEVELOPMENT
AGENCY

Dated: _____

By: _____

ATTEST:

Agency Secretary

REVIEWED AND APPROVED
AS TO FORM:

Agency General Counsel

By: _____
Jennifer Lyon

APPROVED AS TO FORM:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Susan Y. Cola

EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Lot 1 and Lot A of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

ATTACHMENT NO. 17
ASSIGNMENT OF AGREEMENTS

[behind this page]

ATTACHMENT NO. 17

ASSIGNMENT OF AGREEMENTS

THIS ASSIGNMENT OF AGREEMENTS (Assignment), dated as of _____, is made by IMPERIAL COAST, LP, a California limited partnership (“Developer”) in favor of the IMPERIAL BEACH REDEVELOPMENT AGENCY (“Agency”), a public body, corporate and politic, its successors or assigns (collectively referred to as the “Agency”), in connection with the Agency’s purchase of certain real property (the “Property”) and purchase of the Plans, more particularly described in that certain Disposition and Development Agreement, dated _____ (“DDA”). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth for them in the DDA.

1. Assignment. In consideration for the Agency’s purchase of the Property and Plans, Developer hereby assigns and transfers to Agency all of its right, title and interest in and to:

All permits, plans, specifications, surveys, drawings, and other technical descriptions of whatever nature now or hereafter existing that relate to the development, construction, reconstruction, restoration, decoration, repair, or replacement of any improvements on the Property (“Improvements”), including without limitation the plans and specifications for the Improvements including without limitation those prepared by Developer’s Contractor, and all amendments, modifications, and supplements to any of the writings described in this subparagraph (b), (collectively referred to as the “Plans”).

All of the writings described in the paragraph above are sometimes herein referred to collectively as the Agreements.

2. Warranties and Representations. Developer warrants and represents that (a) it is the true owner of the interests under the Agreements; (b) it has not assigned or granted a security interest in any of the Agreements to any other person or entity except the Agency; (c) its interest in each of the Agreements is not subject to any claims, setoffs, encumbrances, or deductions; (d) the Agreements constitute valid and binding obligations of the parties thereto, are enforceable in accordance with their terms, subject to applicable law, and have not been amended except as disclosed to Agency; (e) it is not in default under the terms of any of the Agreements; and (f) all covenants, conditions, and agreements have been performed as required by the Agreements by all parties thereto, except those that are not due to be performed until after the date of this Assignment.

3. No Assumption by Agency and Developer’s Covenants. Neither this Assignment nor any action or actions on the part of Agency shall constitute an assumption of any obligations on the part of Agency under the Agreements, and Developer shall continue to be liable for all obligations thereunder. Developer hereby agrees to punctually perform any and all obligations it may have under the Agreements, to take such steps as may be necessary or appropriate to secure performance by all other parties of their obligations under the Agreements and not to amend in a material manner, or

terminate with or without cause, any of the Agreements without the express prior written consent of Agency in the Agency's sole discretion; provided, however, that the Agency's granting or withholding of its consent in writing shall not be unduly delayed. Agency may, at its option, but shall not be obligated to, perform or discharge any obligation of Developer under any of the Agreements, at Developer's expense, in the event that Developer fails to do so. Agency shall notify Developer of any such actions as soon as reasonably practicable. Developer agrees to indemnify and hold Agency harmless against and from any loss, cost, liability, or expense (including without limitation actual attorney's and accountants' fees and expenses, based on itemized invoices for time and charges, court costs and investigation expenses) resulting from any failure of Developer to perform its obligations under the Agreements, unless any such loss, cost, liability or expense arises from or results from (a) the gross negligence or willful misconduct of Agency, its employees or agents, or (b) any other act or omission of Agency, its employees and agents, to the extent it is not covered by any insurance policy required to be and actually carried by Developer under the DDA.

4. Use of Plans. Agency may use the Plans for any purpose relating to the Improvements, including, without limitation, inspections of construction and the completion of the Improvements. For the purpose of completing, maintaining, restoring, and otherwise dealing with the Improvements, Agency may reassign its right, title, and interest in the Plans to any persons or entities succeeding to the Agency's or Developer's interest in the Property, in Agency's sole discretion without any requirements for the consent of Developer or Developer's Contractor or other party who prepared the Plans, and any such reassignment shall be valid and binding upon Developer and Developer's Contractor as fully as if each had expressly approved the same.

5. No Approval of Plans. Agency's acceptance of this Assignment shall not constitute approval of the Plans by Agency. Agency has no liability or obligation whatsoever in connection with the Plans and no responsibility for the adequacy thereof or for the construction of the Improvements. Subject to the provisions of the DDA, Agency has the right but not the duty to inspect the Improvements. No such inspection nor any failure by Agency to make objections after any such inspection shall constitute a representation by Agency that the Improvements is in accordance with the Plans or constitute a waiver of the Agency's right thereafter to insist that the Improvements be constructed in strict accordance with the Plans.

6. Benefits Conditionally Retained by Developer. Agency hereby grants Developer the right to continue to receive the benefits of, and exercise the rights under, the Agreements unless and until a default occurs, in which event such rights may be revoked at any time thereafter at the option of Agency.

7. Action by Agency Following Default. Agency shall have the right, but not the obligation, at any time following the occurrence of a Default under the DDA, subject to the applicable cure periods, without notice and without taking possession of the Improvements or any part thereof, to take in its name or in the name of Developer or otherwise such action as Agency may at any time or from time to time determine to be necessary to cure any default under the Agreements or to protect or exercise the rights of Developer or Agency thereunder, and may otherwise exercise

any other rights or remedies Agency has under the DDA. Agency shall incur no liability if any action taken by it or on its behalf in good faith, pursuant to this Assignment, shall prove to be in whole or in part inadequate or invalid, and Developer agrees to indemnify and hold Agency free and harmless from and against any loss, costs, liability, or expense (including but not limited to reasonable attorneys' and accountants' fees and expenses, based on itemized invoices for time and charges, court costs and investigation expenses) in connection with its actions hereunder, unless such loss, cost, liability, or expense arises from or results from (a) the gross negligence or willful misconduct of Agency, its employees or agents, or (b) any other act or omission of Agency, its employees and agents, to the extent it is not covered by any insurance policy required to be and actually carried by Developer under the DDA.

8. Power of Attorney. Developer hereby irrevocably constitutes and appoints Agency its true and lawful agent and attorney-in-fact, with full power of substitution, to demand, receive, and enforce all rights of Developer under the Agreements, to modify, supplement, and terminate the Agreements, to give appropriate releases, receipts for or on behalf of Developer in connection with the Agreements, in the name, place, and stead of Developer or in Agency's name, with the same force and effect as Developer could do if this Assignment had not been made, which appointment shall be effective following the occurrence of a Default, subject to applicable notice and cure periods. Developer authorizes any third party to exclusively rely on the certificate of an officer of the Agency for the establishment of a default and hereby waives and releases any claim Developer may have against such third party for such reliance. Developer hereby agrees to deliver to Agency, upon Agency's written demand, originals of all of the Agreements and such other instruments and documents as Agency may reasonably require in order to permit Agency's succession to the right, title, and interest of Developer in and to the Agreements as provided herein. It is hereby recognized that the power of attorney herein granted is coupled with an interest and is irrevocable.

9. Consents of Contract Parties. Prior to or concurrently with Developer's execution of this Assignment, each of the parties other than Developer to any of the Agreements shall execute and deliver to Agency a consent to this Assignment in the form attached hereto.

10. Binding Effect. This Assignment shall be binding upon Developer and Developer's heirs, executors, administrators, legal representatives, successors, and assigns, and shall inure to the benefit of Agency and its successors and assigns, including without limitation any purchaser upon foreclosure of any liens and security interests in the Developer's Leasehold. The Agency may reassign its right, title, and interest in and to the Agreements in whole or in part, to any person or entities succeeding to Agency's or Developer's interest in the Leasehold, in Agency's sole discretion without any requirement for Developer's or any other party's consent, and any such reassignment shall be valid and binding upon Developer and the other parties to the Agreements as fully as if each had expressly approved the same.

11. Governing Law. This Assignment shall be governed by and construed under the laws of the State of California, except to the extent preempted by federal law, in which case federal law shall control.

IN WITNESS WHEREOF, Developer has executed this Assignment as of the date first written above.

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

By: PACIFICA – HOSPITALITY GROUP, a
Nevada corporation

Dated: _____

By: _____
Ashok Israni, President

SCHEDULE 1

List of Contracts Assigned

1. All architectural agreements or contracts by and between _____ (“Contractors”) and Developer relating to the Property (the “Contractor’s Agreement”).
2. All plans and specifications prepared by the Contractors under the terms of the Contractor’s Agreement referred to above.
3. That certain construction agreement or contract for the construction of the Improvements, _____, by and between _____ and Developer (the “General Contract”).

CONSENT FORMS

[Behind this page]

ATTACHMENT 1

Architect's Consent And Certification

The undersigned ("Architect") consents to the assignment ("Assignment") of the Agreement for Architectural Services ("Architectural Contract") dated _____, 2010 by _____ ("Owner"), pursuant to the Assignment of Agreements, dated _____, 2010 ("Assignment of Agreements"), to which reference is made for the definition of capitalized terms not otherwise defined in this Attachment, as follows:

1. CONTINUATION OF PERFORMANCE. On written notice to Architect of the Assignment, Architect will continue performance on behalf of the Imperial Beach Redevelopment Agency ("Agency") under the Architectural Contract in accordance with the terms of it, provided that no default exists with respect to Owner's obligations under the Architectural Contract.

2. RIGHT TO PERFORM. On written notice to Architect of the Assignment, Agency may require Architect to continue to work under the Architectural Contract, and if, but only if, Agency requires the Architect to continue work under the Architectural Contract, Agency will perform the obligations of Owner under the Architectural Contract, and Architect will accept that performance in lieu of performance by Owner in satisfaction of Owner's obligations.

3. NOTICE AND CURE RIGHTS. Architect will not terminate the Architectural Contract on account of any default of Owner without written notice to Agency and first providing to Agency a reasonable opportunity, but not less than thirty (30) days, to affect a cure of the default. Nothing in this Agreement, however, will require Agency to cure any default of Owner under the Architectural Contract, but will only give Agency the option to do so. If the Agency elects not to cure the default, Architect will not be required to continue any work under the Architectural Contract except work for which it has been paid, and Agency will have the right to retain possession and use of the Plans.

4. OBLIGATION TO PERFORM. Regardless of any term or provision of its Architectural contract, Architect will diligently continue to perform its services under the Architectural Contract, regardless of any dispute arising with the Owner or any other person or entity, so long as the undersigned Architect is paid for all work not in dispute in accordance with the terms of the Architectural Contract and no default exists with respect to Owner's obligations.

5. ARCHITECTS' REPRESENTATIONS, WARRANTIES, AND COVENANTS.

Architect represents, warrants, and covenants to Agency that:

- (a) the Architectural Contract is valid and enforceable;

(b) there has been no prior assignment, amendment, or modification of the Architectural Contract of which Architect has notice or is aware;

(c) neither Architect nor, to the best of Architect's knowledge, Owner is in default under the Architectural Contract;

(d) all covenants, conditions, and agreements have been performed as required except those not due to be performed until after the date of this Assignment;

(e) \$ _____ has been paid to Architect under the Architectural Contract and \$ _____ has been earned but not paid as of this date;

(f) the amount allocated to the performance of Architect's services (\$ _____) represents sufficient funds to complete the services of the Architect to be provided under the Architectural Contract, with all contemplated on-site and off-site work, including permits and tie-in charges; and

(g) Architect is duly licensed to conduct its business in the jurisdiction where the construction is to be performed and will maintain the license in full force throughout the life of the Architectural Contract.

6. SUBORDINATION. Architect's lien rights with respect to the Property for work done and materials supplied pursuant to the Architectural Contract or otherwise is and will at all times be subject and subordinate to the Leasehold.

Dated: _____

ARCHITECT:

By: _____
Name

ATTACHMENT 2

Contractor's Consent And Certification

The undersigned ("Contractor") consents to the assignment ("Assignment") of the Agreement for Construction Services ("Construction Contract") dated _____, 2010 by _____ ("Owner"), pursuant to the Assignment of Agreements, dated _____, 2010 ("Assignment of Agreements"), to which reference is made for the definition of capitalized terms not otherwise defined in this Attachment, as follows:

1. CONTINUATION OF PERFORMANCE. On written notice to Contractor of the Assignment, Contractor will continue performance on behalf of the Imperial Beach Redevelopment Agency ("Agency") under the Construction Contract in accordance with the terms of it, provided that no default exists with respect to Owner's obligations under the Construction Contract.

2. RIGHT TO PERFORM. On written notice to Contractor of the Assignment, Agency may require Contractor to continue to work under the Construction Contract, and if, but only if, Agency requires the Contractor to continue work under the Construction Contract, Agency will perform the obligations of Owner under the Construction Contract, and Contractor will accept that performance in lieu of performance by Owner in satisfaction of Owner's obligations.

3. NOTICE AND CURE RIGHTS. Contractor will not terminate the Construction Contract on account of any default of Owner without written notice to Agency and first providing to Agency a reasonable opportunity, but not less than thirty (30) days, to affect a cure of the default. Nothing in this Agreement, however, will require Agency to cure any default of Owner under the Construction Contract, but will only give Agency the option to do so. If the Agency elects not to cure the default, Contractor will not be required to continue any work under the Construction Contract except work for which it has been paid, and Agency will have the right to retain possession and use of the Plans.

4. OBLIGATION TO PERFORM. Regardless of any term or provision of its Construction contract, Contractor will diligently continue to perform its services under the Construction Contract, regardless of any dispute arising with the Owner or any other person or entity, so long as the undersigned Contractor is paid for all work not in dispute in accordance with the terms of the Construction Contract and no default exists with respect to Owner's obligations.

5. CONTRACTORS' REPRESENTATIONS, WARRANTIES, AND COVENANTS.

Contractor represents, warrants, and covenants to Agency that:

- (a) the Construction Contract is valid and enforceable;

(b) there has been no prior assignment, amendment, or modification of the Construction Contract of which Contractor has notice or is aware;

(c) neither Contractor nor, to the best of Contractor's knowledge, Owner is in default under the Construction Contract;

(d) all covenants, conditions, and agreements have been performed as required except those not due to be performed until after the date of this Assignment;

(e) \$ _____ has been paid to Contractor under the Construction Contract and \$ _____ has been earned but not paid as of this date;

(f) the amount allocated to the performance of Contractor's services (\$ _____) represents sufficient funds to complete the services of the Contractor to be provided under the Construction Contract, with all contemplated on-site and off-site work, including permits and tie-in charges; and

(g) Contractor is duly licensed to conduct its business in the jurisdiction where the construction is to be performed and will maintain the license in full force throughout the life of the Construction Contract.

7. SUBORDINATION. Contractor's lien rights with respect to the Property for work done and materials supplied pursuant to the Construction Contract or otherwise is and will at all times be subject and subordinate to the Leasehold.

Dated: _____

CONTRACTOR:

By: _____
Name

ATTACHMENT NO. 18
DECLARATION OF CC&RS

[behind this page]

Recording Requested By:

When Recorded Mail To:

ATT: S RODICK
BROWN & FARMER aplc
C/O CCI SUBDIVISION.NET
REF: SEACOAST INN
5520 WELLESLEY ST #204
LA MESA CA 91942
www.subdivision.net

SPACE ABOVE FOR RECORDER'S USE

Index as "CC&R's" and "SUBORDINATION AGREEMENT"

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
"SEACOAST INN"**

a Condominium Hotel

City of Imperial Beach, County of San Diego, California

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THIS DECLARATION (“Declaration”) is made on the day and year hereinafter written by IMPERIAL COAST LIMITED PARTNERSHIP, a California limited partnership hereinafter called “Declarant.” The first-letter capitalized words used herein shall have the meanings given them in ARTICLE 3 herein.

ARTICLE 1. RECITALS

1.1. THE REAL PROPERTY

Declarant is the owner of that certain real property (the “Property”) and improvements therein located in the City of Imperial Beach, County of San Diego, State of California, more particularly described in Exhibit “A” attached hereto. Collectively, the Property and improvements therein may be referred to herein as the “Resort” or the “Hotel.”

1.2. INTENTION: COMMON INTEREST DEVELOPMENT

Declarant intends by Recordation of this Declaration to:

(a) Establish the Resort as a *Common Interest Development* by development of the Property as a “condominium project” (the “Project” or “Condominium Project”) within the meaning of BUSINESS AND PROFESSIONS CODE §11004.5(c) and CIVIL CODE §1351(c) and §1351(f), in conformance with the provisions of the *Subdivided Lands Law* (BUSINESS AND PROFESSIONS CODE §11000 *et seq.*) and GOVERNMENT CODE §66427;

(b) Subject the Resort to certain mutually beneficial limitations, restrictions, conditions, covenants, easements, Assessments and liens, as hereinafter set forth, to comply with the City of Imperial Beach and California Coastal Commission requirements, and in accordance with the provisions of the *Davis-Stirling Common Interest Development Act* (CIVIL CODE §1350 *et seq.*), as a comprehensive plan of improvement and development for: (i) the lease and/or sale of Condominiums to the general public, (ii) the use and management of the Property as a Common Interest Development, and (iii) enhancing and protecting the value, desirability and attractiveness of the Property for the benefit of all Owners and Permitted Users.

1.3. DESCRIPTION OF RESORT

1.3.1. BUILDING; NUMBER OF SEPARATE INTERESTS

The Resort consists of a single building (the “Building”) on a single Lot which contains the following “Separate Interests”: (a) one (1) “Hotel Unit,” (b) one (1) “Garage Unit,” (c) three (3) “Commercial Units” and (d) seventy-eight (78) limited occupancy residential “Guest Units.”

1.3.2. COMMON AREA; ASSOCIATION PROPERTY

In addition to the Unit Separate Interests, the Resort consists of Common Area, of which there are two types:

(a) Association Property, containing all land, airspace and improvements located *outside* of the boundaries of the Units, located below a point that is fifty (50) feet above the high vertical improvement in the Property. The Association Property shall include, but not limited to: the Building(s), foundations, structural and Utility Systems, roofs, fences, walls, lighting, walkways, and landscaping, *excepting* any of the foregoing that consist of “Resort Facilities Use Areas,” as more fully described herein and in that certain Resort Covenant, defined herein. The Association Property shall be owned by a non-profit mutual benefit corporation, referred to herein as the “Association,” the members of which shall be the Unit Owners. The Association Property is generally intended for use by all “Permitted Users”; however, certain portions of the Association Property are designated by this Declaration for the exclusive or restricted use by specific Permitted Users; and

(b) **Undivided Interest Common Area**, comprised exclusively of *outside* air space, containing no earth or any natural or constructed physical improvements, and located above the upper boundary of the Association Property as shown and/or described on the Condominium Plan described hereafter, and extending upwards therefrom indefinitely. The Undivided Interest Common Area, which exists in order to comply with CIVIL CODE §1351 for the establishment and existence of a condominium project, shall be owned by all Unit Owners in undivided, equal "*Fractional Interests*" as tenants-in-common, as more fully described herein.

1.3.3. CONDOMINIUM PROJECT

The **Guest Units** may each be referred to as a "**Condominium Unit**," which collectively, together with any Easement Areas and Fractional Interests appurtenant to them respectively, and the **Association Property**, shall comprise and be referred to herein as the "**Condominium Project**," which shall be subject to the provisions of this **Declaration** and the **Resort Covenant** described hereafter.

1.3.4. RESORT FACILITIES; RESORT FACILITIES USE AREAS

The **Hotel Unit**, **Commercial Units** and **Garage Unit** shall comprise and may be referred to herein as the "**Resort Facilities Units**" or "**Resort Units**" which, together with the Resort Easement Area and Fractional Interests appurtenant respectively thereto, shall comprise and be referred to herein as the "**Resort Facilities**" and the Improvements therein as the "**Resort Facilities Use Areas**." The Resort Facilities are further described in the Resort Covenant and are delineated on the Resort Facilities Map attached to the Resort Covenant as **EXHIBIT "B"**.

1.4. RESORT COVENANT; RELATIONSHIP TO DECLARATION

Except for those provisions contained in **ARTICLE 13 - PERMITS CONDITIONS/RESTRICTIONS**, **ARTICLE 14 - GUEST UNIT OWNER COVENANTS**, **ARTICLE 15 - RESORT COVENANT** and **ARTICLE 16 - LEASING OF GUEST UNITS** of these CC&RS, and the provisions affecting the Property as contained within the Permits (and specifically those of the California Coastal Commission and the City of Imperial Beach), both the **Condominium Project** and the **Resort Facilities** shall be subject to the terms and provisions of that certain "**RESORT COVENANT**" Recorded concurrently with this Declaration. The covenants, conditions, restrictions, reservations, easements, assessments, charges and equitable servitudes created and imposed by this **Declaration** shall be *in addition* and *subordinate* to the covenants, restrictions, easements and equitable servitudes imposed on the Condominium Project and the Resort Facilities by the **Resort Covenant**. The **Resort Covenant** specifically provides, pursuant to the requirements of the **Permits**, for the Operation of the Property and the Hotel thereon by the **Hotel Owner** or its duly appointed **Hotel Operator**, including, but not limited to, the Building, Guest Units, Commercial Units, subsurface Garage Unit, entry and lobby areas, reception desk, luggage storage, restaurant and kitchen, cocktail lounge, fitness room, patio, pool area and other recreational amenities, function rooms, administration rooms, restrooms, and Hotel operational rooms.

1.5. CONDOMINIUM PLAN

Declarant will Record or has Recorded concurrently with this Declaration a **Condominium Plan** (the "**Plan**") covering the Property in compliance with **CIVIL CODE §1351(e)**. The Plan diagrammatically establishes three-dimensional divisions of the Property into the: (a) "**Association Property**"; (b) "**Undivided Interest Common Area**"; and (c) the "**Unit Separate Interests**."

1.6. ASSOCIATION

Declarant will cause or has caused the incorporation of **SEACOAST INN MAINTENANCE ASSOCIATION**, a California nonprofit mutual benefit corporation (the "**Association**"), organized under the Nonprofit Mutual Benefit Corporation Law (**CORPORATIONS CODE §7110 et seq.**),

for the purpose of exercising the powers and functions set forth herein. The Association shall act as the management body for the Project, and shall be responsible for the Operation of the Association Property, the Undivided Interest Common Area and such other areas of the Property as may be designated by this Declaration and/or other Governing Documents. By virtue of owning a Condominium in the Project, each Owner shall automatically have a membership in the Association, which membership shall be appurtenant to and pass with title to the Condominium.

1.7. PHASING – BY PUBLIC REPORT

(a) It is the intention of Declarant that the **Guest Units** may be offered for sale to the general public in incremental sales sequences or phases (“*Phases*”) as described in a Public Report issued by the California Department of Real Estate (“*DRE*”), designating specific Guest Units as comprising a separate Phase.

(b) The foregoing notwithstanding, Declarant shall have the express right to reconfigure any Phase, by amending the Public Report describing such Phase. Any such reconfiguration may include, but not be limited to, the quantity and designation of the Guest Units included in a Phase. Any such Phase reconfiguration and amendment to a Public Report shall automatically effect a corresponding modification of any rights related thereto within this Declaration and the other Governing Documents.

(c) Anything herein to the contrary notwithstanding, each Person who acquires title to a Guest Unit, hereby acknowledges by acceptance of title to such Guest Unit that: Declarant makes no guarantee whatsoever of: (i) the number Phases, (ii) the number of Guest Units that may comprise any Phase, and (iii) any other Guest Units ever being sold or leased.

1.8. CONDOMINIUM OWNERSHIP

The Separate Interests shall each be a “*Condominium*”; provided, however, this Declaration and the Resort Covenant shall use: (a) the term “**Condominium Unit**” only to those Condominiums which are subject to the *full CC&RS* contained in this Declaration; and (b) the term “**Resort Facilities Unit**”/ “**Resort Unit**” only to those Condominiums which are subject to *limited CC&RS* contained in this Declaration as described in this Section below. While it is contemplated as of the date of Recordation of this Declaration and the Resort Facilities will be collectively owned by Declarant or by an Affiliate thereof, in the event that a **Commercial Unit** is conveyed to a non-Affiliate third-party Owner, each such non-Affiliated owned Commercial Unit may be converted from a *Resort Facilities Unit* into a *Condominium Unit* as defined herein, thereby becoming subject to the full CC&RS contained in this Declaration and subject to levy of Assessments, as more fully described herein.

1.8.1. GUEST UNITS; CONDOMINIUM PROJECT

(a) Each Owner of a **Guest Unit** in the Condominium Project (a) shall receive (i) title to a “**Condominium Unit**” Separate Interest, (ii) an appurtenant undivided “**Fractional Interest**” in the Undivided Interest Common Area, (iii) an automatic membership in the “**Association**”; and (b) may receive the right to use certain “**Exclusive Use Areas**” which shall be appurtenant to (*belong to or go along with*) such Owner’s Unit.

(b) Each **Guest Unit** and its Guest Unit Owner shall be subject to: (i) the *full CC&RS* contained in this Declaration, (ii) the levy of Assessments, (iii) Voting and (iv) the CC&RS contained in the Resort Covenant.

1.8.2. RESORT FACILITIES UNITS; RESORT FACILITIES

(a) The Owner of the Hotel Condominium, a Commercial Condominium or the Garage Condominium in the **Resort Facilities** (i) shall receive [a] title to a “**Resort Facilities Unit**” Separate Interest, [b] an appurtenant undivided “**Fractional Interest**” in the Undivided Interest Common Area, and (i) may receive certain “**Exclusive Easements**” and “**Non-Exclusive Easements**” over the Association Property.

(b) Each **Resort Facilities Unit** and its Unit Owner shall be subject to: (i) *limited* CC&RS contained in this Declaration –specifically, those which relate to [a] the establishment of the Condominium Project, [b] Easements, [c] the rights reserved by and/or granted to the Resort Facilities Unit Owner, as more fully described herein; and (ii) the CC&RS contained in the **Resort Covenant**.

1.9. DISCLOSURE TO PROSPECTIVE PURCHASERS

Prospective Purchasers should be aware that the configuration of the Property described in this Declaration and a related document called the “**Resort Covenant**” is what is designated by California legal statutes as a “*Common Interest Development*” of the type known as a “*condominium project*” – and specifically, a “*condominium hotel*.” The operational structure of this Property as a condominium project, however, is not typical as that of most condominiums in California.

The California Coastal Commission, as a condition of approving this Project, required that the **Hotel Owner** or **Hotel Operator** must retain control of all Hotel portions of the Project, including the Operation of the Guest Units, and specifically the management of renting and booking all Guest Units. As such, control of the overall operations of the Project and the Condominium Hotel is vested in the Hotel Owner or Hotel Operator and not with a Board of Directors of the owners Association described in this Declaration.

As a Owner of a Guest Unit, you will be required to confer upon the Hotel Operator specific rights of monitoring and controlling your and your guests’ access to your Guest Unit as more fully described in **ARTICLE 16** herein entitled “**LEASING OF GUEST UNITS.**” In addition, in order to assure public access to the coastal area adjacent to the Property, this Declaration document restricts the number of consecutive days that you as a Guest Unit Owner may occupy your Unit.

PROSPECTIVE PURCHASERS ARE URGED TO READ THE RESTRICTIONS, LIMITATIONS AND CONDITIONS CONTAINED IN THIS DECLARATION PRIOR TO ENTERING INTO AGREEMENT AND PURCHASE OF A GUEST UNIT.

ARTICLE 2. DECLARATION

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property shall be held and conveyed subject to the following covenants, conditions, restrictions, rights, easements, liens and charges which are hereby declared in this Declaration to be for the benefit of said interests, as this Declaration may be amended from time to time, and subject to the Rules and Regulations (as defined herein) and all of which easements, covenants, conditions and restrictions and the Rules and Regulations are declared to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the Property, and the interest or interests therein to be conveyed or reserved. All such easements, covenants, conditions and restrictions, and Rules and Regulations shall be enforceable equitable servitudes and shall inure to the benefit of and bind the Association, Declarant, the Owners Permitted Users and their respective Invitees in accordance with **CIVIL CODE §1468** and shall be binding upon all parties having or acquiring any right or title in said interests or any part thereof conveyed, to wit, each Unit, and shall inure to the benefit of each Owner thereof and are imposed upon said interests and every part thereof as a servitude in favor of each and every of said interests as the dominant tenement or tenements.

ARTICLE 3. DEFINITIONS

3.1. AESTHETIC STANDARDS

“Aesthetic Standards” shall mean and refer to such design, construction and similar criteria that may be adopted by Declarant and thereafter the Board or its Aesthetics Committee, pursuant to the Article entitled “**AESTHETICS AND DESIGN CONTROL**” herein.

3.2. AFFILIATE

“Affiliate” shall mean and refer to any Person (a) that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, any Owner; or (b) that holds five percent (5%) or more of the equity interest held either beneficially or of record by any Owner, as the context may require. For purposes of this Section, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, familial relationship or otherwise.

3.3. ACCESS ELEMENTS

“Access Elements” shall mean (a) those hallways, corridors, walkways and lobbies of the Hotel Unit and Garage Unit that are maintained and designated, from time to time, by the Hotel Owner for the use of Hotel Guests to gain access to and from the Hotel, the Hotel’s Public Facilities, the Garage Unit and the Commercial Units, (b) all elevators (but excluding service and freight elevators), stairs and stairwells within the Hotel Unit that are designated for use by Hotel Guests or for emergency evacuation, and (c) those Common Areas, excluding any Exclusive Use Common Area, which are designated for use by Owners and Permitted Users for ingress and egress to and from the Project and/or the Units.

3.4. APPROVED SERVICE PROVIDERS LIST

“Approved Service Providers List” or “List” shall have the meaning set forth in **Section 23.2.2** herein.

3.5. APPLICABLE LAW

“Applicable Law(s)” shall mean and refer to any law, regulation, rule, order or ordinance of any governmental or quasi-governmental entity, applicable to the Units or the Project or any portion thereof, or the use or occupancy thereof, now in effect or as hereafter promulgated.

3.6. APPROVED RENTAL AGENT; RENTAL AGENT

“Approved Rental Agent” or “Rental Agent” shall mean a rental agent who appears on the Hotel Operator’s list of qualified agents that possess the objective minimum quality and security standards as reasonably set forth by the Hotel Operator from time to time. A Guest Unit Owner may utilize his or her own choice of a rental agent provided that the proposed rental agent (a) meets and conducts its business commensurate with the Resort Quality Standards, (b) satisfies the requirements of the Permits and this Declaration, (c) complies with the Resort Rules and Regulations, and (d) is the minimum quality standards of the Hotel Operator in its sole discretion; as the foregoing criteria are more fully described in **Section 16.1.5** herein.

3.7. ARTICLES

“Articles” means the Articles of Incorporation of **SEACOAST INN MAINTENANCE ASSOCIATION**, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

3.8. ASSESSMENT

“Assessment” shall mean and refer to a charge which the Board may levy against an Owner and/or such Owner’s Unit in accordance with the provisions of the **Article** herein entitled “**ASSESSMENTS.**” Assessments

3.9. ASSOCIATION

“Association” means **SEACOAST INN MAINTENANCE ASSOCIATION**, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an “Association” as defined in **CIVIL CODE §1351(a)**.

3.10. ASSOCIATION ACCOUNTS

“Association Accounts” shall mean the accounts created for receipts and disbursements of the Association, all as more fully set forth in, and pursuant to **ARTICLE 11** herein.

3.11. ASSOCIATION MANAGER

“Association Manager” shall mean the person employed by the Association pursuant to and limited by the provisions of this Declaration and delegated the duties, powers or functions of the Association as limited by this Declaration, the Bylaws and the terms of any agreement between the Association and said person. Initially, the Association Manager shall be the **Hotel Manager**, and shall remain the Hotel Manager unless and until the Condominium Association Management Agreement with the Hotel Manager is terminated.

3.12. ASSOCIATION RESPONSIBILITY; ASSOCIATION OBLIGATION(S); OBLIGATION(S)

“Association Responsibility,” “Association Obligation(s)” or “Obligation(s)” (*as the context may infer*) shall mean and refer to any responsibility, duty and/or obligation the Association may have pursuant to this Declaration, any other Governing Document, Applicable Law, resolution by the Board or determination by any Board delegated committee, with respect to any Unit or Association Property.

3.13. ASSOCIATION PROPERTY

“Association Property” shall mean and refer to any real property, exclusive easements and any personal property owned, from time-to-time, by the Association, including, without limitation any real property or exclusive easements which may be conveyed to the Association in the future, including, if applicable, all or any portion of the Resort Facilities Use Areas. The Association Property shall include, but not be limited to:

(a) the “remainder” of that portion of the Property after excluding the **Undivided Interest Common Area** and the **Unit Separate Interests**;

(b) all land and improvements within the Property from the center of the earth up to its boundary with the Undivided Interest Common Area, including, but not limited to Building(s), foundations, structural and Utility Systems, roofs, balconies, patios, stairways, elevators, fences, walls, lighting, walkways, and landscaping, excepting from any of the foregoing (i) all **Unit Separate Interests**; and (ii) any **Utility Facilities** owned by a third party, the Operation of which is not specifically designated by these CC&RS or an Ancillary Instrument as an Association Obligation; and (iii) those Improvements and **Exclusive Easements** which are part of the Resort Facilities Use Areas, as more fully described herein and in the **Resort Covenant**.

(c) all Exclusive Use Areas

The Association Property shall be conveyed to and thereafter owned by the Association prior to or concurrent with the first Close of Escrow.

3.14. BOARD

“Board” shall mean and refer to the Board of Directors of the Association.

3.15. BUDGET

“Budget(s)” or shall mean and refer: (a) during the initial year of operation of the Project and the Association, to that detailed “budget” accepted by the DRE and prepared in accordance with DRE requirements for issuance of a Public Report for the Project, estimating the Common Expenses (the “**DRE Budget**”); and, thereafter, (b) to a pro forma operating budget described in **CIVIL CODE §1365(a)**, prepared or caused to be prepared by the Board for the second and each subsequent Fiscal Year of Operation of the Project and the Association (the “**Association Budget**”). The Budget shall define the monthly and

annual costs of estimated Common Expenses and the amount to be allocated to and assessed against the individual Units and their Owners according to their respective **Proportionate Share** in accordance with the provisions of **ARTICLE 11** entitled "**ASSESSMENTS**" herein.

3.16. BUILDING

"Building" shall mean any building structure located on the Property.

3.17. BYLAWS.

"Bylaws" shall mean and refer to the Bylaws of the Association, including such amendments thereto as may from time to time be made.

3.18. CAPITAL IMPROVEMENT

"Capital improvement" shall mean and refer to any renovation, repair or major maintenance to an existing improvement or any new improvement to be installed, repaired or constructed within the Common Expense Area, which is non-recurring (i.e. purchased once), which has a useful life of at least five (5) years, and which is not a Restoration improvement. The foregoing notwithstanding, the Board or its delegated committee may declare an improvement having less than a five year allocated life, to be a Capital improvement.

3.19. CC&RS

"CC&RS" shall mean and refer to the covenants, conditions and restrictions contained in this Declaration and the other Governing Documents, or any portion respectively thereof, as they may from time to time be amended.

3.20. CITY

"City" shall mean and refer to the **City of Imperial Beach**, a municipal corporation located in the County of San Diego, State of California.

3.21. COMMERCIAL UNIT

For "Commercial Unit," see **Section 3.114.2** herein.

3.22. COMMERCIAL USES

"Commercial Uses" shall and refer to the following uses, but excluding Prohibited Uses: **(a)** businesses the primary purpose of which is the sale of retail consumer goods and/or the sale of services directly to the public for retail fees; **(b)** food service and/or restaurant **(c)** spa and/or gym; **(d)** full service bar; **(e)** a venue or club providing live entertainment; **(f)** office and administrative uses related to any of the foregoing; and **(g)** uses approved by the Hotel Owner (which approval may be granted or withheld in the Hotel Owner's sole and absolute discretion) so long as such uses are not **Prohibited Uses**.

3.23. CLOSE OF ESCROW.

"Close of Escrow" shall mean and refer to the date on which a deed from Declarant is Recorded conveying a Condominium pursuant to a transaction requiring the issuance of a Public Report.

3.24. COMMON AREA.

"Common Area" shall mean and refer to all of the Property and improvements thereon, excepting therefrom the Unit Separate Interests. There are two (2) types of Common Area:

3.24.1. ASSOCIATION COMMON AREA.

"Association Common Area" shall mean and refer to the **Association Property** at such time that it is conveyed to the Association.

3.24.2. UNDIVIDED INTEREST COMMON AREA.

“Undivided Interest Common Area” shall have the meaning defined in **Recitals Section 1.3.2(a)** above.

3.25. COMMON EXPENSES

“Common Expenses” shall mean and refer to those costs and expenses for which the Association is responsible under this Declaration and the Resort Covenant, including actual and estimated fixed, operating, and administrative costs, reserve allocations and contingency provisions incurred or potentially to be incurred by the Association, for the Common Expense Areas of the Project, Operation of the Association and such other financial obligations and purposes found and determined by the Board. Common Expenses shall be paid by Unit Owners as part of their Regular Assessments according to each Unit Owner’s Proportionate Share.

3.26. COMMON EXPENSE AREAS

“Common Expense Areas” shall mean and refer to all portions of the Project of which the cost and expense of Operation is the responsibility of the Association, and shall include, but not be limited to, the following: **(a)** the Association Property except Exclusive Use Areas, unless otherwise designated by the Board or the Resort Covenant; **(b)** those portions of a Condominium Unit that may be designated by the Hotel Operator, the Board or this Declaration as an Association Obligation, **(c)** those portions of the Resort designed by the Resort Covenant as an Association Obligation, and/or **(d)** such other Improvements or property designated by the Hotel Operator, the Board or this Declaration as an Association Obligation.

3.27. CONDOMINIUM

“Condominium” shall mean and refer to an estate in the Property, defined in **CIVIL CODE §1351(f)**, and shall consist of **(a)** a Separate Interest in space called a “Unit” **(b)** an appurtenant Fractional Interest in the Undivided Interest Common Area and **(c)** the exclusive right to use any “Exclusive Use Area” appurtenant to such Unit.

3.28. CONDOMINIUM ASSOCIATION MANAGEMENT AGREEMENT

“Condominium Association Management Agreement” shall mean and refer to the management agreement, if any, in effect at a specified time between the Association and the Association Manager.

3.29. CONDOMINIUM PLAN

“Condominium Plan” shall mean and refer to the diagrammatic plan or plans Recorded pursuant to **CIVIL CODE §1351(e)**, covering the Property and depicting the Common Area and each Unit Separate Interest, and any amendment thereto made from time to time.

3.30. CONDOMINIUM PROJECT

“Condominium Project” shall have the meaning set forth in **Recital Section 1.3.3** herein. .

3.31. CONSTANT DOLLARS

“Constant Dollars” shall mean and refer to a stated value (“ORIGINAL VALUE”) adjusted for inflation based upon the San Diego Metropolitan Area Consumer Price Index for the *year in which this Declaration was Recorded* (“ORIGINAL INDEX”) as of the date closest in time to the Recordation of this Declaration or such other reasonable 2009 index as the Board may determine, in ratio to the same Consumer Price Index for a subsequent year of adjustment (the “NEW INDEX”), based upon the following formula: **VALUE IN CONSTANT DOLLARS = ORIGINAL VALUE * NEW INDEX / ORIGINAL INDEX.**

3.32. CONVERSION DATE

“Conversion Date” shall have the meaning set forth in **Section 8.3** hereof.

3.33. COUNTY

“County” shall mean and refer to the County of **San Diego**, California.

3.34. COUNTY RECORDER

“County Recorder” shall mean and refer to the **San Diego County Recorder**, **San Diego** County, California.

3.35. DECLARANT

“Declarant” shall mean and refer to:

(a) **IMPERIAL COAST LIMITED PARTNERSHIP**, a **California limited partnership**, its successors and assigns, by merger, consolidation or (i) by purchase of all or substantially all of its assets, or (ii) by delegation of any of its rights or duties hereunder by an express written assignment;

(b) the Hotel Owner

(c) the Hotel Operator, to the extent the powers and rights granted herein for the Operation of the Property and the Hotel are granted to Declarant; and

(d) any person or entity, his, her or its successors and assigns, to which the foregoing Declarant has assigned any or all of its rights and obligations by an assignment expressed in a Recorded instrument including, without limitation, a deed, lease, option agreement, land sale contract or assignment as the case may be, transferring such interest if such assignee agrees in writing with Declarant to accept such assignment;

Any of the foregoing assignments may include only certain specific rights and/or duties of Declarant, and may be subject to such conditions as Declarant may impose in its sole and absolute discretion.

(e) A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Resort, together with Declarant rights, which beneficiary has acquired any such property by termination of lease, or foreclosure, power of sale or deed in lieu of such foreclosure or sale, as the case may be

3.36. DECLARANT’S AGENT

“Declarant’s Agent” shall have the meaning set forth in **Section 31.2** hereof.

3.37. DECLARANT AND THEREAFTER THE HOTEL OPERATOR

The term “**Declarant and thereafter, the Hotel Operator**” shall mean and refer to the phrase “*...Declarant, for so long as Declarant owns a Condominium Unit, and, thereafter, the Hotel Operator ...*” in describing certain rights and powers of Declarant under these CC&RS. The foregoing notwithstanding, Declarant shall have the express right to waive its authority in favor of the Hotel Operator in each or all instances described herein.

3.38. DECLARATION

“Declaration” shall mean and refer to this Declaration, recorded with the County Recorder, covering the Property, including such amendments thereto as may from time to time be recorded.

3.39. DEED OF TRUST; DEED OF TRUST BENEFICIARY

“Deed of Trust” and “Deed of Trust Beneficiary” shall mean any duly recorded deed of trust encumbering a Unit, and the holder of the beneficiary's interest under any such Deed of Trust, respectively. “**First Deed of Trust**” and “**First Deed of Trust Beneficiary**” shall mean a Deed of Trust which has priority over all other Deeds of Trust encumbering a specific Unit, and the holder of any such First Deed of Trust, respectively.

3.40. DEVELOPMENT ACTIVITIES

“Development Activities” shall mean and refer, but not be limited to, any construction, installation, repair, replacement, maintenance and/or completion of any improvement; the storage and of use materials, equipment, vehicles, tools and machines which may be necessary or desirable in connection with such work; any and all subsequent customer relations and post-sale service, including any type of development work pursuant to any Development Plan of Declarant, together with the right the completion of which either (a) may not fall under any formal evidence of completion such as the Recordation of a Notice of Completion, or (b) may not be included or applicable under, or required by a performance bond pursuant to CALIFORNIA CODE OF REGULATIONS §2792.4, as may be conducted by Declarant or its authorized agents.

3.41. DEVELOPMENT PLAN

“Development Plan” shall mean and refer to a plan of development of improvements within the Property by Declarant in contemplation for the sale, rental or other disposition of the Units in the Property under the authority of a Public Report.

3.42. EMERGENCY

“Emergency” is an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property; provided, however, the term “*emergency situation*” with respect to an action or attention taken by the Board of Directors shall exist if there are circumstances that could not have been reasonably foreseen by the Board, that require immediate attention and possible action by the Board, and that, of necessity, make it impracticable to provide “notice” [CIVIL CODE §1363.05(i)(4)(i)]

3.43. EXCLUSIVE EASEMENT

“Exclusive Easement(s)” shall mean and refer to an easement reserved and granted as an appurtenance to one Unit and/or Owner thereof, over the Property or portions thereof.

3.44. EXCLUSIVE EASEMENT AREA

“Exclusive Easement Area” shall mean and refer to those areas or Facilities within the Property over, under or through which an Exclusive Easement is located.

3.45. EXCLUSIVE RESORT AREA; RESORT AREA

“Exclusive Resort Area” or “Resort Area” shall mean those portions of the Property owned by a Resort Facilities Unit Owner or over which a Resort Facilities Unit Owner has an Exclusive Easement.

3.46. EXCLUSIVE USE AREA; EXCLUSIVE USE COMMON AREA

“Exclusive Use Area” or “Exclusive Use Common Area” shall mean and refer to those Facilities within the Common Area designated by this Declaration, the Condominium Plan, by deed or by Applicable Law for the exclusive use or restricted use of one or more, but fewer than all of the Unit Owners, as Exclusive Easements.

3.47. EXTERIOR BUILDING AREA

“Exterior Building Area” shall refer to the portion of the exterior portions of the Building over which a Resort Easement is reserved and granted to the Covenant Declarant, as more fully described in Section 5.2 herein and in the Resort Covenant.

3.48. FACILITY; FACILITIES; FACILITY AREA(S)

“Facility,” “Facilities” and/or “Facility Area(s)” shall mean and refer to those portions of the Common Area reserved herein for subsequent conveyance as an Exclusive Use Area in accordance with the provisions therefor contained in ARTICLE 5 - “EASEMENTS; LICENSES” herein. Such Facilities shall

include but not be limited to (a) **Balcony/Deck**, (b) **Patio** and ((c) **Utility Facilities**, as more fully described in the Plan and/or in **Section 6.3** herein.

3.49. FAMILY

“Family” shall mean and refer herein with respect to occupancy of a Guest Unit, to a Guest Unit Owner and (a) such Guest Unit Owner’s spouse, domestic partner, parents and children only or, (b) one or more natural persons not all so related to a Guest Unit Owner, but which Guest Unit Owner and such alternatively related person have a commitment to and/or a unique identity with each other.

3.50. FEDERAL AGENCIES

“Federal Agencies” shall mean and refer to collectively one or more of the following agencies and the following letter designation of such agencies shall mean and refer to respectively the agency specified within the parentheses following such letter designation: “**VA**” (United States Department of Veterans Affairs), “**FHLMC**” (Freddie Mac, Federal Home Loan Mortgage Corporation), “**FNMA**” (Fannie Mae, Federal National Mortgage Association), and “**GNMA**” (Ginnie Mae, Government National Mortgage Association).

3.51. FISCAL YEAR

“Fiscal Year” shall mean and refer to the fiscal accounting and reporting period of the Association selected by the Board.

3.52. FRACTIONAL INTEREST

“Fractional Interest” shall mean and refer to each equal, undivided fractional interest in the Undivided Interest Common Area appurtenant to each Unit owned by an Owner. Each Fractional Interest shall be equal to the fractional proportion of one Unit to all of the Units in the Project.

3.53. GARAGE UNIT

For “Garage Unit,” see **Section 3.114** herein.

3.54. GOVERNING DOCUMENTS; DOCUMENTS

“Governing Documents” and/or “Documents” means and includes this Declaration and any Exhibits attached hereto, any Supplemental Declaration, the Condominium Plan, the Articles, Bylaws, the Aesthetics Standards, and any Rules, and the Resort Covenant, including any amendments to the foregoing documents as may from time to time be made.

3.55. GUEST UNIT

For “Guest Unit,” see **Section 3.114** herein.

3.56. GUEST UNIT OWNER

“Guest Unit Owner” shall mean and refer to an Owner of a Guest Unit.

3.57. HVAC

“HVAC” shall mean and refer to heating, ventilation and air-conditioning system(s).

3.58. IDENTITY

“Identity” shall mean the name, likeness, image or indicia of “*Seacoast Inn*” or any variation thereof.

3.59. INCORPORATOR

“Incorporator” shall mean and refer to any one or all of the incorporators of the Association.

3.60. HOTEL; RESORT

For “Hotel,” see “RESORT; HOTEL” at Section 3.104 herein.

3.61. HOTEL AMENITIES

“Hotel Amenities” shall mean the Hotel Improvements, Hotel Services and amenities which Permitted Users are authorized to use under the terms and subject to the limitations of the Resort Covenant, as such amenities are therein defined.

3.62. HOTEL FACILITIES

“Hotel Facilities” shall mean those Hotel Improvements which Condominium Unit Owners or their Permitted Users are authorized to use under the terms and subject to the limitations of the Resort Covenant.

3.63. HOTEL GUEST

“Hotel Guest” shall mean a transient guest utilizing any Guest Unit, which may include Guest Unit Owners.

3.64. HOTEL OPERATOR

“Hotel Operator” shall mean the company engaged by the Hotel Owner to Operate the Hotel, as such company may be replaced by the Hotel Owner from time to time, in accordance with the provisions therefor contained in ARTICLE 20 herein. A Hotel Owner must be a bona fide company, who, at the very least, specializes in the management operation of hotels, and who has verifiable successful past experience and performance credentials. In the event there is no Hotel Operator at any particular time, the Hotel Owner shall be deemed the Hotel Operator at such time for purposes of this definition.

3.65. HOTEL OPERATIONS

“Hotel Operations” shall mean the hotel/hospitality business conducted within the Resort, in the sole and absolute discretion of the Hotel Owner.

3.66. HOTEL OWNER

“Hotel Owner” shall mean and refer to the Hotel Unit Owner, its successors and assigns.

3.67. HOTEL SERVICES

“Hotel Services” shall mean the Hotel Services which the Guest Unit Owners are entitled to receive from the Hotel Operator under the terms and subject to the limitations of the Resort Covenant, as such Hotel Services are therein defined.

3.68. HOTEL SUITES

“Hotel Suites” shall have the meaning set forth in Section 21.16.

3.69. HOTEL UNIT

For “Hotel Unit,” see Section 3.114.2 herein.

3.70. HOTEL USES

“Hotel Uses” may mean and refer to the following uses: (a) for lodging and related businesses, including, but not limited to, the sale of retail consumer goods and/or the sale of services directly to the public for retail fees; (b) a hotel or similar facility, which facility may include, without limitation, such amenities, businesses, services and products associated with a hotel or lodging facility; (c) recreational amenities, including a health spa, swimming pool and/or gym; (d) restaurants open to the public; (e) full service bar open to the public; (f) a venue or club providing live entertainment open to the public; (g) conference, banquet and wedding facilities open to the public; (h) function rooms, food and beverage service,

other customary uses in a hotel operation, and/or any other services and functions deemed necessary or desirable by the Hotel Owner in connection with such use as a hotel and otherwise consistent with the Governing Documents and permitted by Applicable Law; and (i) office and administrative uses related to any of the foregoing.

3.71. IMPROVEMENTS

“Improvements” shall mean and refer to:

(a) structures and appurtenances thereto of every type and kind, including but not limited to, buildings, out buildings, spas, gazebos, walkways, sprinkler and sewer pipes or lines, swimming pools and other recreational facilities, fences, screens, screening walls, retaining walls, awnings, patio and balcony covers, stairs, decks, landscaping, hedges, slopes, windbreaks, the exterior surfaces of any visible structure, trees and shrubs, poles, signs, and water softener or heater or air conditioning and heating fixtures and equipment;

(b) the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind;

(c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed;

(d) (d) landscaping, planting, clearing, or removing of trees, shrubs, grass, or plants; and

(e) any change or alteration of any structures and appurtenances thereto, including any change of interior or exterior material, appearance, color or texture.

3.72. INSTITUTIONAL MORTGAGEE; INSTITUTIONAL LENDER

“Institutional Mortgagee” or “Institutional Lender” shall mean and refer to a First Mortgagee who is a bank, savings and loan association, insurance company, real estate investment trust, retirement fund trust, or other financial institution.

3.73. INVITEE.

“Invitee” shall mean and refer to any person, who is not an Permitted User, whose presence within the Project is approved by or is at the request of a particular Owner, Permitted User or the Association, and shall include, but not limited to, an Owner’s or an Permitted User’s Family, agents, guests, employees, licensees or service personnel.

3.74. LEASE RIDER

“Lease Rider” shall have the meaning set forth in **Section 16.1.9** herein.

3.75. LESSEE

“Lessee” shall mean a Private Guest who leases a Guest Unit from a Guest Unit Owner or the Hotel Operator for one or more days or nights (or any portion thereof) at a specified cost.

3.76. MAINTENANCE MANUAL

“Maintenance Manual” shall mean and refer to either or both of the following, as the context may infer:

3.76.1. ASSOCIATION MAINTENANCE MANUAL

“Association Maintenance Manual” shall mean and refer to a manual prepared or caused to be prepared by Declarant or the Board, or by a third-party consultant respectively thereof, and provided to the Association, specifying the Association Responsibilities for the Common Area and such other areas within the Project, as updated and amended from time to time.

3.76.2. OWNER MAINTENANCE MANUAL

“Owner Maintenance Manual” shall mean and refer to a manual prepared or caused to be prepared by Declarant or the Board, or by a third-party consultant respectively thereof, and provided to each Owner, specifying the Owner Responsibilities for their respective Units, as updated and amended from time to time.

3.77. MARKETING ACTIVITIES

“Marketing Activities” shall mean and refer, but not be limited to, the following or any one or more of them: the offering/advertising for sale, resale, lease or rental of any Condominium Unit in the Property, the establishment, maintenance and/or use of a “model Guest Unit,” sales, financing, business and/or escrow office(s), design center(s), storage areas and any related improvements thereto in any Unit or portions of the Project; the exclusive use of vehicular spaces; the installation and/or posting of “for sale” and/or “for lease” signs, flags, balloons and banners, communication transmission devices; the conducting of such other activities and business as may be reasonably necessary for the disposal of Units by sale, lease or otherwise during the Marketing Period.

3.78. MARKETING EASEMENT

“Marketing Easement” shall mean and refer to one or more Easements over the Common Area or portions thereof reserved by Declarant for the benefit of itself and the Owners and their respective authorized agent for purposes of facilitating their ability to conduct such Marketing Activities therein as may necessary to market the Guest Units to the general public, and to conduct such other related business thereto. A Marketing Easement shall include the right of reasonable ingress, egress and access, on, over, through and across the Common Area.

3.79. MARKETING IMPROVEMENTS

“Marketing Improvements” shall mean and refer, but not be limited to sales offices and trailers, models, flags, balloons, banners, signs; and such distinctive carpeting, lighting and landscaping, all of the foregoing of which: (a) shall be transient and not a part of either the Common Area or the Association Property, (b) may be installed and used by Declarant during the Marketing Period as may be reasonably necessary for Declarant’s conduct of its business to complete its Development Plan for the Project, and (c) to perform or complete any other work of improvement required for Declarant to obtain a release of any bonds posted by Declarant with the City or the DRE; all of the foregoing of which is designed and intended to establish the Property as a condominium-hotel project and dispose of the Guest Units therein by sale, lease or otherwise.

3.80. MARKETING PERIOD

“Marketing Period” shall mean and refer to that period of time beginning with the issuance of the first Public Report covering any portion of the Property and concluding the earlier of either (a) the last Close of Escrow, or, (b) the expiration of all Public Reports covering any portion of the Property, whichever shall first occur. The Marketing Period Easement may be extended by written agreement between Declarant and the Association; provided, however, that such agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association commensurate with the nature, extent and duration of the use proposed by Declarant.

3.81. MEMBER

“Member” shall mean and refer to every Person who is an Owner.

3.82. MORTGAGE

“Mortgage” shall mean and refer to a deed of trust as well as a mortgage.

3.83. MORTGAGEE

“Mortgagee” shall mean and refer to a beneficiary or a holder of a deed of trust as well as a mortgagee.

3.84. MORTGAGOR

“Mortgagor” shall mean and refer to the trustor of a Deed of Trust as well as a mortgagor.

3.85. NIGHTLY USAGE FEE

“Nightly Usage Fee” shall have the meaning set forth in **Section 16.1.4** herein.

3.86. NOTICE AND HEARING

“Notice and Hearing” shall mean and refer to the procedure that gives an Owner notice of an alleged violation of the Governing Documents and the opportunity for a hearing before the Board, as more fully described in the **Article** entitled “**RIGHTS OF OWNERS**” herein.

3.87. OCCUPANT

“Occupant” shall mean a Person in possession of a Guest Unit, including, without limitation, a Guest Unit Owner, Lessee, a Private Guest or a transient guest occupying or using the Guest Unit.

3.88. OPERATION; OPERATE; OPERATING

“Operation” (and its related word forms, which includes, but is not limited to: “*Operate*”) shall mean and refer to the following with respect to improvements and/or responsibilities in or related to the Property:

(a) Periodically inspecting, policing, cleaning, sweeping, servicing and otherwise maintaining an improvement in first-class, safe condition, state of repair and working order, and performing any repairs, replacements and other work for such purposes;

(b) Keeping, as applicable, the improvements well-painted, weather-proofed and clean and clear of rubbish, debris, graffiti, unlawful obstructions, oil, grease and water, as well as removing the same;

(c) Making such additions, alterations, repairs, replacements and doing such other construction as is permitted under this Declaration to render the improvements in compliance in all respects with the CC&RS and Applicable Law;

(d) Periodic inspection, maintenance, fertilization and replacement of any landscaping and related mechanisms and equipment, as may be necessary for the proper growth, operation and functioning thereof;

(e) Performing such other acts and work as reasonably incidental to any of the foregoing to maintain a clean, safe and sanitary condition necessary to preserve the attractive appearance, as the case may be, of the Project and each Condominium, so to protect the values thereof;

(f) Performing and/or administering the duties, obligations and responsibilities of the Association, with respect to the Board and its appointed officers and agents; and

(g) Performing the duties, obligations and responsibilities of the Hotel Owner/Hotel Operator under these CC&RS, including the Permits.

(h) Performing the duties, obligations and responsibilities of an Owner, or Permitted User under these CC&RS, including the Permits.

3.89. ORIGINAL BUYER

For “*Original Buyer*,” see “**PURCHASER**”, **Section 3.101** herein.

3.90. OWNER

“Owner” shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to a Unit, including Declarant. The term “Owner” shall include a seller under an executory contract of sale, but shall exclude Mortgagees.

3.91. PARKING RIGHTS

“Parking Rights” shall mean and refer to the respective rights of the Guest Unit Owners and their Permitted Users to park vehicles within the Garage Unit, in accordance with the provisions therefor contained in Sections 21.18 and 21.19 herein.

3.92. PARKING AREA(S)

“Parking Area(s)” shall mean and refer to those portions of the Resort, as designated by the Hotel Operator from time to time in its sole discretion, which Guest Unit Owners shall have the right to access and use in an unreserved, non-exclusive manner for valet (which Hotel Operator may require exclusively from time to time in its sole discretion) or self vehicular parking upon payment to the Hotel Operator of a fee, as determined by Hotel Operator from time to time in its sole discretion

3.93. PERMITS

“Permits” shall mean and refer to any conditions of approval or development agreement imposed by any applicable governmental or quasi-governmental agency or authority in connection with the development and/or operation of the Resort, including, but not limited to the California Coastal Commission and the City of Imperial Beach. “Permits” shall also include the following:

3.93.1. CITY DEVELOPMENT AGREEMENT

“City Development Agreement” shall mean and refer to that certain “Development Agreement By and Between the City of Imperial Beach and Imperial Coast Limited Partnership Relative to the Development Known as *The Seacoast Inn Development Project*,” Recorded on December 18, 2007 as Document No. 2007-077855.

3.94. PERMITTED USER

“Permitted User” shall mean and refer to a Guest Unit Owner and such Guest Unit Owner’s Family who occupies its Guest Unit, or a Private Guest who occupies a Guest Unit when it is not occupied by a Guest Unit Owner.

3.95. PRIVATE GUEST; RENTER

“Private Guest” or “Renter” shall mean a Person who rents and/or occupies a Guest Unit with the authorization of the Hotel Operator or the Guest Unit Owner.

3.96. PERSON

“Person” shall mean a natural individual, and/or any public or private corporation, general or limited partnership, limited liability company, trust, trustee and any other form of organization permitted by law, or one or more of them, and the heirs, executors, administrators, legal representatives, successors and assigns of any of them, as the context may require, including Owners, who has the legal right to hold title to or an interest in real property, including, but not limited to, a leasehold interest, a guest tenancy or an easement.

3.97. PROHIBITED USES

“Prohibited Uses” shall mean and refer to off-track betting, card rooms, operation of gaming machines and tables, a casino or similar establishment (the foregoing activities, however, are permitted, in accordance with Applicable Law, in the Hotel Unit and any Unit owned, operated or managed by the Hotel Owner, the Hotel Operator, or their respective Affiliates), any use involving the display or distribution of

pornographic materials, adult books or magazines or X-rated videos (but specifically excluding the sale of X-rated and/or adult films displayed in connection with in-room pay-per-view services offered by the Hotel to Occupants of a Guest Unit), pawn shops, flea markets and/or swap meets, second-hand store, auction, distress or fire sale, bankruptcy sale, or lost-our-lease, moving or other going-out-of-business sale, arcades (except to the extent video arcades are operated in connection with, incidental to and generate less than ten percent (10%) of a Commercial Unit's or Hotel Unit's gross sales), and any use which is not permitted by federal, state or local laws, statutes, ordinances or regulations, including, without limitation, all federal, state or local laws concerning the management, use, generation, storage, transportation, -presence, discharge or disposal of hazardous, toxic, radioactive, or carcinogenic materials, substances or wastes, zoning, land use or other governmental laws, regulation or ordinances.

3.98. PROJECT; PROPERTY

"Project" or "Property" shall mean and refer to all of the real property described in **Exhibit "A"** together with all improvements situated thereon.

3.99. PROPORTIONAL SHARE

"Proportional Share" shall mean the quotient (rounded to the nearest 1/100th) obtained by dividing the Guest Unit Square Footage for a Guest Unit of a particular Guest Unit Owner by the total sum of Guest Unit Square Footage for all Guest Units. Proportional Interest shall be used to determine the proportionate share of the Common Expenses and Voting Percentage allocated to each Guest Unit and its Guest Unit Owner. The Proportional Shares for each Guest Unit are set forth in **EXHIBIT "B"** attached hereto.

3.100. PUBLIC REPORT

"Public Report" shall mean and refer to that report issued by the DRE pursuant to **BUSINESS AND PROFESSIONS CODE §11018.2** or any similar statute hereafter enacted, covering all or a portion of the Project, which provides for disclosure of material facts for the Project.

3.101. PURCHASER; ORIGINAL BUYER

"Purchaser" and/or "Original Buyer" shall mean and refer to a Person who purchases a Guest Unit from Declarant under the authority of a Public Report for purposes of ownership and use thereof.

3.102. RECORD; RECORDED; RECORDATION

"Record," "Recorded" or "Recordation" shall mean and refer to, with respect to any document, the recordation or filing of such document in the Office of the County Recorder, California in which the Property is located; the use of such term shall automatically imply that the parties shall provide properly authorized signatures and notarization thereof.

3.103. REGISTRATION SYSTEM

"Registration System" shall mean and refer to a centralized registration system operated by the Hotel Operator to record, manage and monitor all registrations and rentals/bookings and the collection of transient occupancy tax.

3.104. RESORT; HOTEL

"Resort" or "Hotel" shall mean the overall mixed-use, Common Interest Development referred to as a "condominium hotel" and commonly known as of the date of Recordation of these CC&RS as the "*Seacoast Inn*" of which the Resort Facilities Units and the Condominium Units are a part, and shall include, but not be limited to, the Building, Guest Units, Commercial Units, subsurface Garage Unit, entry and lobby areas, reception desk, luggage storage, restaurant and kitchen, cocktail lounge, fitness room, patio, pool area and other recreational amenities, function rooms, administration rooms, restrooms, and Hotel operational rooms. The "Resort" or "Hotel" is furthermore described in the **Resort Covenant**.

3.105. RESORT COVENANT

“Resort Covenant” shall mean and refer to that certain *Resort Covenant for Seacoast Inn*, Recorded concurrently with this Declaration, as it may be amended from time to time.

3.106. RESORT FACILITIES USE AREAS

“Resort Facilities Use Areas” shall mean the areas described in **Section 1.3.4** herein and more fully described and designated in the **Resort Covenant**, which include, but are not limited to, the following:

3.106.1. NON-EXCLUSIVE RESORT FACILITIES USE AREAS

“Non-Exclusive Resort Facilities Use Areas” consist of those portions of the Resort that are used and shared by Declarant and all Unit Owners and their Permitted Users.

3.106.2. LIMITED USE AREAS

“Limited Use Areas” consist of those areas that are used by one or more Unit Owners, but not by all Unit Owners.

3.106.3. RESORT SERVICE AREAS

“Resort Service Areas” consist of those portions of the Resort that are used exclusively by Declarant, the Hotel Operator, and their respective agents and independent contractors, to provide services to Permitted Users.

3.107. RESORT QUALITY STANDARDS

“Resort Quality Standards” shall mean at any time, the higher of the following standards, which shall at all times define the minimum standard of construction, maintenance, repair and restoration of the Resort: the standard required to operate, maintain, repair and restore the Resort in a condition and a quality level no less than that which existed at the time that the Resort was initially completed (ordinary wear and tear excepted); but in any event, no less than the highest standard of the Hotel Operator then operating the Resort.

3.108. RESORT RULES AND REGULATIONS; RESORT RULES

“Resort Rules and Regulations” or “Resort Rules” shall mean those rules and regulations established by Declarant for all Guest Unit Owners, and their Lessees and Private Guests, relating to the use of the Guest Units.

3.109. RULE; OPERATING RULE

“Rule(s)” or “Operating Rule(s)” shall mean and refer to a regulation(s) adopted by Declarant and thereafter the Board under **CIVIL CODE §1357.100 et seq.** that applies generally to the Operation of the Project or the conduct of the business and affairs of the Association, Owners, Permitted Users and their respective Invitees within the Project.

3.110. SQUARE FOOTAGE

“Square Footage” shall mean shall mean and refer: **(a)** as to each **Guest Unit**, its square footage as allocated in **EXHIBIT “B”** hereto notwithstanding the physical dimensions or boundaries of any Building perimeter wall or any interior Demising Wall as calculated by any other measurement; or **(b)** as to all **Guest Units**, to the total of all such individual **Guest Unit** Square Footages as described in **EXHIBIT “B”**. Notwithstanding anything contained herein to the contrary, Guest Unit Square Footage shall not be determinative of the boundaries of the Guest Unit itself. Guest Unit Square Footage is for the purpose of calculating the allocation of Assessments, charges, expenses, and such other calculations among the various Guest Units as provided herein.

3.111. SPECIAL WIRING

“Special Wiring” shall mean all electrical, cable television, computer or any other type of conduit or wire of an oversized or special nature installed in the Association Property which is exclusively used by a particular Owner or two or more Owners, in operating equipment which requires electrical power or other type of electronic transmission that cannot be accommodated by utility conduit or wire installed as part of the original construction of an improvement in the Project. Installation of Special Wiring and/or equipment which is required to utilize such Special Wiring shall require the written approval of the Board or its delegated committee, which shall not be unreasonably withheld vis-à-vis the health, safety and welfare of persons and property in the Project.

3.112. SUBSEQUENT OWNER

“Subsequent Owner” shall mean and refer to a Person who has purchased a Guest Unit from an Original Buyer or any subsequent Owner of a Guest Unit, other than Declarant for purposes of ownership and use thereof.

3.113. TRANSIENT OCCUPANCY ORDINANCE

“Transient Occupancy Ordinance” shall mean **Title 3.24 of the Municipal Code** of the City pertaining to, among other things, the assessment, levy and collection of transient occupancy tax, as the same may be amended from time to time.

3.114. UNIT

“Unit” shall mean and refer to the elements of a Condominium that are not owned in common with the other Owners of Condominiums in the Project. There are four (4) types of Units in the Project in two (2) different categories (“*Unit Category*”):

3.114.1. CONDOMINIUM UNITS (Category)

A. GUEST UNITS

“Guest Units” shall mean and refer to those Separate Interests shown and identified on the Condominium Plan as “UNIT” followed by a number.

B. CONVERTED UNITS

“Converted Unit(s)” shall mean and refer to an original Resort Facilities Unit Separate Interest which is converted into a Condominium Unit by the Hotel Owner in accordance with the provisions therefor contained herein.

3.114.2. RESORT FACILITIES UNITS (Category)

A. HOTEL UNIT

“Hotel Unit” shall mean and refer to that Separate Interest shown, identified and/or described on the Condominium Plan as “Hotel,” “H” or “Hotel Unit,” over portions of which Declarant has granted an easement to the Condominium Unit Owners for egress and ingress to and from their Units and non-exclusive use of certain Improvements located within the Hotel Unit, all as more fully described in the **Resort Covenant**. The Hotel Unit shall not be a Condominium Unit as defined herein.

B. COMMERCIAL UNITS

“Commercial Units” shall mean and refer to those Separate Interests shown and identified on the Condominium Plan as “C-#” Commercial Units.” A Commercial Unit shall not be a Condominium Unit as defined herein, unless specifically converted thereto by the Hotel Unit Owner, as more fully described herein.

C. GARAGE UNIT

“Garage Unit” shall mean and refer to that Separate Interest shown and identified on the Condominium as the “Garage,” “G” or “Garage Unit.” The Garage Unit shall not be a Condominium Unit as defined herein.

3.115. UNIT RESPONSIBILITY(IES); UNIT OBLIGATION(S)

“Unit Responsibility(ies),” or “Unit Obligation(s)” shall mean and refer to any responsibility, duty and/or obligation a Guest Unit Owner and/or Permitted User may have pursuant to this Declaration, any other Governing Document, Applicable Law, resolution by the Board or determination by any Board delegated committee, with respect to such Guest Unit.

3.116. UTILITY CHARGES

“Utility Charges” shall mean and refer to all charges associated with providing water, sewer, electrical, gas and other utility services to the Project and the Units, which, are either not separately metered or are sub-metered to the Units or separately allocated thereto by the Association, for such utility services obtained by the Association and provided to the Owners, as may further be provided in this Declaration.

3.117. UTILITIES; UTILITY FACILITY(IES)

“Utilities” or “Utility Facility(ies)” shall mean and refer to, but not be limited to, internal and external: telephone, electrical, television and computer wiring, cable, satellite dish and/or similar transmission devices and/or media available now or in the future; gas, water, sanitary sewer and drainage facilities; plumbing, lighting, heating and air conditioning facilities, including air conditioning compressors and condensers and all such other similar utilities.

3.118. VEHICULAR SPACE

“Vehicular Space” shall mean and refer to any parking space within the Property.

3.119. VOTING

“Voting” shall mean and refer to the voting rights attributed to a Condominium Unit and its Owner, pursuant to **Section 8.2** herein.

3.120. VOTING AND ELECTION PROCEDURES POLICY; VOTING POLICY

“Voting Policy” or “Voting and Election Procedures Policy” shall mean and refer to specific procedures adopted by the Board for Member decision-making as described in the BYLAWS, pursuant to **CIVIL CODE §1363.03**, or its successor statute, including any quorum requirement not otherwise addressed by statute or specific provision of the Governing Documents.

3.121. VOTING POWER

“Voting Power” shall mean those Members of the Association who are eligible to vote, as provided in the Bylaws.

ARTICLE 4. OWNERSHIP; PARTITION

4.1. OWNERSHIP INTERESTS.

Ownership of a Condominium shall include those interests described in **Section 1.8** hereinabove

4.2. CONVEYANCE OF ASSOCIATION PROPERTY

Declarant covenants for itself, its successors and assigns, that Declarant will convey to the Association the Association Property prior to or contemporaneously with the first Close of Escrow, free of all liens and encumbrances except (a) current real property taxes (which shall be prorated as of the date of

conveyance), (b) any nonmonetary title exceptions of record, (c) these CC&RS, but specifically reserving to Declarant the easements described in the **Article** entitled “EASEMENTS” hereafter, and (d) the **Resort Covenant**.

4.3. CONVEYANCE OF UNDIVIDED INTEREST COMMON AREA

The Undivided Interest Common Area shall be conveyed from Declarant to an Owner as an Fractional Interest appurtenant to such Owner’s Unit Separate Interest, and thereafter owned as described in **Section 3.52** above. Any Fractional Interest not conveyed from Declarant to an Owner shall be retained and owned by Declarant in the same manner as described in **Section 3.52** above.

4.4. NO SEPARATION OF INTERESTS

No Owner may sell, assign, lease or convey such Owner’s Fractional Interest in the Undivided Interest Common Area separate and apart from its Unit, nor any portion of, or appurtenance to its Unit apart from the entire Unit. Anything in the Article entitled “AMENDMENTS” herein to the contrary notwithstanding, this Article shall not be amended, modified or rescinded until Declarant has conveyed title to the last Condominium in the Project to a Purchaser or other Person, without (a) the prior written consent of Declarant, and (b) the Recording of said written consent.

4.5. PARTITION

Each of the Owners of a Unit, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Property, except upon the showing that such partition is consistent with the requirements of **CIVIL CODE §1359**.

4.6. POWER OF ATTORNEY

The Association is hereby granted an irrevocable power of attorney to sell the Property for the benefit of all the Owners thereof when partition of the Owners’ interests in the Undivided Interest Common Area may be had pursuant to the Article entitled “DAMAGE AND DESTRUCTION” hereinafter or the Section entitled “*Partition*” hereinabove. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding an aggregate of sixty-seven percent (67%) of the interest in the Undivided Interest Common Area by any two (2) members of the Board who are hereby authorized on behalf of the Association to record a certificate of exercise with the County Recorder, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

ARTICLE 5. EASEMENTS

The interests in the Common Area and Units described in the **Article** above entitled “OWNERSHIP” are or may be subject to easements granted and reserved in this Declaration and other Governing Documents. Each of such easements reserved or granted shall be deemed to be established, if not already established, upon the Recordation of this Declaration, unless otherwise provided, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Units superior to all other encumbrances applied against or in favor of any portion of the Project, excepting those contained in the **Resort Covenant**. Individual grant deeds to Units may, but shall not be required to set forth the easements specified in this Article.

5.1. EASEMENTS

5.1.1. AMENDMENT TO ELIMINATE EASEMENTS

For so long as Declarant owns any interest in any portion of the Resort (a) this Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempts to do so shall have no effect, and (b) any attempt to

modify or eliminate this Article or any provision hereof shall likewise require the prior written approval of Declarant.

5.1.2. NATURE OF EASEMENTS

Unless otherwise set forth herein, any easement reserved in this Declaration shall be nonexclusive. Any and all easements reserved in this Declaration shall be deemed to be in full force and effect whether or not referred to, reserved, and/or granted, in any instrument of conveyance.

5.1.3. CERTAIN RIGHTS AND EASEMENTS RESERVED TO DECLARANT

A. UTILITY FACILITIES

Easements over the Association Property for the installation and maintenance of electric, telephone, water, cable TV, gas and sanitary sewer lines and facilities, landscaping and drainage improvements as required for the Map, the Condominium Plan, and as may hereafter be required or needed to service the Resort, or for the benefit of owners of any real property adjoining or in the vicinity of the Resort, or for the construction of all Improvements to the Association Property to be made by Declarant, are hereby reserved by Declarant for the benefit of the Declarant and the Hotel Operator. Declarant and the Hotel Operator each shall have the power to grant and convey to any third party such easements. Each Unit Owner, in accepting a deed to a Unit, expressly consents to such easements and authorizes and appoints Declarant (so long as Declarant owns one or more Units) or the President of the Association, as his or her attorney-in-fact to execute any and all instruments conveying or creating such easements. The power of attorney created hereunder is coupled with an interest and shall be irrevocable, and shall be a covenant running with the land and an equitable servitude. Declarant, for itself and its successors, assigns, agents, employees, contractors, subcontractors, and other authorized personnel, further reserves, for a period of eleven (11) years following the date of issuance of a notice of completion for each Building, an exclusive easement in, over and through the Association Property for the renovation, rehabilitation, remodeling, refurbishment and construction of the Association Property and the improvements to the Association Common Area. The use of the easements described above in this subsection shall not unreasonably interfere with or diminish the rights of Unit Owners, Permitted Users, or Declarant to occupy the Units, the Exclusive Use Common Areas appurtenant thereto, the Association Common Area (other than the Exclusive Use Common Areas not appurtenant to the Unit so occupied), and to use the Common Furnishings.

B. UTILITIES

There are hereby reserved to Declarant, together with the right to grant and transfer same, easements and rights over the Property for the installation, maintenance, and repair of electric, telephone, security, cable television, satellite television, water, gas, sanitary sewer, drainage, and other utility lines and facilities as are needed to service the Resort; provided, however, such easements and rights shall not unreasonably interfere with the use and enjoyment by the Condominium Unit Owners of their Units or the Common Area.

C. VENTILATION AND OTHER SYSTEMS

There is hereby reserved to Declarant, together with the right to grant and transfer same, easements and rights in, on, over, under, along and across all portions of the Common Area, for the Operation of ventilation and/or other systems and related Improvements; provided, however, such easements and rights shall not unreasonably interfere with the use and enjoyment by the Condominium Unit Owners of their Units or the Common Area.

5.1.4. CERTAIN EASEMENTS FOR CONDOMINIUM UNIT OWNERS

A. RIGHTS AND DUTIES; UTILITIES AND TELEVISION

Wherever Utility Facilities are installed within the Condominium Project, the Condominium Units which are served by said Utility Facilities shall have, and there are hereby reserved Condominium Unit Owners, together with the right to grant and transfer same, easements and rights to the full extent necessary for the full use and enjoyment of such portion of such Utility Facilities which service such Condominium Units, together with the right to Enter Condominium Units owned by others, or to have utility companies enter Condominium Units owned by others, in or upon which said Utility Facilities, or any portions thereof, lie, to Operate Utility Facilities as and when the same may be necessary, provided that such Entering Condominium Unit Owner or utility company shall repair all damage to any Condominium Unit caused by such entry as promptly as possible after completion of work thereon.

B. CONDOMINIUM UNIT OWNERS' EASEMENTS IN COMMON AREA

Subject to the provisions of this Declaration, every Condominium Unit Owner, its Permitted Users and Invitees shall have a nonexclusive easement of access, ingress, egress, use and enjoyment of, in and to the Common Area and such easements shall be appurtenant to and shall pass with title to every Condominium Unit, subject to the following:

(1) The right of the Board to make Rules relating to the Operation and use of the Common Area.

(2) Except as otherwise provided in this Declaration with respect to Declarant's rights, the right of the Association acting through its Board to Operate the Common Area.

(3) The right of the Board to grant to third parties such permits, licenses (which may be irrevocable) and easements over the Common Area, for utilities and other purposes necessary for the proper operation of the Project, to serve other real property.

(4) The right of the Board to convey portions of the Common Area to an adjacent real property owner or public entity in connection with a boundary adjustment.

(5) The right of the Association or its authorized agent to access, ingress and egress over the Common Area, and the right of installation and use of Utility Facilities therein for the benefit of the Units and the Common Area.

(6) Subject to the provisions of this Declaration and the right reserved by Declarant herein to reserve and grant exclusive easements over Common Area Vehicular Spaces, the Association's right to assign, license or otherwise designate and control parking within the Common Area and to promulgate Rules to control such parking in a manner consistent with this Declaration and the other Governing Documents.

(7) The Association's right to limit, on a reasonable basis, the number of Permitted Users and their Invitees using the recreational and other facilities situated within the Common Area. Any such limitation or restriction shall be set forth in the Association's Rules.

C. CONDOMINIUM UNIT OWNERS' EASEMENTS IN HOTEL FACILITIES UNITS

Subject to the provisions of this Declaration and the Resort Covenant, every Condominium Unit Owner, its Permitted Users and Invitees shall have: (a) a nonexclusive easement in, over and through the Hotel Facilities for access, ingress and egress to and from their respective

Units; and (b) exclusive use of some Improvements and non-exclusive use of other Improvements located within the Hotel Facilities Units, all as more fully described in the Resort Covenant; provided, however, that granting of such easements will result in an *Easement Fee* assessed by the Owner(s) of the Hotel Facilities Units against the Condominium Unit Owners to defray costs of Operation of the Hotel Facilities. The foregoing easements shall be appurtenant to and shall pass with title to every Condominium Unit.

D. OTHER EXCLUSIVE USE EASEMENTS; LICENSES

Declarant hereby reserves the right to grant and assign an Exclusive Easement, or a temporary use license, over a portion or portions of non-exclusive Common Area to one or more Condominium Units, provided that such portion(s) of said Common Area so granted or licensed (i) is in substantial conformance with Declarant's intended Development Plan, or (ii) removes the burden of its Operation from the Association and is generally inaccessible and not of general use to the Members at large, or (c) as may be otherwise authorized pursuant to **CIVIL CODE §1363.07**.

5.1.5. CERTAIN EASEMENTS FOR ASSOCIATION

A. ASSOCIATION RIGHTS

There are hereby reserved to the Association easements over the Resort Facilities Units for the purpose of permitting the Association to discharge its obligations and exercise its duties as described in this Declaration, subject to the **Resort Easement** and the provisions of the **Resort Covenant**.

B. RIGHTS AND DUTIES; UTILITIES

Whenever Utility Facilities installed within the Resort serve recreational or other facilities within the Common Area, the Association shall have the right, and there are hereby reserved to the Association, together with the right to grant and transfer the same, easements and rights to the full extent necessary for the full use and enjoyment of such portion of such Utility Facilities, and to enter upon all portions of the Resort, or to have utility companies enter upon all portions of the Resort, including all Units in or upon which said Utility Facilities are located for purposes of Operation as and when the same may be necessary, subject to the **Resort Easement** and the provisions of the **Resort Covenant**, provided the Association or utility company shall promptly repair all damage, including damage to any Unit, caused by such entry as promptly as possible after completion of work thereon.

5.1.6. CERTAIN EASEMENTS FOR DECLARATION AND HOTEL OPERATOR

A. DECLARANT'S AND DECLARANT'S EASEMENTS IN COMMON AREA

Declarant hereby reserves for itself and to the Hotel Operator, with the right to grant and transfer the same, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in and to the Common Area for purposes of carrying out the responsibilities of the Hotel Operator in connection with the Operation of the Resort and the Condominium Project.

B. DECLARANT'S AND DECLARANT'S EASEMENTS IN THE CONDOMINIUM PROJECT

Declarant hereby reserves for itself and to the Hotel Operator, with the right to grant and transfer the same, a nonexclusive easement in, on, over and through the Hotel to Operate the Property as a condominium-hotel project pursuant to this Declaration, the Resort Covenant and the Permits.

C. RIGHTS OF ENTRY

Declarant hereby reserves for itself and to the Hotel Operator, with the right to grant and transfer the same, an easement in, on, over, along, through and across each Condominium Unit, including, without limitation, the interior of such Condominium Units, for the purpose of Operating any Condominium Unit, and taking whatever action may be deemed necessary or proper by Declarant, or their respective assignee or delegate, consistent with the provisions of this Declaration and the Resort Covenant. Such right of entry shall be exercised in such a manner as to avoid any unreasonable or unnecessary interference with the possession, use and enjoyment of the rightful occupant of such Condominium Unit and shall be preceded by reasonable notice to such occupant whenever the circumstances permit. Any action taken by Declarant or the Hotel Operator pursuant to the foregoing provisions of this subsection must be reasonably related to the performance by Declarant or the Hotel Operator of its responsibilities under the terms of this Declaration and the Resort Covenant. Any damage caused to a Condominium Unit by such entry by Declarant or by any person authorized by Declarant shall be repaired by Declarant at the expense of the Condominium Unit Owner. Furthermore, a Condominium Unit Owner shall permit Declarant to enter its, his or her Condominium Unit for the purpose of performing required installations, alterations or repairs to the mechanical or electrical services to the Condominium Unit. In case of an Emergency, such right of entry shall be immediate. Upon receipt of reasonable notice from Declarant or Hotel Operator, each Condominium Unit Owner shall vacate its, his or her Condominium Unit in order to accommodate efforts of Declarant, Hotel Operator or its agents to perform any other maintenance or repairs pursuant to this Resort Covenant. Declarant and Hotel Operator shall have the right of entry to the Condominium Units and the right to temporarily remove Condominium Unit Owners from their Condominium Units, if necessary, to accomplish their duties as provided herein. The cost of performing any such maintenance or repairs shall be paid by the Condominium Unit Owner, together with the cost of any temporary relocation required by such installations, alterations or repairs.

D. DRAINAGE EASEMENTS

Declarant hereby reserves for itself, with the right to grant and transfer the same, an easement over the Common Area and any Exclusive Use Area therein, for the purpose of permitting run-off of surface waters in, on, over, under and across the entire Property. No Condominium Unit Owner shall construct, modify, or alter any Improvement(s) if to do so will interfere with the natural drainage course of water over and across the Property as originally constructed.

5.1.7. ENCROACHMENT

Declarant hereby reserves for itself, with the right to grant and transfer the same to any Hotel Operator, and to any Unit Owner, together with the right to grant and transfer same, the reciprocal rights and easements for the purposes of encroachments resulting from the construction, reconstruction, repair, shifting, settlement or other movement of any Improvements upon the dominant tenement, and for the maintenance of such encroachments. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachment exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be cured by repair and restoration of the structure.

5.1.8. EXCLUSIVE USE AREAS

Declarant expressly reserves for the benefit of certain Condominium Unit Owners exclusive easements over the Property for use of the **Exclusive Use Areas** adjacent to a Condominium Unit, which may consist of storage, balcony or patio areas shown and assigned, if any, on the

Condominium Plan, and/or assigned and conveyed in the individual grant deeds of the respective Condominium Units to the initial Purchasers of the applicable Condominium Units, if any, or created in connection with the creation of any Association Property.

5.1.9. UTILITY COMPANY EASEMENTS

Declarant expressly reserves for the benefit of the Association the right of Declarant to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary for the proper development and disposal of the Property.

5.2. RESORT EASEMENT

The **Covenant Declarant**, its respective successors, assigns, affiliates, agents, employees, contractors, subcontractors and other authorized personnel, is hereby declared to have:

(a) a perpetual, non-exclusive easement (the "*Non-Exclusive Resort Easement*") in, over and through each **Guest Unit** at any reasonably necessary time, whether or not in the presence of the Guest Unit Owner thereof, to enter upon any Guest Unit, in the manner provided in **Section 5.1.6.C** herein, for any purpose, but without any obligation, reasonably related to the exercise of the rights and obligations of Covenant Declarant under the **Resort Covenant**. Nothing herein shall be construed to impose any obligation upon Covenant Declarant to maintain or repair any property or Improvements required to be maintained or repaired by the Guest Unit Owners.

(b) a perpetual, exclusive easement (the "*Exclusive Resort Easement*") in, on, over and through the Association Property, together with the right to grant and transfer same, for the Operation of the Association Property and all Improvements therein reasonably related to the exercise of the rights and obligations of Covenant Declarant under the **Resort Covenant**. Nothing herein shall be construed to impose any obligation upon Covenant Declarant to maintain or repair any property or Improvements required to be Operated by the Association.

5.3. DEVELOPMENT AND MARKETING EASEMENTS

Declarant is causing or has caused development activities ("Development Activities") to be performed on certain Common Area and Unit improvements. In order that the Development Activities may be completed and to promote the marketing, sale, rental and other disposition of the Condominium Units as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the easements and rights set forth herein and its related provisions in these CC&RS.

5.3.1. DEVELOPMENT EASEMENTS

Declarant hereby expressly reserves for itself and its authorized agents and successors in interest one or more development easements ("Development Easements") over the Common Area, for purposes of Declarant's conducting such Development Activities therein as may be necessary to complete such Development Activities as Declarant may deem appropriate, including Declarant's right to segregate such portions of the Common Area from access or use by the Association, Owners, Permitted Users and their respective Invitees, in order to (a) properly conduct and effect such Development Activities, and/or (b) safeguard the health, safety and/or welfare of such Owners, Permitted Users and their Invitees therefrom. A Development Easement shall include the right of ingress and egress over, under, upon and across the Common Area to and from any Development Easement area, together with the right of Declarant to deny access of such Development Easement area to an Owner, an Permitted User and agents of the Association and their respective Invitees, by fencing or any other reasonable method prior to completion of the Development Activities within any such Development Easement Area. The foregoing notwithstanding, the Association shall have the right of access, ingress and egress on, over and across the Improvements within any Development Easement area for purposes of Operating the Common Area and its Improvements,

excluding the Operation of any Improvements for which the responsibility therefor shall be that of Declarant pursuant to the Development Easements reserved by these CC&RS.

5.3.2. MARKETING EASEMENTS

Declarant hereby expressly reserves Marketing Easements for the benefit of Declarant, its authorized agents and successors in interest.

ARTICLE 6. DECLARANT’S RIGHTS AND RESERVATIONS

6.1. GENERAL

Subject to applicable laws and regulations, nothing in these CC&RS shall limit, and no Condominium Unit Owner or the Association shall do anything to interfere with, the right of Declarant to subdivide or resubdivide any portion of the Property (subject to **Section 6.2.2**), Record any condominium plan(s) for all or a portion of the Property owned by Declarant or the Association, or to complete Improvements to and on the Common Area or any portion of the Property owned solely or partially by Declarant, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Property so long as Declarant owns any portion of the Property. Each Condominium Unit Owner, by accepting a deed to a Condominium Unit, hereby acknowledges that the activities of Declarant may temporarily or permanently impair the view of such Condominium Unit Owner and may constitute an inconvenience or nuisance to the Condominium Unit Owners, and hereby consents to such impairment, inconvenience or nuisance. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Condominium Unit in the Condominium Project by a Purchaser from Declarant to establish on that Condominium Unit additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. Declarant may use any Condominium Units owned by Declarant as model unit complexes, or real estate sales or leasing offices. The rights of Declarant hereunder and elsewhere in these CC&RS may be assigned by Declarant to any successor in interest to any portion of Declarant’s interest in any portion of the Property by a written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as developer of the Property, will be required before any amendment to this Article shall be effective. Each Condominium Unit Owner hereby grants, upon acceptance of a deed to such Condominium Unit Owner’s Condominium Unit, an irrevocable, special Power of Attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article and the CC&RS. Declarant and its prospective purchasers of Condominium Units shall be entitled to the nonexclusive use of the Common Area and any recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, in order to show the Property to its prospective purchasers and to dispose of the Property as provided herein. Declarant, and its successors and tenants, shall also be entitled to the nonexclusive use of any portions of the Condominium Project which comprise private streets, drives and walkways for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property. The Association shall provide Declarant with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor.

6.2. RIGHT OF DECLARANT TO REDESIGN RESORT AND CONDOMINIUM PROJECT

6.2.1. GENERAL

There is no guarantee that the Resort or the Condominium Project will be developed as originally planned. Subject to the restrictions and limitations set forth in this Section, Declarant reserves the right, in its sole discretion, from time to time, within a period of ten (10) years from the date of

the Recording this Declaration, or at any time or at different times within such ten (10) year period, to redesign the Property or any portion or aspect thereof, including, but not limited to, any Improvement constructed or proposed to be constructed on the Property and, in connection with such redesign, to effect the following changes in the Condominium Project and/or the Resort Facilities:

- (a) Alter the vertical and/or horizontal boundaries, of any Improvement.
- (b) Alter the size, shape, configuration, floor plan and/or location of any Condominium Units.
- (c) Change the configuration of any Improvement.
- (d) Adjust the configuration of the Common Area and the Resort Facilities Use Areas boundary lines.
- (e) Effect deviations from the Condominium Unit Plan which result during the actual construction of the Improvements
- (f) Change the "quality" of the Resort (e.g. change the "Hotel Star Rating").

6.2.2. GENERAL RESTRICTIONS ON DESIGN

The rights of Declarant set forth in **Section 6.2.1** above are subject to the following limitations: "In no event shall the Condominium Project, when completed, exceed *seventy-eight (78) Guest Units.*"

6.2.3. AMENDMENT TO CONDOMINIUM PLAN

In the event that a redesign of all or any portion of the Condominium Project in accordance with the provisions of this Article affects any Guest Units in the Condominium Project so as to necessitate the preparation of an amendment to the Condominium Plan, including any amendment necessary to cause the Condominium Plan to comply with the Improvements as actually built, Declarant or Incorporator shall have the right to prepare or cause to be prepared, execute, acknowledge, File or cause to be Filed for approval and Record or cause to be Recorded an amendment to the Condominium Plan. The amendment to the Condominium Plan shall, when Recorded, have the effect of (a) relocating the Common Area and any Resort Facilities Use Areas therein and each Guest Unit to the extent set forth on the amendment to the Condominium Plan, (b) vesting in each Guest Unit Owner (including Declarant with respect to any unsold Guest Units) an undivided interest in the Common Area as depicted on the amendment to the Condominium Plan, (c) vesting in Declarant an undivided interest in the Resort Facilities Use Areas as depicted on the amendment to the Condominium Plan, (d) divesting each Guest Unit Owner (except Declarant) of all right, title and interest to any Guest Unit, other than each Guest Unit Owner's Guest Unit, depicted on the amendment to the Condominium Plan, (e) vesting in each holder of a Mortgage an undivided interest (to the extent of the interest in the Common Area owned by the Guest Unit Owner of the Guest Unit) which is the subject of such Mortgage in the Common Area as depicted on the amendment to the Condominium Plan and (f) divesting each holder of a Mortgage of all right, title and interest to each Guest Unit (other than the Guest Unit Owner's Guest Unit which is the subject of such Mortgage) depicted on the amendment to the Condominium Plan. The adjustment of any Mortgage in accordance with the provisions of this Section shall not affect the priority of any such Mortgage with respect to any other matters affecting title to the Guest Unit which is the subject thereof.

6.2.4. POWER OF ATTORNEY

Each Guest Unit Owner, by accepting a deed to a Guest Unit, shall be deemed to have constituted and irrevocably appointed, for himself and each of his or her Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees,

devises, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, Declarant or the Incorporator as his or her attorney-in-fact and thereby to have conveyed a power of attorney coupled with an interest ("Power of Attorney") to Declarant or the Incorporator as his or her attorney-in-fact, whether acting in Declarant's or the Incorporator's name alone or expressly as attorney-in-fact or agent for such Guest Unit Owner, to effect the redesign of all or any portion of the Property in accordance with the limitations and requirements set forth in this Article, and further:

(a) To prepare or cause to be prepared, execute, acknowledge, File or cause to be Filed for approval and File or Record or cause to be Filed or Recorded any map or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California as in effect on the date of Recordation of this Declaration and as thereafter amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Condominium Project as in effect on the date of Recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(b) To prepare or cause to be prepared, execute, and acknowledge and File or cause to be Filed for approval and Record or cause to be Recorded any amendment to the Condominium Plan, including any amendment necessary to cause the Condominium Plan to comply with the Condominium Project as actually built, which may be required or permitted by the laws of the City, the County or the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Condominium Project as in effect on the date of Recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(c) To prepare or cause to be prepared, execute, acknowledge and File or cause to be Filed for approval, any application for zoning or setback changes or variance or special use permits or any other permits and/or reports required or permitted by the laws of the City, the County, or the State of California as in effect on the date of Recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Condominium Project as in effect on the date of Recordation of this Declaration and thereafter enacted or amended and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(d) To make application for any property reports or public reports or amendments thereto or exceptions from the requirements therefor required or permitted in order to comply with federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands to the public and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any agreements and bonds securing the performance of the obligations contained therein;

(e) To deliver any Public Reports or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(f) To prepare or cause to be prepared, execute, acknowledge, File or cause to be Filed for approval, any registration or any application for any license (including, without limitation, any business license that may be required pursuant to the Special Use Permit or any applicable law), permit, approval, exemption, ruling or entitlement required or permitted pursuant to any law or regulation in effect as of the date of the Recording of this Declaration and as hereafter enacted or amended by any federal, state and local governmental entities and authorities, and in connection therewith to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any agreement and bonds and post deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations;

(g) To prepare or cause to be prepared, execute, acknowledge and Record or cause to be Recorded any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any Guest Units, whether constructed or to be constructed, in the Condominium Project; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

6.2.5. INDEMNIFICATION

Declarant shall indemnify and hold each Guest Unit Owner harmless from all liabilities, including reasonable attorneys' fees, which are incurred as a direct result of the execution by Declarant or Incorporator of any improvement agreements or bonds, or both, in connection with the exercise by Declarant of the Power of Attorney set forth in Section 6.2.4 hereof.

6.2.6. MORTGAGEES

The acceptance or creation of any Mortgage whether voluntary or involuntary, and whether or not created in good faith and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the Power of Attorney described in Section 6.2.4 hereof.

6.2.7. BINDING

Each and all Guest Unit Owners and each of their respective Mortgagees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, shall be deemed to have expressly agreed, assented and consented to each and all of the provisions of this Declaration and shall be deemed to have constituted and irrevocably appointed Declarant or the Incorporator as his or her attorney in fact to carry out the powers described in Section 6.2.4 hereof, and such Power of Attorney shall be deemed to continue to be coupled with an interest.

6.3. FACILITY AREAS: RESERVATION, CONVEYANCE

Declarant hereby reserves all Facility Areas from the conveyance of the Common Area or a Unit, with the right, subject to these CC&RS, to subsequently grant and/or assign any such Facility Area to one or more Units as an Exclusive Use Easement pursuant to the provisions of these CC&RS, the Condominium Plan and/or an Ancillary Instrument, and as may be further defined and clarified respectively therein. Declarant's reservation and right to grant or assign Exclusive Use Areas shall terminate upon the last Close of Escrow.

6.3.1. AUTOMATIC CONVEYANCE; CONVEYANCE BY APPURTENANT USE

Those portions of the Property shown and designated as a numbered Exclusive Use Area on the Condominium Plan shall automatically be conveyed as an Exclusive Use Area appurtenant to the Guest Unit bearing the same numerical designation. Portions of the Property described but not numbered on the Condominium Plan may be conveyed as Exclusive Use Areas by their appurtenant use to a specific Unit (*e.g. air-condition compressor locations*).

6.3.2. UTILITY FACILITIES

Utility Facilities intended for the exclusive use by the respective Owners and Permitted Users of Units, shall automatically be conveyed to each such Owner as an Exclusive Use Common Area to such Owner's Unit, concurrent with the conveyance of such Unit.

6.4. DECLARANT AND ASSOCIATION EASEMENTS

6.4.1. OPERATION AND MAINTENANCE

There is hereby reserved by Declarant for the benefit of Declarant (until the last Close of Escrow or the termination of any Declarant contractual agreements or warranties with respect to any Association Property improvements, whichever is later) and granted to the Association, such easements on, over, under, across and through the Property, as may be necessary to service and maintain the Property, or any portion thereof, and to perform the respective duties and obligations of Declarant and/or the Association, as the case may be, as set forth in, but not limited to: (a) any contractual agreements and/or warranties with respect to any Association Property improvements, or (b) this Declaration and the other Governing Documents, including any Association Rules and/or Aesthetic Standards and their implementation; and to perform any obligations not performed by the Owner pursuant to the terms of this Declaration and the other Governing Documents.

6.4.2. UTILITIES; THIRD PARTIES

For so long as Declarant owns any portion of the Property, Declarant shall have the power to grant and convey to any Owner, the Association or other Person, in the name of and as attorney-in-fact for the Association and/or any and all Owners, such easements and rights-of-way as may hereafter be required or needed to service the Association Property, or any portion respectively thereof, for purposes of constructing, erecting, operating or maintaining lines, cables, wire, conduits or other devices for electricity, cable or master antenna television, power, telephone, computer and other purposes, as well as for public and private sewers, storm water drains and pipes, water systems, sprinkler systems, water, gas lines or pipes, and any similar public or quasi-public improvements or facilities. Upon the first Close of Escrow, the Association shall additionally have the power to grant and convey such easements and rights-of-way in the name of and as attorney-in-fact for any and all Owners; provided, however, until the last Close of Escrow, any such grant or conveyance shall require the approval of Declarant with respect to Declarant's reservations herein. Each Purchaser, in accepting a deed to a Unit, expressly consents to such easements and rights of way and authorizes and appoints the Association and, until the last Close of Escrow, as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. The foregoing notwithstanding, no such easement or right-of-way can be granted if it would permanently interfere with the use, occupancy or enjoyment by any Owner of that portion of such Owner's Unit, unless approved in writing by any such "interfered" Owner(s).

6.5. ASSIGNABILITY OF RIGHTS

The rights of Declarant under this Section may be assigned to any successor(s) by an express assignment in a Recorded instrument, including without limitation a deed, option or lease. The foregoing

notwithstanding, this Declaration shall not be construed to limit the right of Declarant at any time prior to such assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

6.6. LIGHT, AIR OR VIEW

No Owner shall have an easement for light, air or view over any portion of the Property or any improvements therein and no diminution of light, air or view by any Building or improvement now existing or hereafter erected shall entitle the Owner, Permitted User or any Invitee to claim any easement for light, air or view within the Project.

6.7. EASEMENT TO INSPECT AND TEST

6.7.1. RESERVATION OF EASEMENT

Declarant hereby reserves easements to enter any portion of the Project, including the interior of any Unit, to inspect those areas and to conduct testing referred to in **CIVIL CODE §1375**. However, Declarant shall notify the Association, with respect to any Common Expense Area, which is to be inspected and the Owner of the Unit to be inspected of at least three (3) alternative dates and times when such inspection can take place (the earliest of which shall not be less than ten (10) days after the notification is given) and Declarant shall give the Association and Owner, respectively, the opportunity to specify which date and time is acceptable. Should the Association or Owner not respond affirmatively with respect to one of the dates and times within five (5) days, then (1) Declarant may decide which of the dates and times the inspection and testing shall take place and so notify the Association or Owner, respectively; or (2) Declarant may seek a judicial order allowing such inspection and testing to take place. Declarant shall be entitled to its reasonably incurred attorney's fees and be deemed the "*Prevailing Party*" should such a court order be sought and obtained. Declarant shall be obligated to fully repair any damage caused by any testing.

6.7.2. COMMON EXPENSE AREA INSPECTION.

(a) Within ninety (90) days after the first Close of Escrow, Declarant and the Association shall cause an inspection to be performed of any improvements that Declarant has installed, constructed, modified and/or refurbished within the Common Expense Areas. Commencement of such inspection protocol shall commence with either (i) Declarant notifying the Board or the Association's Property Manager of such inspection protocol, or (ii) the Board or the Property Manager notifying Declarant of such inspection protocol. **Within fifteen (15) days after such notice, the parties shall establish a date and time for such inspection, which shall be no later than fifteen (15) days after such notice.** The reasonable cost of such inspection shall be paid by Declarant.

(b) The Property Manager shall inspect the improvements for which Declarant has requested inspection promptly within such fifteen (15) day period. Two representatives of Declarant and two representatives of the Board may accompany the Property Manager during the inspection. The inspection shall be limited to a visual inspection, and improvements shall not be uncovered. The Property Manager shall not be responsible for identifying latent deficiencies. Promptly after the inspection is completed, the Property Manager shall submit a written report (the "*Report*") to Declarant and the Board specifying the respects, if any, to which the Property Manager has determined the inspected improvements may be defective; and/or, if there are no defects, the Report shall so state with respect to each such improvement determined without defect. The Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent deficiencies, if any, the improvements so inspected are without deficiency, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any deficiencies specified in the Report and except with respect to latent deficiencies, if any, and the separate repair obligations of Declarant under express written warranty, if any.

(c) Declarant shall correct any deficiencies specified in the Report, and the Property Manager shall reinspect such improvements within thirty (30) days after Declarant's request. Such reinspection shall be performed in the same manner as provided for the first inspection. Promptly after the reinspection is completed, the Property Manager shall submit another written report (the "Reinspection Report") to Declarant and the Board specifying the deficiencies noted in the Report which have not been corrected, if any, and if all such deficiencies have been corrected the Reinspection Report shall state that such deficiencies have been corrected, such Reinspection Report thereby constituting conclusive and binding evidence therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any deficiencies specified in the Reinspection Report, and except with respect to latent deficiencies, if any, and the separate repair obligations of Declarant under express written warranty, if any.

(d) Additional inspections and Reinspection Reports shall be made, if necessary, all in accordance with and with the same effect as provided hereinabove.

(e) Within ten (10) days after all deficiencies have been corrected, as evidenced by a Report or Reinspection Report, the Board shall be deemed to have accepted the improvements in writing and shall release in writing any and all rights under any and all payment and performance, labor and material and completion bonds pertaining to the improvements, if any.

6.8. COMMENCEMENT OF EASEMENTS

The easements reserved herein shall become effective upon the first Close of Escrow. Individual grant deeds to Units may, but shall not be required to, set forth the easements specified in this Declaration.

6.9. AMENDMENT

The provisions of this Article may not be amended without the consent of Declarant (or its duly authorized successor in interests) until the last Close of Escrow.

ARTICLE 7. THE ASSOCIATION

7.1. THE ORGANIZATION

The Association is a nonprofit mutual benefit corporation formed under the Nonprofit Mutual Benefit Law of the State of California.

7.2. COMMENCEMENT OF ASSOCIATION

The Association shall commence business at such time that a **Board of Directors** has been elected pursuant to the provisions therefor contained in the **Bylaws**.

7.3. INTERIM PERIOD

The "Interim Period" shall mean and refer to that period of time from (a) the date of conveyance of the first Condominium to a Purchaser in the Project, until (b) the date that a Board of Directors of the Association has been elected by the membership pursuant to the provisions therefor contained in the **Bylaws**. During the Interim Period, Declarant or its designated agent may operate and handle the affairs for the Common Expense Area of the Project, as more fully described in the Bylaws. The foregoing notwithstanding, during the Interim Period, the powers granted to the Association and the Board herein, in the Bylaws and in the other Governing Documents, shall inure to Declarant or its agent.

7.4. POWERS AND DUTIES OF THE ASSOCIATION

The Association, acting through its Board of Directors, shall have all of the powers of a California nonprofit mutual benefit corporation, and to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, as

described and subject to the limitations set forth in this Declaration, the Articles of Incorporation and the Bylaws of the Association.

ARTICLE 8. MEMBERSHIP, VOTING, FIRST MEETING

8.1. MEMBERSHIP IN GENERAL

Every Owner of a Unit, including Declarant, shall be a Member of the Association. Ownership of a Unit or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until such owner's interest a Unit in the Project ceases, at which time such Owner's membership in the Association shall automatically cease. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant, and then only to the purchaser. Any attempt to make a prohibited transfer shall be void. The transfer of title to a Unit or interest therein shall operate automatically to transfer the appurtenant membership to the new Owner. As a Member of the Association, each Owner, *subject to the limitations contained in these CC&RS and the Resort Covenant*, is obligated to promptly, fully and faithfully comply with and conform to the Governing Documents.

8.2. COMMENCEMENT OF VOTING RIGHTS

Except for Declarant, voting rights attributable to the Units shall not vest until Assessments have been levied in accordance with the provisions of this Declaration; *provided, however*, the foregoing provisions shall not operate to preclude Declarant, solely for purposes of determining when Class B votes convert to Class A votes under **Section 8.3** hereof, from being vested with Class B voting rights for each and every Guest Unit that has not been sold and conveyed to a Purchaser

8.3. CLASSES OF VOTING RIGHTS

The Association shall have two (2) class(es) of membership:

8.3.1. CLASS A

Each Member, *other than Declarant*, shall be a Class A member. Class A membership entitles the holder to one (1) vote for each Guest Unit of which he or she is record owner. When more than one (1) Person owns any Guest Unit, all such Persons shall be deemed Members; *provided, however*, the vote for such Guest Unit owned by more than one (1) Person shall be exercised as a unit, as they themselves determine in accordance with **Section 8.3.3** below. In no event shall more than one (1) vote be cast by Class A Members for each Guest Unit.

8.3.2. CLASS B

Declarant shall be the sole Class B Member. Class B membership entitles the holder to three (3) votes for each Unit owned. The Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

(a) When the total outstanding votes held by the Class A Members are equal to or greater than the total outstanding votes held by the Class B Member; or

(b) Two (2) years following the first Close of Escrow.

8.3.3. JOINT GUEST UNIT OWNER DISPUTES

The one (1) vote for each Guest Unit owned by a Class A Member must be cast as a single unit; fractional votes shall not be allowed. In the event that the joint Guest Unit Owners of any Condominium Unit are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Guest Unit Owners cast a vote

representing a Guest Unit, it will thereafter be conclusively presumed for all purposes that the Guest Unit Owner(s) were acting with the authority and consent of all other Guest Unit Owners of the same Guest Unit. In the event more votes are cast than are allocated for a particular Guest Unit, none of said votes shall be counted and said votes shall be deemed void.

8.3.4. PERMANENT RIGHT OF HOTEL OWNER TO APPOINT ONE-THIRD OF DIRECTORS

Anything herein to the contrary notwithstanding, in order to assure a continuity of control and Operation of the Board, the Hotel Owner shall have the permanent right to designate one-third of the members of the Board.

8.3.5. SPECIAL VOTING RIGHTS OF CLASS A MEMBERS FOR ELECTION OF DIRECTORS

In any election of Directors, so long as there are two (2) outstanding classes of membership in the Association, not less than twenty percent (20%) of the Directors shall have been elected solely by the votes of Class A Members, other than the Declarant. Such Class A elected representative may be removed prior to the expiration of his or her term of office only by a vote of at least a simple majority of the Members, excluding the Declarant.

8.4. CONTINUING APPROVAL OF DECLARANT

Notwithstanding the termination of the Class "B" membership described in **Section 8.3** above, the approval of Declarant shall continue to be required before the Association may take any of the permitted actions noted in **Sections 8.4(a) through (f)** below, until such time as Owners, other than Declarant, own at least **seventy-five percent (75%)** of the Guest Units in the Property.

(a) Reduction in the level of, or change in allocation of responsibility for (i) Operation of any Association Property subject to this Declaration, which is not otherwise the responsibility of the Hotel Operator pursuant to the Resort Covenant; and (ii) any other Operation obligations of the Association set forth in the **Article** entitled "**RESPONSIBILITIES OF MAINTENANCE**";

(b) Conveyance by the Association of all or any part of the Common Area;

(c) Alteration in the method of fixing and collecting Assessments;

(d) Reduction or modification of any easement rights reserved to Declarant pursuant to the provisions of this Declaration;

(e) Alteration in the method of enforcing the provisions of this Declaration; and

(f) Amendments or Supplements to this Declaration or any other Governing Document which would diminish or otherwise affect Declarant's right of approval regarding the actions enumerated above.

8.5. APPROVAL OF MEMBERS

Member decision-making shall be accomplished pursuant to the Association's *Voting and Election Procedures Policy* as described in the **BYLAWS**, pursuant to **CIVIL CODE §1363.03**.

8.6. FIRST MEETING OF THE ASSOCIATION

The first "*report and information meetings*" (hereinafter, "**Report Meeting(s)**") for Members shall be held within forty-five (45) days after the Close of Escrow which represents the fifty-first percentile interest (51%) in the Project. Thereafter, one or more Report Meetings shall be scheduled and conducted by the Board at least once in each subsequent Fiscal Year. There shall be no Member quorum requirements to convene and conduct a Report Meeting.

8.7. ELECTION OF BOARD OF DIRECTORS

Election of the directors shall be accomplished by secret ballot with cumulative voting, in accordance with the election provisions described in the **BYLAWS**, pursuant to **CIVIL CODE §1363.03**. A Report Meeting may be scheduled to be conducted concurrently (a) with the tabulation of secret ballots for such election of directors and prior to (b) a Board meeting, so that the Board may thereafter elect officers and/or make such other decisions as may be necessary for the Operation of the Board and the Association.

8.8. NO PERSONAL LIABILITY OF BOARD MEMBERS

No member of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any error or omission of the Association, the Board, its authorized agents or employees or its delegated committee, if such person or entity has, on the basis of such information as may be possess by him or it, acted in good faith without willful or intentional misconduct. In addition to the foregoing, as more particularly specified in **CIVIL CODE §1365.7**, or any successor statute or law, any person who suffers bodily injury, including, but not limited to, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Project either as a tenant or as an Owner of no more than two Units, and who, at the time of the act or omission, was a “volunteer” as defined in **CIVIL CODE §1365.7**, or any successor statute or law, shall not recover damages from such Board member, if such Board member committed the act or omission within the scope of such member’s Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of **CIVIL CODE §1365.7**, or any successor statute or law, have been satisfied.

ARTICLE 9. RIGHTS, POWER AND DUTIES OF ASSOCIATION AND BOARD

Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws. Except as otherwise provided in this Declaration, the Articles and the Bylaws, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting rights assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws.

9.1. POWERS OF ASSOCIATION AND BOARD

The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the CC&RS, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below.

9.1.1. PERFORMANCE OF DUTIES

The Association shall have the power to undertake all of the express duties required under the **Section** below entitled “*Duties of the Association*” to be done by the Association.

9.1.2. DELEGATION OF POWERS: PROFESSIONAL MANAGEMENT

The Association, acting by and through the Board, may delegate its power, duties and responsibilities to committees, employees or, by contract, to a professional managing agent (“Manager”). The maximum term of any such contract (“*Management Contract*”) shall be one (1) year, unless a longer term is approved either by vote or written assent of a majority of the voting power of the Association, subject to the Class voting limitations contained in **Section 9.2.14** herein, in which case the maximum term of the Management Contract shall be three (3) years. Each Management Contract shall provide for its termination by either party thereto with cause upon no more than thirty (30) days written notice to the other party, and without cause and without payment of a termination fee upon no more than ninety (90) days written notice to the other party.

9.1.3. RIGHT OF ENFORCEMENT; PENALTIES; NOTICE AND HEARING

A. ENFORCEMENT ACTIONS

The Association in its own name and on its own behalf, or on behalf of any Owner who consents, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges for any violation of the Governing Documents or Board resolutions.

B. PENALTIES AGAINST MEMBERS

The Board shall have the right to impose the following penalties against Members:

(1) Suspension of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period of time during which the Assessment on a Member's Unit remains unpaid;

(2) Suspension of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period not to exceed thirty (30) days for any infraction of the Association's Rules;

(3) Imposition of monetary penalties against an individual Member as a disciplinary measure for failure of a Member to comply with provisions of the Governing Documents or Board resolutions, or as a means of causing the Member to reimburse the Association for costs and expenses incurred by the Association in the repair of damage to the Association Property for which the Member was allegedly responsible, or in bringing the Member and his or her Condominium to compliance with the Governing Documents or Board resolutions; provided, however, no such monetary penalty may be characterized or treated as an Assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of **CIVIL CODE §§ 2924, 2924(b) and 2924(c)**.

The provisions of the preceding paragraph expressly do not apply to charges imposed against a Member consisting of reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments as more fully described in this Declaration.

C. SETTLEMENT PRIOR TO JUDGMENT

In the event legal counsel is retained or legal action is instituted by the Board pursuant to this Section, any settlement prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs and reasonable attorneys' fees.

D. RIGHT TO NOTICE AND HEARING

A Member shall have the right to Notice and Hearing prior to the Board's decisions to impose any suspension or monetary penalty, as more fully described in **Section 10.2** hereafter entitled "*Notice and Hearing.*"

9.1.4. ENTRY BY ASSOCIATION

The Association and the Association's agents or employees shall have the right to Enter into any Guest Unit and any portion of the Common Area to perform such Operations required or related to any Association Obligations and/or in the event of an Emergency.

9.1.5. CONTRACTS FOR GOODS AND SERVICES

The Association shall have the power to contract for goods and services for the benefit of the Common Area and the Project necessary for the Association to perform its Obligations hereunder, subject to such limitations as set forth in this Declaration, the Bylaws and the **Resort Covenant**.

9.1.6. BORROW FUNDS

The Association shall have the right to borrow money to improve, repair or maintain the Common Area and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the assessment liens levied thereon provided that, the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the Association shall require the consent of fifty-one percent (51%) of each class of Members.

9.1.7. TITLE POLICIES

The Association shall have the power to pursue any title claims regarding the Association Property made by any third party, pursuant to any title insurance policy held by the Owners or the Association. Each Owner hereby delegates, on a non-exclusive basis, and assigns to the Association any rights it may have under its title insurance policies to the extent that the title claim relates to the Association Property.

9.1.8. CLAIMS AND ACTIONS

Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to: (a) the application or enforcement of this Declaration and (b) damage to the Association Property or Common Expense Area.

9.1.9. DEDICATE OR GRANT EASEMENTS AND/OR LICENSES

The Board shall have the right to dedicate and/or grant easements and/or issue licenses over all or any portion of the Association Property. In the event an affirmative vote of Association Members is required pursuant to these CC&RS or Applicable Law with respect to Board action with respect to any such right, such affirmative vote of Members of the Association shall be equal to the percentage ratio of the number of directors constituting a majority of the Board, to the total of all Units in the

Project (this provision is intended to specifically meet the “*different percentage*” provision of CIVIL CODE §1363.07).

9.1.10. ENTER INTO SUBSIDY OR MAINTENANCE AGREEMENTS

The Association shall have the power to enter into maintenance or subsidy agreements with Declarant, subject to any prior approval therefor required by the DRE.

9.1.11. POWER OF ATTORNEY TO CORRECT ERRORS

Except as may otherwise be provided in this Declaration, Declarant hereby reserves, for itself and grants to the Incorporator and the Association, powers of attorney to act on behalf of the Owners (including Declarant and the Association, when Declarant or Incorporator alone is exercising the power of attorney herein reserved) and their respective Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, to amend the Condominium Plan or any amendment thereto, by executing on behalf of the affected Owners and Mortgagees an amendment thereto and such instrument(s) to effect any conveyances or partial reconveyances necessary to effect such amendment; provided, however, such powers of attorney hereby reserved or granted are limited as follows: (a) to cure or correct any manifest or technical errors, any ambiguity or defective or inconsistent provisions or any clerical omission or mistake, as evidenced by a written statement in such amendment describing any of the foregoing; or (b) to reconfigure the boundaries of any Unit; provided, however, such power may not be exercised if such exercise would result an actual physical reduction in the living area square footage of an Owner’s (other than Declarant’s) Unit, without the written approval of the Owner of such Unit and any Mortgagee thereof (i.e. if a Plan is amended to reflect the *actual* living area square footage of Unit, which is less than any “stated” square footage noted in any Governing Document or Ancillary Instrument, no written approval would be required). In the event any such foregoing amendment requires the revision or recalculation of any diagrammatic element of the Condominium Plan, then any such amendment shall be duly signed by a land surveyor, civil engineer or other California licensed professional as authorized by Applicable Law to sign a Condominium Plan or any amendment thereto for such purpose(s).

9.1.12. POWER OF BOARD TO DEFINE AND INTERPRET

Each Person who accepts a deed to or leasehold interest in a Unit, hereby agrees and acknowledges that the Board shall have the power and the authority to define, interpret and/or construe certain words and terminologies contained in this Declaration and the Governing Documents *which may otherwise be unclear, vague and/or ambiguous*, and, which, if not so defined, interpreted or construed, would be detrimental to the Board’s ability to conduct, manage and control the affairs and business of the Association, not (a) inconsistent with Applicable Law, (b) not in contravention to the general plan for the Project, or any portion thereof. The foregoing notwithstanding, such power and authority of the Board shall exclude such power and authority over or relating to Declarant, the Hotel Owner, the Hotel Operator or to the Resort Covenant.

9.2. DUTIES OF ASSOCIATION

9.2.1. ASSESSMENTS

The Association through its Board shall have the power and duty to establish, fix, and levy Assessments against the Owners and their Condominiums, and to enforce payment of such Assessments in accordance with the provisions of the Governing Documents.

9.2.2. ASSOCIATION PROPERTY

The Association shall accept the Association Property and improvements situated therein conveyed by Declarant and/or created under this Declaration, subject to such rights and easements as may be reserved thereon by Declarant in favor of the Hotel Owner, the Hotel Operator or as otherwise provided pursuant to the CC&RS of the Resort Covenant, and shall Operate the improvements situated thereon, as well as any other real or personal property acquired by the Association in accordance with the terms and provisions of this Declaration, the Project Permits and Applicable Law,. The Association's obligations to Operate the Association Property and Common Expense Areas shall commence on the date Regular Assessments commence on Units. Until commencement of Regular Assessments on Units, the Association Property shall be Operated by Declarant..

9.2.3. TAXES AND ASSESSMENTS

The Association shall have the duty to pay all real and personal property taxes and assessments and all other taxes levied against the Common Area or against the Association. Such taxes and assessments may be contested or compromised by the Association; provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

9.2.4. WATER AND OTHER UTILITIES

The Association shall acquire, provide and pay for necessary water and other utilities for the Project and the Operation thereof to the extent not separately metered and charged to individual Owners/Units. The Association shall have the duty to permit utility suppliers and other providers of any telecommunications or other services to use portions of the Common Area reasonably necessary to the ongoing development and Operation of the Resort.

9.2.5. OPERATION OF PROJECT

Except as otherwise provided in the Resort Covenant, the Association shall have the duty to Operate the Association Property and any other portions of the Project required to be maintained by the Association pursuant to these CC&RS and any Maintenance Manual. The Association's obligations to maintain the Association Property shall commence upon the commencement of Regular Assessments on the Condominiums.

9.2.6. RULES AND REGULATIONS

(a) The Board shall have the power to adopt, amend or repeal any Operating Rule ; provided, however, that any Operating Rule shall be valid and enforceable only if all of the following requirements are satisfied:

- (1) The Rule is in writing;
- (2) The Rule is within the authority of the Board conferred by and not inconsistent with Applicable Law, these CC&RS or the other Governing Documents;
- (3) The Rule is adopted, amended or repealed in good faith and in substantial compliance with the requirements of this Section; and
- (4) The Rule is reasonable.

(b) An Operating Rule may govern the use of the Association Property by all Owners, Permitted Users and their Invitees, and the conduct of Owners, Permitted Users and their Invitees with respect, but not limited to vehicle parking, outside storage of bicycles and other objects,

disposal of waste materials, drying of laundry, pets (i.e. the type, size, number, etc. of pets allowed per Unit or their control or comportment within the Project) and other activities which, if not so regulated, might detract from the appearance of the Resort or offend or cause inconvenience or danger to persons residing or visiting therein. An Operating Rule may also (a) govern issues relating to landscaping and irrigation, if deemed appropriate by the Board, to protect the Project and the improvements thereon or to reduce Operations costs; and (b) provide that the Owner or Permitted User of a Unit or their Invitee who leaves property within the Association Property areas in violation of the Rules may be assessed, after Notice and Hearing, an amount to cover (i) the expense incurred by the Association in removing such property and storing or disposing thereof, or (ii) the expense incurred by the Association in correcting such violation or the results of such violation.

9.2.7. AESTHETIC CONTROL

The Association shall have the duty to maintain aesthetic and architectural control through Board or its delegated committee over the Property pursuant to the Aesthetic Standards and the provisions of **ARTICLE 22** herein.

9.2.8. LIENS AND CHARGES

The Association shall pay any amount necessary to discharge any lien or encumbrance upon the Association Property, or any other property or interest of the Association. Where one or more Owners are jointly responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said Owner(s).

9.2.9. RESERVES

The Association shall establish and maintain a reserve fund as required under the CC&RS.

9.2.10. INSURANCE

The Association shall obtain, from reputable insurance companies and maintain the insurance described in the **Article** hereof entitled **INSURANCE**.

9.2.11. PROPERTY MANAGEMENT

(a) The Association shall employ a professional management company ("*Managing Agent*") to handle the day to day Operations of the Association.

(b) Prior to, but in no event more than 90 days before entering into a management agreement the Board shall obtain from a prospective Managing Agent a written statement addressed to the Board containing all of the information concerning the Managing Agent, as required pursuant to **CIVIL CODE §1363.1**.

9.2.12. CONTRACTS

Any agreement for professional management of the Project, or any portion thereof, or any agreement providing for services by Declarant, or any contract or lease, including franchises and licenses to which Declarant is a party, shall have a term of not more than one (1) year, without the consent of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party "*without cause*" and without payment of a termination fee upon not more than ninety (90) days written notice, and "*with cause*" upon thirty (30) days written notice. The foregoing notwithstanding, the Board shall not terminate professional management of the Project and assume self-management, when professional

management had been required previously by an Eligible Mortgage Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the First Mortgages on Units.

9.2.13. MAINTENANCE MANUALS

The Association shall maintain at the offices of the Association a copy of any Owners Maintenance Manual and shall make available to every Owner upon request a copy of such Owner Maintenance Manual. The Association shall have the right to charge the requesting Owner a fee for the copying of such Owner Maintenance Manual. The Association shall have a duty to comply with provisions of the Association Maintenance Manual. Declarant, and thereafter, the Board, may, from time to time, make appropriate revisions to the Owner Maintenance Manual and the Association Maintenance Manual, in order to update such respective Manual, so long as such changes do not reduce the useful life or functionality of the items being Operated.

9.2.14. LIMITATIONS ON AUTHORITY OF BOARD

The Board shall not take any of the actions listed below except with the vote or approval by written ballot of: (a) a majority of the Members of each of Class A and Class B during the time the two-class voting structure set forth in this Declaration is in effect; or (b) except with the vote at a meeting of the Association or by written ballot without a meeting pursuant to **CORPORATIONS CODE §7513** of at least fifty-one percent (51%) of the Members of the Association including at least a majority of Association Members other than Declarant after conversion to a single Class A voting membership.

A. LIMIT ON CAPITAL IMPROVEMENTS

Incur aggregate expenditures for Capital improvements in any Fiscal Year in excess of five percent (5%) of the Budget's gross expenses for that Fiscal Year (see **Section 11.20** herein).

B. LIMIT ON SALES OF ASSOCIATION PROPERTY

Sell during any Fiscal Year Association Property having an aggregate fair market value greater than five percent (5%) of the Budget's gross expenses for that Fiscal Year.

C. LIMIT ON COMPENSATION

Pay compensation to members of the Board for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association. The foregoing notwithstanding, nothing herein shall limit the Association from paying compensation to any members of the Board, any committees appointed by the Board or consultants to such committees, including any architectural or aesthetics committee, who may provide services to the Association in their professional capacity other than as a member of the Board.

D. LIMIT ON THIRD PERSON CONTRACTS

Enter into a contract with a third person wherein the third person will furnish goods or services for the Association Property or the Association for a term longer than one year with the following exceptions:

- (1) A management contract, the terms of which have been approved by the Federal Housing Administration or VA;
- (2) A contract with public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the

term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(3) A prepaid casualty and/or liability insurance policy not to exceed three (3) years duration; provided that the policy permits for short-rate cancellation by the insured; and

(4) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one year without cause, penalty or other obligations upon ninety (90) days written notice of termination to the other party.

ARTICLE 10. RIGHTS OF OWNERS

Owners, and, to the extent permitted by such Owner, such Owner's Invitees, and contract purchasers who occupy such Owner's Unit, shall have the following rights and limitations:

10.1. RIGHT OF ACCESS AND USE OF CONDOMINIUM

The right of access over the Association Property for ingress to and egress from such Owner's Condominium, and of enjoyment and full use of such Condominium, which right shall be appurtenant to and shall pass with title to the Owner's Unit, subject to the limitations contained herein. This right cannot be forfeited or abridged by the failure by an Owner to comply with provisions of the Governing Documents or duly-enacted Rules, except by order of a court, order pursuant to a final and binding arbitration decision or as otherwise provided by Applicable Law.

10.2. NOTICE AND HEARING

(a) The rights to be notified in writing at least ten (10) days prior to a meeting by the Board to consider or impose discipline upon a Member. The notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting. The Board shall meet in executive session if requested by the Owner being disciplined.

(b) The right to receive within fifteen (15) days' following the Board's imposition of discipline on a Member, written notice of the disciplinary action by either personal delivery or first-class mail.

(c) If the discipline imposed by the Board is one that suspends the privileges of a Member, such Member shall have the additional to have an opportunity to be heard by the Board orally or in writing, not less than five (5) days before the effective date of the suspension, to request reconsideration that such suspension not take place. Any action challenging a suspension of privileges, including any claim alleging defective notice, must be commenced within one (1) year after the date of the suspension. In the event such an action is successful the court may order any relief, including reinstatement, it finds equitable under the circumstances, but no vote of the Members or of the Board may be set aside solely because a person was at the time of the vote wrongfully excluded by virtue of the challenged suspension, unless the court finds further that the wrongful suspension was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

(d) Such other rights and limitations provided under **CORPORATIONS CODE §7341** and **CIVIL CODE §1363(h)**, as each may be hereafter amended.

For purposes of this Section, "**Notice**" shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner, sent by first class or registered mail, or by courier delivery; the foregoing addressed to the Owner at the last address of the Owner shown on the Association's records.

10.3. INSPECT AND COPY ASSOCIATION DOCUMENTS AND MEMBERSHIP LIST

The right of an Owner or such Owner's duly authorized representative to inspect and copy or to request copies of the Association's (i) accounting books, (ii) records (Bylaws certified by the Secretary, CC&RS, Articles of Incorporation, and amendments thereto), (iii) Operating Rules, (iv) minutes of proceedings (other than minutes, proposed minutes or summary minutes of a Board executive session) (collectively, "*Association Documents*"), and (v) members' names, addresses and voting rights ("*Membership List*"), in accordance with CIVIL CODE §§1363(f), 1365.2, CORPORATIONS CODE §§8330-8338, and such other Applicable Law, as more fully described in Bylaws' ARTICLE entitled "ASSOCIATION DOCUMENTS; MEMBERSHIP LIST."

10.4. ASSESSMENT STATEMENT

The right of an Owner to obtain a statement ("*Assessment Statement*") in writing from an authorized representative of the Association as to the amount of any Assessments levied upon the Owner's interest in his or her Condominium which are unpaid on the date of the Assessment Statement. Such Statement shall also include true information on late charges, interest and costs of collection which, as of the date of the Statement, are or may be made a lien upon the Owner's Condominium interest pursuant to CIVIL CODE §1367, or any successor statute or law. A properly executed Assessment Statement by the Association shall be upon the Association as of the date of its issuance. The Association may charge a fee for production of the Assessment Statement, which fee shall not exceed the reasonable costs for preparation and reproduction thereof.

10.5. DELEGATION OF USE

Subject to the CC&RS of the Governing Documents, the right of an Owner to delegate his or her right of enjoyment to the Association Property to such Invitees who occupy such Owner's Condominium; provided, however, if an Owner delegates such right of enjoyment to tenants, neither the Owner nor such Owner's Family shall be entitled to use the Association Property by reason of ownership of the Unit during the period of delegation. Invitees of any Owner may use the Association Property only in accordance with the Governing Documents.

ARTICLE 11. ASSESSMENTS

11.1. DEFINITIONS RELATING TO ASSESSMENTS

11.1.1. REGULAR ASSESSMENT

"Regular Assessment" shall mean and refer to the charge against each Owner and such Owner's Unit for a proportionate share of the Common Expenses allocable to such Owner and such Owner's Unit.

11.1.2. RESORT FACILITIES ASSESSMENT

"Resort Facilities Assessment" shall mean and refer to that portion of the Regular Assessment consisting of the "*Resort Facilities Fee*" as described in the Resort Covenant, allocated to Guest Unit Owners for their respective use, enjoyment and Operation of the Resort Facilities Use Areas and for "*Basic Services*," as defined in the Resort Covenant. The Resort Facilities Fees shall be a Common Expense. The determination of the Resort Facilities Fees, their collection by the Association and their remittance to the Hotel Operator shall be as set forth in the Resort Covenant.

11.1.3. SUPPLEMENTAL ASSESSMENT; SUPPLEMENTAL REGULAR ASSESSMENT

A “Supplemental Assessment” or “Supplemental Regular Assessment” shall mean and refer to a charge against an Owner and such Owner’s Unit, representing a portion of such additional funds that the Board, in accordance with **Section 11.7.2** herein, deems necessary in order to supplement a Regular Assessment determined to be inadequate to meet all Common Expenses for a current Fiscal Year for any reason, including, but not limited to, unanticipated delinquencies, costs of reconstruction, unexpected repairs or replacements of Capital improvements, damage and destruction, condemnation or costs of Operation of Common Expense Area improvements. A Supplemental Assessment shall be levied against each Unit in the same proportions as are Regular Assessments, subject to the limitations described herein.

11.1.4. SPECIAL ASSESSMENT

“Special Assessment” shall mean and refer to a charge which the Board may levy against an Owner and/or such Owner’s Unit, which charge is specifically not allocable against an Owner and/or such Owner’s Unit as a Regular or Supplemental Assessment. A Special Assessment may refer to, but not be limited to, any one of the following described types of Assessments:

A. CAPITAL IMPROVEMENT ASSESSMENT

“Capital improvement Assessment” shall mean and refer to a charge that the Board may levy against the Owners and their Units in any Fiscal Year applicable to that year only, representing a portion of the cost to the Association for installation or construction of any Capital improvement within the Common Expense Areas to the extent that the same is not covered by a Restoration Assessment, including the necessary fixtures and personal property related thereto. Such charge or charges shall be levied against each Unit in the same proportions as are Regular Assessments.

B. PURCHASE ASSESSMENT

“Purchase Assessment” shall mean and refer to a charge that the Board may levy against all of the Owners and their Condominiums for the Association’s purchase of those Affected Units and/or Damaged Units (as the foregoing are defined in the Article entitled “**DAMAGE AND DESTRUCTION**”) under the conditions and in the manner specified in said **Article**. Such charge or charges shall be levied on the basis of the ratio of the square footage of the floor area of the Unit to be assessed, to the total square footage of floor area of all Units to be assessed, excepting the Units to be purchased.

C. RESTORATION ASSESSMENT

“Restoration Assessment” shall mean and refer to a charge that the Board may levy against the Owners and their Units under the conditions and in the manner specified in the Article entitled “**DAMAGE AND DESTRUCTION**” hereinafter. Such charge or charges shall be levied against each Unit in the manner and proportions provided in the **Section** entitled “*Rate of Assessments*” in the **Article** entitled “**ASSESSMENTS**” hereinafter.

D. SINGLE BENEFIT ASSESSMENT

“Single Benefit Assessment” shall mean and refer to charge against a particular Owner directly attributable to, or reimbursable by, that Owner for any cost or expense not otherwise provided for in the Governing Documents, which will benefit less than all of the Owners, and which will be assessed only against the Owner(s) and/or such Owner’s(s’) Guest Unit(s) so benefiting.

11.1.5. NON-LIEN ASSESSMENT

(a) "Non-Lien Assessment" shall mean and refer to a:

A. COMPLIANCE ASSESSMENT

which shall mean and refer to either:

(1) a charge against a particular Owner directly attributable to that Owner or such Owner's Permitted User, or their respective Invitees, equal to the cost incurred by the Association in bringing such Owner or such Owner's Permitted User, or their respective Invitees and/or such Owner's Condominium into compliance with the provisions of the Governing Documents; or

(2) a reasonable fine or penalty against an Owner, imposed by the Board, plus interest and other similar charges, as a disciplinary measure for failure of an Owner or such Owner's Permitted User or their respective Invitees to comply with the provisions of the Governing Documents.

B. REIMBURSEMENT ASSESSMENT

which shall mean and refer to a charge against a particular Owner directly attributable to that Owner or such Owner's Permitted User, or their respective Invitees, for reimbursement of certain costs incurred by the Association in connection with an action, failure to take action, result or event caused or proximately caused by such Owner, such Owner's Permitted User or their respective Invitee, including, but not limited to the following:

- (1) damage to a Common Expense Area improvement
- (2) failure to perform any maintenance or repair required by the
- (3) acceptance of materials or services provided by the
- (4) a violation of these CC&RS or other Governing Document,

CC&RS

Association

including such violation that results in a diminution of insurance proceeds otherwise payable to the Association.

(b) A Non-Lien Assessment may be imposed upon the vote of the Board after a Notice and Hearing, and the Board shall meet in executive session if requested by the Owner against whom a Non-Lien Assessment is intended to be levied, such Owner being entitled to attend such executive session.

(c) Except to the extent that a Non-Lien Assessment is to reimburse the Association for the cost of collecting Assessments, a **Non-Lien Assessment** shall be assessed only against the Owner and shall *not* constitute a lien on such Owner's Condominium enforceable by a sale in accordance with the provisions of **CIVIL CODE §§ 2924, 2924(b) and 2924(c)**. The Association shall have lien rights with respect to charges imposed against an Owner which are reasonable late payment fees for delinquent Assessments, interest and other charges to reimburse the Association for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent Assessments.

11.2. COVENANT FOR ASSESSMENTS

Subsequent to the first Close of Escrow, Declarant, for each Unit owned within the Project, hereby covenants, and each Purchaser who acquires a Unit, by acceptance of a deed or instrument therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) **Regular Assessments**, (b) **Supplemental Assessments**, and (c) **Special Assessments** levied pursuant to the provisions of this Declaration. The Association may not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it was levied. All Assessments

(other than Non-Lien Special Assessments), together with interest, costs, late charges and reasonable attorneys' fees for the collection thereof, shall be a charge on and a continuing lien on the Condominium against which each such Assessment is made, the lien to become effective upon recordation of a Notice of Delinquent Assessment, as provided in this Article. Each such Assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment fell due and shall bind his or her heirs, devisees, personal representatives and assigns. Unlike the lien for delinquent Assessments, the personal obligation for non-delinquent Assessments shall not pass to successive Owners, unless expressly assumed by each such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent Assessments. If more than one person or entity was the Owner of a Unit, the personal obligation to pay such Assessment or installment respecting such Unit shall be both joint and several.

11.3. FUNDS HELD IN TRUST

The Assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. Upon the sale or transfer of a Unit, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

11.4. FINANCIAL ACCOUNTS

The Board shall establish no fewer than two (2) separate financial accounts in the name of the Association ("*Association Financial Accounts*" or "*Financial Accounts*"), into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration and the other Governing Documents. The Financial Accounts may be established as trust accounts at any banking, savings, brokerage or similar institution ("*Institution*"), provided such funds are fully insured (i) by the Federal Deposit Insurance Corporation or similar Federal insuring agency, or (ii) by a comparable account insurer. Aggregate deposits held in any single Institution shall not exceed the limit of deposit insurance coverage available. The Financial Accounts shall include:

- (a) An **Operating Account** for current Common Expenses of the Association;
- (b) A **Resort Facilities Fee Account** for the deposit of funds to be remitted to the Hotel Operator pursuant to the Resort Covenant;
- (c) A **Reserve Account** for the deposit of reserve funds attributable to improvements within Common Expense Areas (which would not reasonably be expected to occur on an annual or more frequent basis); and for payment of deductible amounts for insurance policies which the Association obtains as provided in the Article entitled "INSURANCE" herein. **Reserve Accounts shall be used for the purposes and in the manner described in CIVIL CODE §1365.5, as it may from time to time be amended.**
- (d) A **Capital Account** for the deposit of Capital improvement Assessments and/or loans for Capital improvements; and
- (e) Any **Other Accounts** that the Board may establish or is required to establish as a separate Financial Account (e.g. for Restoration Assessments, Reconstruction Assessments) to the extent necessary under the provisions of this Declaration and the other Governing Documents. ; and
- (f) **Cost Center Accounts**, which may be a separate subaccount of funds within any one of the above Financial Account types. Such subaccounts shall be established and maintained in order to facilitate, account for and secure the segregated use of Category Account funds for the benefit of those Owners and/or Units comprising any such separate Category.

Except for purposes of transfer of funds upon receipt or disbursement thereof, the Board shall not commingle any amounts deposited into any of the Financial Accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Financial Accounts by the Association so long as the amounts assessed to, deposited into, and disbursed from any such Account are earmarked for specified purposes authorized by this Declaration and the other Governing Documents.

11.5. PURPOSE OF ASSESSMENTS

The purpose of Assessments levied by the Association includes, but shall not be limited to, the following: (a) promotion of the health, safety and welfare of the Owners; (b) Operation of the Common Expense Areas, (c) reimbursement to the Association of costs incurred in bringing an Owner into compliance with the Governing Documents, (d) discharging of any Association obligations under this Declaration and the other Governing Documents, and (e) such other purposes as described in this Declaration or authorized by the Board pursuant to the powers granted in the Governing Documents.

11.6. USE OF FUNDS

(a) All funds deposited into the Association Financial Accounts shall be made by the Board or its authorized agent for such purposes as are necessary for the discharge of the Board's and Association responsibilities herein for the benefit of the Owners in accordance with this Declaration, other than those purposes for which disbursements from the Reserve Account are to be used.

(b) Disbursements from the Reserve Account shall be made by the Board only for the purposes specified in this Article and in **CIVIL CODE §1365.5(c)**.

(c) If the Association decides to use or transfer reserve funds to pay for litigation, the Association must notify its Members of the decision in the next available mailing. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation which will be available at the Association's office in the same manner and protocol for Governing Documents. The accounting shall be updated monthly.

(d) The Association shall not use any Assessments, Association funds or otherwise participate in support of federal, state or local political activities intended to influence governmental action affecting areas outside of the boundaries of the Project (e.g. endorsement or support of political candidates, legislative or administrative actions by any governmental agency, or ballot proposals).

11.7. LIEN ASSESSMENTS

11.7.1. REGULAR ASSESSMENTS

Regular Assessments shall be levied on a Fiscal Year basis. Regular Assessments for the first Fiscal Year or portion thereof shall be levied based upon the DRE Budget (defined in **Section 3.15** hereinabove. Regular Assessments for each Fiscal Year after the initial Fiscal Year (or portion thereof) shall be established when the Board approves the Association Budget for that Fiscal Year, which Budget shall be prepared in accordance with the provisions of this Declaration. Each Member shall pay to the Association such Member's Regular Assessment in installments at such frequency and in such amounts as established by the Board. Each installment of Regular Assessments may be paid by the Member to the Association in one check or in separate checks as payments attributable to specific Association Financial Accounts. If any payment of a Regular Assessment (a) is less than the amount assessed, and/or (b) does not specify the Association Financial Account into which it should be deposited, then the amount received shall be credited in order of priority **first** to the *Operating Account*, until that portion of the Regular Assessment has been satisfied and **second** to the *Reserve Account*; any additional amount remaining shall be applied to any *Special Assessment* then due and outstanding; thereafter, any remaining amount shall be held as a credit to a Member's future *Regular Assessment* on the same funds application basis as herein described.

11.7.2. SUPPLEMENTAL ASSESSMENTS

NOTE: The term “*Supplement Assessment(s)*” as used in these CC&RS and the other Governing Documents, is the equivalent of the term “*special assessment(s)*” referred to in the Davis-Stirling Common Interest Development Act (CIVIL CODE §1350 *et seq.*)

(a) If the Board determines that the estimated total amount of funds necessary to defray Common Expenses for a given Fiscal Year, is or will become inadequate to meet actual expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs, Capital improvements, damage and destruction or condemnation of the Association Property, the Board shall determine the approximate amount necessary to defray such respective expenses and, if the amount is approved by a majority vote of the Board and does not exceed five percent (5%) of the budgeted gross expenses of the Association, it shall become a Supplemental Assessment; provided, however that such limitation shall not apply to Supplemental Assessments levied by the Board to replenish the Association’s reserve account as provided in the **Bylaws’** Section entitled “*Use of Reserve Funds.*”

(b) The Board may, in its discretion, prorate such Supplemental Assessment over the remaining months of the Fiscal Year or levy the Assessment immediately against each Unit. Unless exempt from federal or state income taxation, all proceeds from any Supplemental Assessment shall be segregated and deposited into a Financial Account and shall be used solely for the purpose or purposes of which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income to the Association.

11.7.3. SPECIAL ASSESSMENTS

Special Assessments may be levied by the Board against an Owner and such Owner’s Unit as follows:

A. CAPITAL IMPROVEMENT ASSESSMENT

The Board may levy a Capital improvement Assessment against Owners and their Units. Capital improvement Assessments shall be due and payable in such installments and during such period or periods as the Board shall designate. The foregoing notwithstanding, Capital improvement Assessments shall be subject to the limitations set forth in the Section below entitled “*Limitations on Capital improvement Assessments.*”

B. PURCHASE ASSESSMENT

The Board may levy a Purchase Assessment against the Owners and their Units (excepting those Owners and Units which are the subject of purchase), pursuant to the conditions, limitations and in the manner specified in the **Article** entitled “**DAMAGE AND DESTRUCTION**” herein.

C. RESTORATION ASSESSMENT

The Board may levy a Restoration Assessment against Owners and their Units pursuant to the conditions, limitations and in the manner specified in the **Article** entitled “**DAMAGE AND DESTRUCTION**” herein.

D. SINGLE BENEFIT ASSESSMENT

The Board may levy a Single Benefit Assessment that will benefit less than all of the Owners, and which will be assessed only against the Owners and their Units so benefiting.

(1) A Single Benefit Assessment may be imposed only by a vote of at least fifty-one percent (51%) of the Owners of the Units benefited by the Single Benefit Assessment.

(2) Each Single Benefit Assessment shall be segregated in the Financial Accounts solely in trust for and to the Units which derive the benefit therefrom. In the event that the Association obtains income directly related to an item which has been assessed as a Single Benefit Assessment, such income shall be allocated so as to reduce or offset such Single Benefit Assessment.

E. OTHER CHARGES

The Board may levy other charges against an Owner and/or such Owner's Unit, including but not limited to (a) a **change of occupancy charge** (i) at the time escrow closes on the conveyance of title to a Unit, if title is transferred, or (ii) as of the date a new tenant takes possession of the Unit, if the Unit is leased. Such charge shall be for the purpose of covering the reasonable and necessary expenses incurred by the Association as a result of the change of ownership or possession of the Condominium. The charge shall be in an amount to be reasonably determined from time to time by the Board; or (b) such other charges as the Board may deem appropriate in compliance with the Governing Document and Applicable Law.

11.8. NON-LIEN ASSESSMENTS

11.8.1. COMPLIANCE ASSESSMENT

The Board (a) may levy a Compliance Assessment against an Owner, and (b) shall have the authority to adopt a reasonable schedule of Compliance Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by this Declaration and which satisfies **CORPORATIONS CODE §7341**, the Owner fails to cure or continues the action or non-action (the "Violation"), as the case may be, that is the basis for the Compliance Assessment, the Association may impose an additional fine each time the Violation is repeated, and may assess such Owner and enforce the Compliance Assessment as herein provided for nonpayment of an Assessment. A hearing committee may be established by the Board to administer the foregoing. Compliance Assessments may not become a lien against the Owner's Condominium that is enforceable by a power of sale under **CIVIL CODE §§2924, 2924b and 2924c** or any successor statute or laws; provided, however, such restriction on enforcement shall not be applicable to *late payment penalties* for delinquent Compliance Assessments or charges imposed to reimburse the Association for *loss of interest* or for *collection costs*, including *reasonable attorneys' fees*, for delinquent Compliance Assessments.

11.8.2. REIMBURSEMENT ASSESSMENT

The Board may levy a Reimbursement Assessment against an Owner, together with attorneys' fees, interest and other charges related thereto. The foregoing notwithstanding, Reimbursement Assessments may not become a lien against the Owner's Condominium that is enforceable by a power of sale under **CIVIL CODE §§ 2924, 2924b and 2924c** or any successor statute or laws; provided, however, such restriction on enforcement shall not be applicable to *late payment penalties* for delinquent Reimbursement Assessments or charges imposed to reimburse the Association for *loss of interest* or for *collection costs*, including *reasonable attorneys' fees*, for delinquent Reimbursement Assessments.

11.9. CAPITALIZATION REQUIREMENT

As additional contingency to meet the initial expenses of the Association, including those operating expenses and reserve requirements unforeseen or not fully contemplated in the Budget reviewed and accepted by the DRE, upon acquisition of record title to a Guest Unit from Declarant, each **Purchaser shall contribute to the capital of the Association an amount equal to one-sixth (1/6)** the amount of the Regular Assessment for the Guest Unit as determined by the Board. This amount shall be deposited by the

Purchaser into the purchase and sale escrow and disbursed therefrom to the Association. Escrow shall remit these funds to the Association.

NOTE: The capitalization funds set forth herein are not to be considered paid in lieu of Regular Assessments or any other Assessment levied by the Association.

11.10. MAINTENANCE AGREEMENT

Notwithstanding any other provisions of this Declaration or the other Governing Documents regarding the term and termination of contracts with Declarant for providing services to the Association, Declarant may enter into a written maintenance agreement with the Association under which Declarant shall pay all or any portion of the operating Common Expenses and perform all or any portion of the Association's maintenance responsibilities in exchange for a temporary suspension of Regular Assessments. Any such maintenance agreement shall extend for a term and shall be on such conditions as are approved by DRE, and may require Owners to reimburse Declarant, through the Association, for a portion of the costs expended in satisfaction of Common Expenses.

11.11. RESTRICTIONS OF TAX EXEMPTION

As long as the Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to **INTERNAL REVENUE CODE §528** and **REVENUE AND TAXATION CODE §23701t** and any amendments thereto, then the Board shall prepare its annual budget and otherwise conduct the business of the Association in such manner consistent with federal and state requirements to qualify for such status.

11.12. NON-WAIVER OF REGULAR ASSESSMENTS.

If before the expiration of any Fiscal Year the Association fails to fix Regular Assessments for the next Fiscal Year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

11.13. ALLOCATION OF LIEN ASSESSMENTS

Lien Assessments shall be allocated separately against the Project Guest Units at their respective Percentage Shares set forth on **EXHIBIT "B"** attached hereto and by reference made a part here.

11.14. EXCESSIVE ASSESSMENTS OR FEES

The Board may not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied. The Board may determine that funds in the Operating Account at the end of the Fiscal Year be retained and used to reduce the next Fiscal Year's Regular Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Property as a condominium project, any amounts remaining in any of the Financial Accounts shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members.

11.15. COMMENCEMENT OF REGULAR ASSESSMENTS; DUE DATES.

Each Member shall pay to the Association Regular Assessments initially in monthly installments on the first day of each month, which shall commence as to all **Guest Units** on the first day of the calendar month following the first Close of Escrow in the Property. Except for the initial monthly Regular Assessment following the first Close of Escrow, all monthly Regular Assessments thereafter shall be prorated on the basis of a *30-day* month as of the Close of Escrow. The foregoing notwithstanding, subject to the terms of the Maintenance Agreement, Declarant shall pay its full pro rata share of the Regular Assessments on all of its unsold Guest Units for which Regular Assessments have commenced. The Board shall have the right to modify the due dates and/or payment schedule of Regular Assessments.

11.16. EXEMPTION FROM ASSESSMENTS UNTIL GUEST UNIT PUT TO USE

Declarant and any Guest Unit Owner *for which a Certificate of Occupancy* has not been issued because the construction of the interior improvements of such Guest Unit has not been completed, shall be exempt from payment of that portion of the Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the Guest Unit. Any such exemption from the payment of Regular Assessments shall be in effect only until the earlier to occur of (a) the issuance of a Certificate of Occupancy of the Guest Unit; (b) the occupancy or use of the Guest Unit, or (c) the completion of all interior improvements of the Guest Unit.

11.17. NOTICE OF ASSESSMENT

A single ten (10) day prior written notice of each Non-Lien Assessment and Capital improvement Assessment shall be given to each Owner. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a Budget as described in the Bylaws. Increases in Regular Assessments shall be subject to the limitations set forth in the Section below entitled "*Limitations on Regular and Supplemental Assessments.*" For the first Fiscal Year, the Budget upon which Regular Assessments shall be based shall be the DRE Budget. Thereafter, the Board shall annually prepare and approve the Budget and distribute a copy thereof to each Member (or a summary thereof as provided in the Bylaws), together with written notice of the amount of the Regular Assessments to be levied against the Owner and such Owner's Unit, not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the Fiscal Year. The foregoing notwithstanding, the failure of the Board to comply with the foregoing notice provisions shall not affect the validity of any Assessment levied by the Board. The Board shall also provide notice by first-class mail to the Owners of any increase in the Regular Assessment, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due and payable.

11.18. FAILURE TO FIX REGULAR ASSESSMENT.

The omission by the Board to fix the Regular Assessments hereunder before the expiration of any Fiscal Year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the Regular Assessment or any installment thereof for that or any subsequent year, but the Regular Assessment fixed for the preceding year shall continue until a new Regular Assessment is fixed.

11.19. LIMITATIONS ON REGULAR AND SUPPLEMENTAL ASSESSMENTS.

(a) The Board of Directors of the Association shall not impose or collect an Assessment, penalty, or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. Annual increases in Regular Assessments for any Fiscal Year, as authorized by subsection (b) immediately hereinafter, shall not be imposed unless the Board has prepared and distributed a Budget in accordance with the provisions of **CIVIL CODE §1365(a)** as it may from time to time be amended, with respect to that Fiscal Year, or has obtained the approval of Owners in accordance with **Voting Policy**.

(b) From and after January 1st of the year immediately following the first Close of Escrow, the Board of Directors may not impose, except as provided herein, a Regular Assessment **that is more than twenty percent (20%) greater than the Regular Assessment for the preceding Fiscal Year or impose Supplemental Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses for that Fiscal Year** without the approval of Owners in accordance with **Voting Policy**; the foregoing notwithstanding, an Owner who does not deliver a negative response pursuant to a solicited vote within thirty (30) days of receipt of such requested vote, shall be deemed to have consented to such requested approval, provided the requested ballot therefor was solicited pursuant to Voting Policy. These provisions, however, shall not limit Assessment increases necessary for the following "emergency situations":

- (1) An extraordinary expense required by an order of a court;

(2) An extraordinary expense necessary to repair or maintain those portions of the Common Expense Area which is an Association Obligation where a threat to personal safety is discovered;

(3) An extraordinary expense necessary to repair or maintain those portions of the Common Expense Areas which is an Association Obligation that could not have been reasonably foreseen by the Board in preparing and distributing the Budget, in accordance with **CIVIL CODE §1365**, or any amendment thereto; provided, however, that prior to the imposition or collection of an Assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the “*Notice of Regular Assessment*”;

(c) Any increases authorized under this Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in the Bylaws with respect to the Fiscal Year for which an Assessment is levied. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term “Regular Assessments” shall be deemed to include the amount assessed against each Unit by the Association as a Regular Assessment plus any amount paid by Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments.

(d) Any action authorized under this Section shall be taken in accordance with **Voting Policy**. The foregoing notwithstanding, an Owner who does not deliver a negative response pursuant to a solicited vote within thirty (30) days of receipt of such requested vote, shall be deemed to have consented to such requested approval, provided the requested ballot therefor was solicited pursuant to Voting Policy.

11.20. LIMITATION ON CAPITAL IMPROVEMENT ASSESSMENTS.

The Board may not levy a Capital improvement Assessment which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year except with the assent, by a vote of Members in accordance with **Voting Policy**; or, in such instance where the Capital improvement Assessment is limited to a specific Cost Center, without the vote or written assent of the Members within such specific Cost Center, in accordance with Voting Policy; the foregoing notwithstanding, an Owner who does not deliver a negative response pursuant to a solicited vote within thirty (30) days of receipt of such requested vote, shall be deemed to have consented to such requested approval, provided the requested ballot therefor was solicited pursuant to Voting Policy. Anything herein to the contrary notwithstanding, such limitation shall not apply to a Restoration Assessment.

11.21. NO OFFSETS

All Assessments shall be payable in the amount specified by the Board and no offsets against such amount shall be permitted for any reason, including, without limitation (a) a claim that the Association is not properly exercising its duties and powers as provided in this Declaration; (b) a Member has made or elects to make no use of the Association Property or any improvements located therein; or, (c) any construction or maintenance performed pursuant to **Section 23.9** entitled “*Assumption of Maintenance Obligations*” herein, shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

11.22. DELINQUENCIES; LATE PENALTIES; INTEREST ON ASSESSMENTS

Any Assessment not paid within fifteen (15) days after the due date shall be delinquent and shall be subject to a reasonable late penalty not exceeding ten percent (10%) of the delinquent Assessment or ten dollars (\$10.00), whichever is greater, and shall bear interest on all sums including the delinquent Assessment, reasonable costs for collection and late penalties at an annual percentage not exceeding twelve

percent (12%) commencing thirty (30) days after the Assessment becomes due, or at the maximum legal rate as defined in the CALIFORNIA CIVIL CODE §1366, or any successor statute or law.

11.23. DEBT OF THE OWNER

Any Assessment made in accordance with this Declaration and any late charges, reasonable costs of collection and interest, shall be a debt of the Owner of a Unit from the time the Assessment and other sums are levied.

11.24. ASSOCIATION POLICIES AND PRACTICES RE: DEFAULTS

11.24.1. ASSESSMENT DEFAULTS

The Board shall annually distribute during the sixty (60) day period immediately preceding the beginning of the Association's Fiscal Year: (a) a **statement** of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Regular, Supplemental, Capital improvement, and Restoration Assessments, including the recording and foreclosing of liens against Members' Units, and (b) such notice require by **CIVIL CODE §1365.1**, as it may be amended.

11.24.2. MONETARY PENALTIES AND FEES

If the Association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any Member for a violation of the Governing Documents, including any monetary penalty relating to the activities of an Invitee, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for Member discipline contained in **Section 9.1.3.A Enforcement Actions**. and **Section 10.2 Notice and Hearing**"; provided, however, no such monetary penalty may be characterized or treated as an Assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of **CIVIL CODE §§ 2024, 2024(b) and 2024(c)**. The Board, however, shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was previously adopted and distributed to the Members.

11.25. COLLECTION OF ASSESSMENTS; LIENS

11.25.1. RIGHT TO ENFORCE ASSESSMENTS

The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, can enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 11.25.6** below, enforce the lien rights created. Suit to recover a money judgment for unpaid Assessments together with all other Additional Charges described in **Section 11.26** hereafter shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein:

(a) Monetary penalties imposed by the Association: (i) as a disciplinary measure for failure of a Member to comply with the Governing Documents, or (ii) as a disciplinary measure in bringing the Member and his or her Condominium into compliance with the governing instruments of the Association, may not be characterized nor treated as an Assessment which may become a lien against the Member's Condominium enforceable by a sale thereof conducted in accordance with the provisions of **CIVIL CODE §§2924, 2924(b), 2924(c) and 1367**, or any successor statute or law. The limitation in the preceding sentence however, does not apply to any Additional Charges; and

(b) So long as Condominiums are not being sold under authority of a Public Report, monetary penalties imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Expense Area improvements for which a Member or a Member's Invitees were responsible may become a lien against the Member's Condominium enforceable by the sale of the Condominium under **CIVIL CODE §§ 2924, 2924b, 2924c and 1367.**

11.25.2. NOTICE TO OWNER PRIOR TO LIEN OF ASSESSMENT

Pursuant to **CIVIL CODE §1367.1**, at least thirty (30) days before Recording a lien ("*Assessment Lien*") upon an Owner's Condominium to collect any Assessment which is past due ("*Delinquent Assessment*"), the Association shall provide written notice ("*Delinquent Assessment Notice*") to the Owner by certified mail. The precise form and content of the Delinquent Assessment Notice and the protocols to be observed in connection therewith, shall be as set forth in **CIVIL CODE §1367.1**, as it may be amended, which, as of the date of Recordation of these CC&RS, shall include without limitation the following:

(a) Collection and lien procedures of the Association and the method of calculation of the charges owed by the Owner;

(b) A statement that the Owner has the right to inspect Association records pursuant to **CORPORATIONS CODE §8333**;

(c) An itemized statement of the charges owed by the Owner, including items on the statement which indicate (i) the amount of any delinquent Assessment, (ii) the fees and reasonable costs of collection, (iii) reasonable attorney's fees, (iv) any late charges; and (v) interest, if any;

(d) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the Assessment was paid on time to the Association.

(e) A statement that the Owner has the right to submit a written request to meet with the Board to discuss a payment plan for the Delinquent Assessment. The Association shall provide the Owner the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the Owner's written request, if the request is mailed within 15 days of the date of the postmark of the Delinquent Assessment Notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner;

(f) The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4.

(g) The right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 before the association may initiate foreclosure against the owner's separate interest, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(h) The following statement in 14-point boldface type if printed, or in capital letters, if typed:

"IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION"

11.25.3. LIEN OF ASSESSMENT

Pursuant to **CIVIL CODE §1367.1(d)**, as it may be amended, the amount of any Delinquent Assessment, plus any costs of collection, late charges, and interest assessed in accordance

with **CIVIL CODE §1366**, shall be a lien on an Owner's Condominium from and after the time the Association causes the Recordation of a "*Notice of Delinquent Assessment*," which shall state the amount of the Assessment and other sums imposed in accordance with **CIVIL CODE §1366**, the name of the record or reputed record Owner and a legal description of the Owner's Condominium against which the Assessment and other sums are levied, and the name and address of the trustee authorized by the Association to enforce the lien, if by nonjudicial foreclosure as provided below. Such Notice of Delinquent Assessment shall be signed by the President, Vice President, Secretary, or Chief Financial Officer of the Association, or by an authorized agent (as designated by resolution of the Board) of the Association. Immediately upon Recording of any Notice of Delinquent Assessment pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such Notice, together with the costs (including attorneys' fees), late penalties and interest accruing thereon, shall be and become a lien upon the Condominium described therein, which lien shall also secure all costs (including attorney's fees), late penalties and interest accruing thereon. The lien may be enforced as provided in **Section 11.25.6** below, entitled "*Lien Enforcement; Foreclosure Proceedings*."

11.25.4. NOTICE TO OWNER AFTER LIEN OF ASSESSMENT

Not later than ten (10) calendar days after Recordation of the Notice of Delinquent Assessment with the County Recorder, a copy of the Notice of Delinquent Assessment and the recording date thereof shall be mailed in the manner set forth in **CIVIL CODE §2924b** to all record Owners of the Condominium.

11.25.5. RELEASE OF LIEN

In the event the delinquent Assessments and all other Assessments which have become due and payable with respect to the same Unit together with all costs (including attorneys' fees), late charges and interest which have accrued on such amounts are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and release of such lien.

11.25.6. LIEN ENFORCEMENT; FORECLOSURE PROCEEDINGS

After the expiration of thirty (30) days following the recording of the Notice of Delinquent Assessment with the County Recorder, and in accordance with the requirements of **CIVIL CODE §1367.4**, or any successor statute or law, the lien created by such recording may be foreclosed in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to **CIVIL CODE §2934a**. Any sale by the trustee shall be conducted in accordance with the provisions of **CIVIL CODE §§2924, 2924(b), 2924(c), 2924(f), 2924(g), 2924(h) and 1367**, or any successor statute or law. The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid Assessments, costs, late penalties and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

11.26. ADDITIONAL CHARGES

In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any Assessments, each Owner agrees to pay Additional Charges incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. Additional Charges shall include, but not be limited to, the following:

11.26.1. ATTORNEY'S FEES

Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any Assessment or sum due, whether by suit or otherwise;

11.26.2. LATE CHARGES

A late charge in an amount to be fixed by the Board in accordance with Civil Code §1366, or any successor statute or law, to compensate the Association for additional collection costs incurred in the event any Assessment or other sum is not paid when due or within any "grace" period established by law;

11.26.3. COSTS OF SUIT

Costs of suit and court costs incurred as are allowed by the court;

11.26.4. INTEREST

Interest to the extent permitted by law; and

11.26.5. OTHER

Any such other additional costs that the Association may incur in the process of collecting delinquent Assessments or sums.

11.27. PRIORITY OF THE LIEN

The lien of Assessment herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Unit subject to Assessment, and the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure transfer (excluding a transfer by deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any Assessments thereafter becoming due nor from the lien of any subsequent Assessment. Where the First Mortgagee or other purchaser of a Unit obtains title to the same as a result of foreclosure (excluding a transfer by deed in lieu of foreclosure), such acquiror of title, and his or her successors and assigns, shall not be liable for the share of common expenses or Assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquiror, except for a share of such charges or Assessments resulting from a reallocation of such charges or Assessments which are made against all Units.

11.28. WAIVER OF EXEMPTIONS

Each Owner, to the extent permitted by law, waives, to the extent any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any Assessment or installment thereof becomes delinquent, or any lien is imposed.

11.29. TAXATION OF COMMON AREA

In the event that any taxes are assessed against the Common Area or any portion(s) thereof, rather than against the individual Units, said taxes shall be added to the Regular Assessments, and, if necessary, a Supplemental Assessment may be levied against the Units in the same proportion as Regular Assessments are levied against each Unit, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment, or as otherwise may be established by the Board.

11.30. PERSONAL LIABILITY OF OWNER

No Owner may exempt himself from personal liability for Assessments levied by the Association, nor release the Unit owned by him from the liens and charges hereof by waiver of the use or enjoyment of any of the Association Property or by abandonment of his or her Unit.

11.31. TRANSFER OF CONDOMINIUM

After transfer or sale of a Unit within the Project, the selling Owner or Owners shall not be liable for any Assessment levied on such Owner or Owner's Unit after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. The selling Owner shall still be personally responsible for all Assessments and charges levied on his or her Unit prior to any such transfer.

ARTICLE 12. REAL PROPERTY TAXES

To the extent not assessed to or paid by the Guest Unit Owners, Declarant shall pay all real and personal property taxes and assessments levied upon any portion of the Property. In addition, if all of the Guest Units in the Property are taxed under a blanket tax bill covering all of the Property, each Guest Unit Owner shall pay such Guest Unit Owner's Percentage Share of any installment due under the blanket tax bill to Declarant at least ten (10) days prior to the delinquency date, and Declarant shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. Taxes assessed against the Property as a whole shall be allocated as follows:

(a) The Guest Unit Owners shall, collectively, be responsible for the portion of the taxes equal to the ratio of the total Guest Unit Square Footage of the Guest Units to the total Guest Unit Square Footage of all Guest Units.

(b) The portion of such taxes allocated to the Guest Unit Owners shall thereafter be levied against all of the Guest Unit Owners and their Guest Units based upon the ratio of the Guest Unit Square Footage of each such Guest Unit to the Guest Unit Square Footage of all Guest Units.

(c) The foregoing formulas shall be used solely to allocate blanket taxes prior to the date assessed values for the individual Guest Units are determined (which assessed values would actually determine the appropriate amount of taxes owing by each Guest Unit Owner). Payments by each Guest Unit Owner pursuant to such formula shall be adjusted upon the actual assessed value for each Guest Unit when finally determined (*i.e.*, those Guest Unit Owners who pay more than their assessed value indicates is due shall receive a refund of such overpayment, and those Guest Unit Owners who pay less than their assessed value indicates is due shall make a make-up payment for such underpayment). Declarant shall, at least forty-five (45) days prior to the delinquency date of any tax installment to be allocated among the Guest Units, deliver to each Guest Unit Owner in the Property a copy of the tax bill, along with a written notice setting forth the Guest Unit Owner's obligation to pay such Guest Unit Owner's Percentage Share of the tax installment and the potential additional charges to the Guest Unit Owner for failure to comply. Declarant shall pay the taxes on behalf of any Guest Unit Owner who does not pay such Guest Unit Owner's Percentage Share. Declarant shall add to the charges owing by the delinquent Guest Unit Owner the amount of any sum advanced, plus interest at the Maximum Interest Rate and any amount necessary to reimburse Declarant for any penalty or late charge actually assessed in connection with such tax bill, which late charge results from the failure of the delinquent Guest Unit Owner to make timely payment of his or her Percentage Share of the taxes. Until the Close of Escrow for the sale of *seventy-eight (78)* Guest Units, the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Resort may not be amended without the express written consent of Declarant.

ARTICLE 13. PERMITS CONDITIONS/RESTRICTIONS

13.1. COASTAL COMMISSION CC&RS

Anything herein to the contrary notwithstanding, in accordance with the Permits, the Property and the Resort, including all Units, the Association, Owners, Permitted Users and their respective Invitees, shall be subject to the following applicable conditions and restrictions (the "*Coastal Commission CC&RS*"):

(a) The Hotel Owner or its appointed Hotel Operator shall retain control through ownership, lease or easements of the Hotel.

(b) The Hotel shall have an on-site Hotel Operator to manage rental/booking of all Guest Units through the Registration System. Whenever any individually owned Guest Unit is not occupied by its Owner(s), that Guest Unit shall be available for rental by the general public on the same basis as a traditional hotel room.

(c) The Hotel Operator shall market and advertise all Guest Units to the general public. Guest Unit Owners may also independently market and advertise their respective Guest Units but all booking of reservations shall be made by and through the Registration System by the Hotel Operator exclusively.

(d) The Hotel Operator shall manage all Guest Units as part of the hotel inventory, which management will include the booking of reservations through the Registration System, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing Guest Units for use by Owners and Private Guests, a service for which the Hotel Operator may charge the Guest Unit Owner a reasonable fee.

(e) If the Hotel Operator is not serving as the Rental Agent for an individually owned Guest Unit, then the Hotel Operator shall nevertheless have the right, working through the individually owned Guest Unit's Owner or its designated agent, to book any unoccupied room to fulfill demand, at a rate similar to comparable Guest Units in the Hotel. The Guest Unit Owner or its Rental Agent may not withhold the Guest Unit from booking thereof by the Hotel Operator. In all circumstances, the Hotel Operator shall have full access to a Guest Unit's reservation and booking schedule so that the Hotel Operator can fulfill its booking and management obligations hereunder.

(f) All Guest Unit keys shall be electronic and created by the Hotel Operator upon each new occupancy to control the use of the individually owned Guest Units.

(g) A Guest Unit Owner shall not discourage rental of its Guest Unit or create disincentives meant to discourage rental of its Guest Unit.

(h) All individually owned Guest Units shall be rented at a rate similar to that charged by the Hotel Operator for Guest Units of a similar class or amenity level.

(i) The Hotel Operator shall maintain records of usage by Guest Unit Owners and Private Guests and rates charged for all Guest Units through the Registration System, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all Guest Units, a service for which the Hotel Operator may charge the Guest Unit Owner a reasonable fee.

(j) Each individually owned Guest Unit shall be used by its Owner(s) and their respective Families *collectively* (no matter how many Owners there are) for a **maximum of ninety (90) days in any calendar year**, with no stay exceeding *twenty-five (25) consecutive days* and which stay must be immediately preceded by a *fifty (50) day period* during which the Guest Unit interest is not reserved or used by a Guest Unit Owner or its Family.

(k) The use period limitations identified in **Subsection (j)** above, shall be unaffected by multiple Owners of a Guest Unit or the sale of a Guest Unit to a new Guest Unit Owner during the calendar year, meaning that all such Guest Unit Owners of any given Guest Unit shall be *collectively* subject to the foregoing use restriction as if they were a single, continuous Guest Unit Owner.

(l) **Restriction on Conversion**: No portion of the Property may be converted into a time-share, full-time occupancy Guest Unit, apartment or any other type of "limited use overnight visitor accommodation" or other type of project that differs from the approved "condominium hotel," as the foregoing quoted terms are defined by the Permits or any one of them; the foregoing notwithstanding, in the event that any Commercial Unit in the Property is converted into a Converted Unit, such Converted Unit shall automatically become subject to these Coastal Commission CC&RS and the City Development

Agreement and all related provisions thereto. The foregoing restriction in this **Subsection (I)** shall run with the land and shall be binding upon the owner(s) of the Property or any portion thereof, their successors and assigns, including without limitation any future lien holders.

13.2. ADDITIONAL HOTEL OPERATOR RIGHT

Anything herein to the contrary notwithstanding, the Hotel Operator shall have the express right to reserve and book one or more blocks of Guest Units in order to accommodate group bookings that otherwise would not be possible, including the right of the Hotel Operator to cancel previously reserved Guest Units by Owners or Permitted Users, as more fully described in the **Resort Covenant**.

13.3. AMENDMENT

The CC&RS contained in **Section 13.1** above or as they may be provided elsewhere in this Declaration, the Covenant Agreement or any other Governing Document, shall not be removed or changed without approval of an amendment to the underlying **Coastal Development Permit** and approval of an amendment to the **Permit** by the **Coastal Commission**, unless it is determined by the *Executive Director* of the Coastal Commission, or its duly authorized representative or successor, that such an amendment is not legally required. If there is a Section or clause within this Declaration or any other Governing Document related to amendments, and the statement provided pursuant to this **Section 13.3** is not in that Section or clause, then this amendment **Section 13.3** shall prevail and controls over any such contradictory statement(s) on amendments.

13.4. CERTAIN RESPONSIBILITIES OF HOTEL OWNER/OPERATOR

The Hotel Owner and the Hotel Operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the CC&RS of this **ARTICLE** at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these CC&RS comply with the same.

13.5. COMPLIANCE WITH COASTAL DEVELOPMENT PERMIT AND CITY DEVELOPMENT AGREEMENT

Each Owner of an individual Guest Unit shall be jointly and severally liable with the Hotel Owner and the Hotel Operator for any and all violations of the terms and conditions imposed by the special conditions of the Coastal Development Permit and the City Development Agreement with respect to the Operation of that Owner's Guest Unit. Violations of the Coastal Development Permit can result in penalties pursuant to **PUBLIC RESOURCE CODE §30820**.

13.6. SALES AND MARKETING DOCUMENTS

All documents related to the marketing and sale of the Guest Units, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:

(a) Each Guest Unit Owner shall be jointly and severally liable with the Hotel Owner and Hotel Operator for any violations of the terms and conditions of the Permits with respect to the use of that owner's unit; and

(b) Each Guest Unit shall be restricted so as to limit its reservation, use, or occupancy by Guest Unit Owners, and their respective Families collectively (no matter how many Owners there are) to a maximum of ninety (90) days in any calendar year, with no stay exceeding twenty-five (25) consecutive days and which stay must be immediately preceded by a fifty (50) day period during which the Guest Unit is not reserved or used by such Guest Unit Owner(s).

13.7. REQUIRED BUYER WRITTEN ACKNOWLEDGEMENTS

Prior to the sale of any Guest Unit, Declarant, the Hotel Owner, Hotel Operator, Original Buyer or Subsequent Owner, as the case may be, shall obtain a *written acknowledgement* from the Purchaser or Subsequent Owner, as the case may be, that occupancy by the Purchaser or Subsequent Owner shall be

limited to **90 days per calendar year** with a maximum of **25 consecutive days** of use during any **50 day period**, that the unit must be available for rental by the Hotel Operator to the general public when not occupied by the Owner, and that there are further restrictions on use and occupancy of the Guest Unit in the Coastal Development Permit, this Declaration and the other Governing Documents.

13.8. HOTEL OCCUPANCY: MONITORING AND RECORD KEEPING

(a) The Hotel Owner and/or Hotel Operator shall monitor and record hotel occupancy and use by the general public and the Guest Unit Owners throughout each year through the Registration System

(1) The monitoring and record keeping shall include specific accounting of Guest Unit Owner usage for each individual Guest Unit.

(2) The records shall be sufficient to demonstrate compliance with the restrictions set forth in **Section 13.1** above.

(3) The Declarant, Hotel Owner and/or Hotel Operator shall be required to provide for collection and payment of the transient occupancy tax ("*TOT*") to the City for all Guest Units that are occupied, regardless of the occupant (i.e. Guest Unit Owner, Lessee, Private Guest or guest). If a Guest Unit is occupied by a Guest Unit Owner, the tax shall be based upon the nightly rate then in effect for the Guest Unit as if it were being occupied by a third party Renter. For occupancies of the Guest Unit other than by a Guest Unit Owner, the *TOT* shall be based on the actual rent charged. This requirement to collect and pay *TOT* to the City exists regardless of whether the Guest Unit is booked in person through the Registration System, via telephone or through online means via agents of the Declarant, Hotel Owner and/or Hotel Operator. If there is a legal reason why the Declarant, Hotel Owner and/or Hotel Operator cannot collect the *TOT* from Owner Occupants of a Guest Unit, the Declarant, Hotel Owner and Hotel Operator shall be required to provide to the City an amount of *TOT* equivalent to the amount that should have been collected from the Owner Occupant for each night a Guest Unit is occupied by the Owner thereof.

(b) The Hotel Owner and/or Hotel Operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts.

The foregoing records shall be maintained for ten (10) years and shall be made available to the City and the Executive Director of the Coastal Commission upon request and to the auditor required in **Section 13.9** hereinbelow. Within thirty (30) days of commencing hotel operations, the Hotel Owner or Hotel Operator shall submit notice to the City and the Executive Director of the Coastal Commission of commencement of hotel operations.

13.9. INDEPENDENT AUDIT

Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the Hotel Owner or Hotel Operator shall retain an independent auditing company, approved by the Executive Director of the Coastal Commission, to perform an audit to evaluate compliance with special conditions of the Coastal Development Permit which are required by this **ARTICLE** regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Hotel. The audit shall evaluate compliance by the Hotel Owner or Hotel Operator and Guest Unit Owners during the prior one-year period. The Hotel Owner or Hotel Operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of each one year period of hotel operations. After the initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Executive Director of the Coastal Commission. The Executive Director of the Coastal Commission may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.

13.10. HOTEL OWNER AND HOTEL OPERATOR JOINT AND SEVERAL LIABILITY AND RESPONSIBILITY

If the Hotel Owner and Hotel Operator at any point become separate entities, the Hotel Owner and Hotel Operator shall be jointly and severally responsible for ensuring compliance with the requirements of this **ARTICLE**. If the Hotel Owner and Hotel Operator become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.

ARTICLE 14. GUEST UNIT OWNER COVENANTS

14.1. TRANSIENT OCCUPANCY REQUIREMENTS

All Guest Units shall be subject to the transient occupancy tax of the City for each day of the year the Guest Unit is occupied in accordance with the Transient Occupancy Ordinance, regardless of whether the Guest Unit is occupied by a Guest Unit Owner, Lessee, Private Guest or guest. Transient occupancy tax for each Guest Unit occupied by a Guest Unit Owner shall be based upon and calculated at the nightly rate then in effect for such Guest Unit as if it were being occupied by a third party Renter. If there is a legal reason why the Declarant, Hotel Owner and/or Hotel Operator cannot collect the TOT from Owner Occupants of a Guest Unit, the Declarant, Hotel Owner and Hotel Operator shall be required to provide to the City an amount of TOT equivalent to the amount that should have been collected from the Owner Occupant for each night a Guest Unit is occupied by the Owner thereof. For occupancies of the Guest Unit other than by a Guest Unit Owner, the TOT shall be based on the actual rent charged. Each Guest Unit shall be occupied and used only for short term resort occupancy purposes by the Guest Unit Owner or Lessee and no trade or business shall be conducted therein other than as consistent with resort occupancy use.

(a) A Guest Unit Owner shall not occupy a Guest Unit **more than ninety (90) cumulative days** during each calendar year, provided that any such occupancy shall not exceed ***twenty-five (25) consecutive days***.

(b) No Guest Unit Owner shall occupy a Guest Unit for more than twenty-five (25) days within any immediately preceding fifty (50) day period.

(c) If a Guest Unit is owned by more than one Person, the foregoing restrictions on occupancy shall apply to the Guest Unit and to all direct and indirect Guest Unit Owners and their respective Families collectively.

(d) For purposes of computing days hereunder, occupancy of a Guest Unit for a portion of a day shall be deemed to be occupancy for the entire day.

(e) Each Guest Unit Owner shall make such Guest Unit Owner's Guest Unit available for transient rentals to the public when not occupied by such Guest Unit Owner.

(f) Guest Units shall only be managed and staffed through Declarant or Hotel Operator, who shall be responsible for performing and coordinating the following services which include but are not limited to: Guest Unit reservations through the Registration System, check-in and check-out procedures, issuance of room key cards, control of room access (for Guest Unit Owners, Lessees, Private Guests and guests), maid service and collection and remittance of transient occupancy tax. No Guest Unit Owner or Rental Agent shall directly or indirectly manage or perform the foregoing services for any Guest Unit.

14.2. TEMPORARY KEY; COLLECTION OF TRANSIENT OCCUPANCY TAXES

The temporary key for each Guest Unit shall be maintained by the Hotel Operator, who shall be responsible for collecting transient occupancy taxes for all such Guest Units. No permanent key shall be provided to any Guest Unit Owner, to ensure that all guests of all Guest Unit Owners are identified for purposes of collecting transient occupancy taxes when owed to the City pursuant to the City's Transient

Occupancy Ordinance and regulations. The Hotel Operator shall collect from all Guest Unit Owners and Permitted Users, regardless of whether the Guest Unit is rented to transient guests by the Guest Unit Owner or by an agent on the Guest Unit Owner's behalf, the transient occupancy taxes owed for such Guest Unit for every night that such Guest Unit is rented to any given transient, regardless of any restrictions that may be set forth in the City's Transient Occupancy Ordinance and applicable regulations.

14.3. COMPLIANCE WITH GOVERNING DOCUMENTS; PAYMENT OF TAXES AND ASSESSMENTS

Guest Unit Owners must comply with all of the provisions of this Declaration and of the Bylaws, the Resort Covenant, all applicable Resort Rules and Regulations with respect to Project operations and the Resort, and all Conditions of Approval. Each Guest Unit Owner shall pay as and when due all taxes, Assessments and other impositions that are or may become a lien on such Guest Unit Owner's Guest Unit or any interest therein.

14.4. USE OF GUEST UNITS OWNED BY DECLARANT

The foregoing notwithstanding or anything herein or in any Governing Document to the contrary, Declarant (or its designee or successors and assigns) may, without the permission of the Board: (a) use or grant permission for the use of any Guest Unit owned by Declarant or such designee or successors or assigns for any purpose, including but not limited to use as a model or sales office, subject only to compliance with Applicable Law, and (b) lease any such Guest Units owned by Declarant to any party(ies), subject to Applicable Law.

14.5. GUEST UNIT MAINTENANCE STANDARDS

All Guest Units shall be maintained in accordance with the Resort Quality Standards. In addition, each initial Guest Unit Owner will be required to purchase the furniture, fixtures, finishes and equipment offered by Declarant upon the initial sale of the Guest Unit from Declarant. All costs of Operation of the Guest Units shall be borne by the respective Guest Unit Owners, as further described in **Section 23.2** herein. Declarant, Hotel Operator and their respective representatives, may, from time to time at any reasonable hour or hours and without prior notice to any Guest Unit Owner or Lessee, Enter and inspect any Guest Unit to ascertain whether such Guest Unit and the uses thereof are in compliance with this Declaration and the Resort Covenant, in the manner provided in **Section 5.1.6.C** herein. In such event, no entering person shall thereby be deemed guilty of, or become liable for, any manner of trespass or unlawful entrance in connection with such entry and inspection.

14.6. RESORT QUALITY STANDARDS

All areas within the Project shall be kept and maintained in accordance with the Resort Quality Standards. To promote a consistent appearance, the Hotel Operator, on behalf of each Guest Unit Owner, will install and maintain all Guest Unit window treatments and backings which conform to any specifications (including color) promulgated by the Hotel Operator. Furnishings, fixtures, equipment and facilities adorning or servicing any publicly utilized Common Area or Common Expense Area (including, without limitation: *lobby and front desk/concierge/reception area furnishings, fixtures, equipment and facilities; corridor and hallway furnishings, fixtures, equipment and facilities; elevator furnishings, fixtures, equipment and facilities; flooring materials; wallpaper; paint; furniture; carpeting; fixtures; lighting; equipment; and decor items* (collectively, the "**FF&E**"¹)) must be replaced, repaired or refurbished as deemed necessary by Declarant or the Hotel Operator, as the case may be, at the expense of all of the Guest Unit Owners, and in each instance that Declarant or the Hotel Manager, as the case may be, makes a determination that such FF&E is in need of replacement (for purposes of replacing FF&E due to wear and tear, age or to perform general refurbishment or renovation of the Project), each Guest Unit Owner will be

¹ **FF&E** – furniture, fixtures and equipment

required to participate in each such FF&E replacement program and to pay for such Guest Unit Owner's share of the costs of such FF&E replacement program, the costs for which will be charged on either a unit-by-unit actual cost basis, a percentage interest basis, a square footage basis or such other reasonable cost allocation as Declarant or the Hotel Operator, as the case may be, shall determine. The decision of Declarant or the Hotel Operator, as the case may be, as it relates to the above FF&E replacement provisions, shall be conclusive and binding on the Guest Unit Owners. In the event of a dispute concerning the replacement or refurbishment of the FF&E, the decision of Declarant shall be binding upon all parties to the dispute.

14.7. GUEST UNIT CABLE TELEVISION SYSTEM

Each Guest Unit has been equipped with at least one outlet activated for connection to the cable television system serving the Project, which outlet and systems are integral parts of the Resort Facilities Use Area. Additional outlets for connection to the cable television system are obtainable only from the Hotel Operator and may be installed only by the firm or individual authorized by the Hotel Operator to make such installation, with the prior approval of the Hotel Operator and the payment of any required additional fees. Guest Unit Owners and Permitted Users are prohibited from making any modifications to or tampering with said outlet and from making any connections to the cable television system, and the Hotel Operator may charge any Guest Unit Owner with the cost of locating and removing any unauthorized connections thereto and of repairing any modifications thereto. Notwithstanding anything to the contrary contained herein, Declarant hereby expressly reserves the right (for itself and for the Hotel Operator) to charge any Guest Unit Owner who wishes to subscribe to premium programming or pay-per-view service provided through such cable television system a usage charge based on such rates as Declarant or the Hotel Operator, as the case may be, may promulgate from time to time. To the extent permitted by applicable law, Declarant's (and the Hotel Operator's) right to impose such charges shall continue until Declarant no longer owns title to any Guest Unit and, thereafter, the assignee of Declarant's right (or the Hotel Operator at the direction of such assignee) shall have any rights of Declarant with regard to the imposition and collection of any such use charges.

14.8. LOBBY AREAS

Lobby areas, which are part of the Hotel Unit, are intended to serve as accessways only and, except as otherwise permitted by Declarant or the Hotel Manager, nothing shall be kept or stored therein.

14.9. STRUCTURAL ALTERATION AND INTEGRITY

Under no circumstances shall any Guest Unit Owner alter, impair, modify, or penetrate any Improvement within the Project for any reason whatsoever. No interior or exterior structural changes of any kind shall be constructed, erected or made within the Project by any Guest Unit Owner. No partition walls shall be installed, altered or removed by any Guest Unit Owner. Nothing shall be hung from any ceiling, bearing wall or partition walls bounding or within any Guest Unit. Nothing shall be installed, kept or maintained within any Guest Unit which might damage or impair the structural integrity of the Project. No Guest Unit Owner shall overload the electric wiring in any building, or operate machines, appliances, accessories or equipment in such manner as to cause an unreasonable disturbance to others, or connect any machines, appliances, accessories or equipment to the heating or plumbing system. No Guest Unit Owner shall overload the floors of any Guest Unit. No Guest Unit Owner shall permit anything to be done or kept in such Guest Unit Owner's Guest Unit or elsewhere in the Project which will result in the cancellation of any insurance, or which would be in violation of any law.

ARTICLE 15. RESORT COVENANT

15.1. OBJECTIVE OF RESORT COVENANT:

- (a) To identify and enumerate the Resort Facilities Use Areas of the Resort

(b) To identify and provide for the “Basic Services” (as defined in the Resort Covenant) to be provided to Owners within the Resort

(c) To provide for the fair and equitable allocation of the costs and expenses of Operating the Resort Facilities Use Areas and the *resort facilities* located thereon, and also the resort facilities required to provide Basic Services

(d) To provide for the fair and equitable allocation of the cost of providing the Basic Services to the Owners within the Resort

(e) To provide a fair and expeditious means for resolving disputes regarding Resort Facilities Use Areas and Basic Service expense allocation; and

(f) To provide an efficient means of modifying and/or adjusting Resort Facilities Use Areas or Basic Services provided by Declarant (or the Manager, on its behalf) to the Owners within the Resort.

Pursuant to the Resort Covenant and its exhibits, the Resort Facilities Expenses (as defined in the Resort Covenant) of the Resort are allocated among the **Resort Facilities Units**, the **Guest Units** and the **Association**.

15.2. RESORT COVENANT: RELATION TO THE CONDOMINIUM PROJECT

The covenants, conditions, restrictions, reservations, easements, assessments, charges and equitable servitudes created and imposed by this Declaration are in addition to the covenants, restrictions, easements and equitable servitudes imposed on the Condominium Project and the Resort by the **Resort Covenant**. In addition, with the exception of those provisions contained in **ARTICLE 13 - PERMITS CONDITIONS/RESTRICTIONS**, **ARTICLE 14 - GUEST UNIT OWNER COVENANTS**, **ARTICLE 15 - RESORT COVENANT** and **ARTICLE 16 - LEASING OF GUEST UNITS** of these CC&RS, and the provisions affecting the Property as contained within the Permits (and specifically those of the California Coastal Commission and the City of Imperial Beach), the covenants, conditions, restrictions, reservations, easements, assessments, charges and equitable servitudes created and imposed by this Declaration *are subordinate* to the covenants, restrictions, easements and equitable servitudes imposed on the Condominium Project and the Resort by the Resort Covenant. Nevertheless, it is the purpose and intention of Declarant to cause this Declaration and the Resort Covenant to be construed, interpreted, applied, and enforced in a manner that, to the greatest extent reasonably possible, effectuates and implements the purposes and intent of this Declaration and the Resort Covenant, one to another, as an integrated plan of development, management, operation of the Resort Facilities Use Areas, and allocation of Resort Facilities Expenses (as defined in the Resort Covenant) among the Project and the Association.

ARTICLE 16. LEASING OF GUEST UNITS

16.1. LEASING REQUIREMENTS

The reservation and leasing of all Guest Units shall be registered through a centralized reservation system operated by the Hotel Operator (“*Reservation System*”). The Hotel Operator shall have the right to market, advertise and lease all Guest Units to third parties as part of its business operations. Each Guest Unit Owner shall have the right to lease or otherwise afford Lessees the right to occupy or use such Guest Unit Owner’s Guest Unit from time to time, subject to the following:

16.1.1. REGISTRATION THROUGH THE RESERVATION SYSTEM

The Guest Unit Owner or its third-party Rental Agent shall register any reservation or lease through the Hotel Operator, as operator of the Reservation System.

16.1.2. HOTEL OPERATOR'S RIGHT TO BOOK BLOCKS OF GUEST UNITS

The Hotel Operator's express right to reserve and book one or more blocks of Guest Units in order to accommodate group bookings that otherwise would not be possible, as more fully described in **Section 13.2** above and the **Resort Covenant**.

16.1.3. RULES

Each Guest Unit Owner and Private Guest shall comply with any and all Rules relating to the exercise of use and access rights to the **Resort Facilities Use Areas** or the provision of services to the Guest Units by the Hotel Operator, including, without limitation, rules or procedures adopted regarding mandatory check-in for Guest Unit Owners and Private Guests and coordination of any charging privileges which the Hotel Operator may elect to offer Permitted Users.

16.1.4. NIGHTLY USAGE FEE

Each Permitted User occupying a Guest Unit shall be required to pay to the Hotel Operator a nightly usage fee ("**Nightly Usage Fee**") to compensate Hotel Operator for the cost of providing check-in and check-out services, electronic key services, and the cost of keeping records of all persons who occupy each Guest Unit, and remitting the taxes chargeable for occupancy of the Guest Units. Hotel Operator will establish a Nightly Usage Fee on an annual basis in an amount reasonably determined by Hotel Operator as the cost of providing check-in and check-out service, registration services and key service, and of administering, collecting and remitting taxes chargeable for occupancy of the Guest Units. The Hotel Operator shall require that each Person who occupies a Guest Unit check-in, check-out, and receive an electronic key at the front desk of the Hotel. Hotel Operator will further keep records of all persons who occupy each Guest Unit, and remit the taxes chargeable for occupancy of the Guest Units as required by this Declaration and the Transient Occupancy Ordinance.

16.1.5. RENTALS BY OWNERS OR THIRD-PARTY AGENTS

Guest Unit Owners may rent or lease their respective Guest Units directly (*i.e. by themselves*) or through third party Rental Agents, provided that any Rental Agent engaged by Guest Unit Owners (i) satisfy the requirements of the **Special Use Permit**, this Declaration and the Resort Covenant, including the requirements, among other things, that the Hotel Operator maintain the temporary key for the Guest Unit and that the Hotel Operator collect and remit the transient occupancy taxes for the Guest Unit to the City, and (ii) are appropriately licensed and bonded; conduct their business commensurate with the Resort Quality Standards; (iii) shall be subject to the provisions of **ARTICLE 13- PERMITS CONDITIONS/RESTRICTIONS** (and specifically to **Subsections 13.1(g) and 13.1(h)** therein), **ARTICLE 14 - GUEST UNIT OWNER COVENANTS**, and this **ARTICLE 16**, (iv) are sufficiently familiar with the Resort, and informed of the rules and restrictions contemplated by the Resort Covenant, this Declaration, the other Governing Documents, including these leasing guidelines to inform potential renters of their obligations under this Declaration and the Governing Documents. In order to allow the Hotel Operator to comply with its obligations to collect and remit the applicable transient occupancy taxes for the Guest Unit to the City, the following additional requirements shall apply to Guest Unit rental arrangements:

(a) the Hotel Operator will collect the transient occupancy taxes upon check-in to the Guest Unit by any Guest Unit Owner, Lessee, Private Guest or guest;

(b) the Guest Unit Owner shall provide a copy of the lease agreement or confirmation of the Guest Unit rental rate at least five (5) days prior to check-in, in order to establish the rental rate (which is subject to the requirements of **Section 13.1(h)** above) that applies to the Guest Unit for purposes of calculating the applicable transient occupancy taxes or, alternatively, if a copy of the lease agreement or confirmation of Guest Unit rental rate has not been provided, the Hotel Operator will collect an

amount of transient occupancy taxes based upon the nightly room rate for comparable units in the Project that are rented by the Hotel Operator; and

(c) if the Private Guest occupying the Guest Unit does not, for any reason, pay the transient occupancy taxes that are owed for the Guest's use of the Guest Unit, or the amount of transient occupancy taxes paid by the Guest are less than the amount of transient occupancy taxes owed for the Guest Unit, then the Guest Unit Owner of the Guest Unit shall be responsible for payment of any unpaid transient occupancy taxes owed for the Guest's occupancy of the Guest Unit and any expenses incurred by the Hotel Operator to collection the unpaid taxes.

16.1.6. GUEST UNIT OWNER JOINT AND SEVERAL LIABILITY

Each Guest Unit Owner will be jointly and severally liable with its Lessee and any Private Guest to the Association and Declarant and Hotel Operator for any amounts due and owing to the Association, Declarant or Hotel Operator, including, without limitation, (a) any charges assessed on account of services provided to or for the benefit of the Guest Unit Owner or Lessee or their respective Private Guests, and (b) any costs for the repair of any damage to the facilities of the Guest Unit or the Resort Facilities Use Areas or third party claims for personal injury or damage to the property resulting from the acts or omissions of the Guest Unit Owner, Lessee or their respective Private Guests.

16.1.7. SUBORDINATION OF TENANCIES

All tenancies are hereby made subordinate to any lien or Mortgage created in favor of or filed by Declarant and to any lien created in favor of or filed for the benefit of a Mortgagee, whether prior or subsequent to such lease.

16.1.8. AMENDMENT; MODIFICATION OF THIS ARTICLE

Declarant may, in its sole discretion, modify or amend this **ARTICLE 16** in order to comply with the any amendment or modification to the Special Use Permit, the Transient Occupancy Ordinance or any other ordinance, law or rule enacted by the City, County or government agency with appropriate jurisdiction. Any modification or amendment to any of the provisions of this **ARTICLE 16** shall require the consent of Declarant.

16.1.9. LEASE RIDER

In the event a Guest Unit Owner rents a Guest Unit directly or through a rental agent not affiliated with Declarant or Hotel Operator, such lease shall be required to have annexed to it and include a **Lease Rider** (in form and substance as may be determined by Declarant or Hotel Operator). All leases (in respect of all or any part of a Guest Unit) entered into after the date of the establishment of this Project and any renewals, extensions, modifications, amendments, sublets or assignments thereof, or of any existing lease, after such date, shall include the Lease Rider; and no subsequent extension, modification or amendment of any such lease or of any existing lease may change the terms of the Lease Rider once it has been so incorporated. The foregoing requirements shall also apply regardless of whether the lease or existing lease in question is to an affiliate or other party related to the leasing Guest Unit Owner. The initial form of Lease Rider shall include, subject to the right of Declarant or Hotel Operator, in its sole discretion, to amend, modify, supplement or delete any of such requirements:

(a) Requirement of at least five (5) business days prior written notice of the rental be provided to Declarant or Hotel Operator, including the identity of the renter, the times of arrival and departure.

(b) Lessee must present credit card on arrival to front desk for use of Hotel *a la carte* services and housekeeping services.

(c) Lessee must receive housekeeping services at least two times per week, and at least once upon departure of the Guest Unit, and Lessee will be charged for such housekeeping services at the rates established from time to time by Declarant or Hotel Operator.

(d) The Lease Rider must advise Lessee in clear terms that: (i) the Lessee is renting a particular Guest Unit from a private party rather than from Declarant or Hotel Operator; (ii) since the rental is not arranged through Declarant or Hotel Operator, Declarant or Hotel Operator has no authority to relocate the renter to another room/suite or adjust rental charges or length of stay; (iii) rent must be paid to the Guest Unit Owner of the Guest Unit; (iv) *a la carte* services are payable to Declarant or Hotel Operator directly; and (v) housekeeping services and provision of in-room consumables such as soaps, shampoos, etc, are only provided with the purchase of daily housekeeping services at the rates established from time to time by Declarant or Hotel Operator.

(e) All tenancies are hereby made subordinate to any lien or Mortgage created in favor of or filed by Declarant and to any lien created in favor of or filed for the benefit of a Mortgagee, whether prior or subsequent to such lease.

16.2. DESIGNATED USE

Lessees under the leases described in this Article shall be deemed to have assigned to them by the leasing Guest Unit Owner such Guest Unit Owner's right to use the Common Area and **Resort Facilities Use Areas over which the applicable Guest Unit Owner has easement rights pursuant to this Declaration; provided, however, the Guest Unit Owner, as lessor, may not thereafter exercise the right to use the Common Area until such lessor reassumes possession of the Guest Unit.**

ARTICLE 17. TRANSFER OF A GUEST UNIT

17.1. UNRESTRICTED TRANSFER

Subject to any express provisions herein to the contrary, a Guest Unit Owner may, without restriction under this Declaration, sell, give, devise, convey, mortgage, or otherwise transfer such Guest Unit Owner's entire Guest Unit. Notice of such transfer shall be given to the Board, in the manner provided herein for the giving of notices, within five (5) days following consummation of such transfer.

17.2. RESALE FEE

Upon any resale of a Guest Unit by a Guest Unit Owner (other than a sale of such Guest Unit to Declarant), the Guest Unit Owner shall pay to the Hotel Unit Owner at the closing of the sale of the Guest Unit a *resale fee equal to 0.75% of the aggregate gross revenues received by the Guest Unit Owner in connection with the sale of the Guest Unit, in consideration of the rights and licenses provided by the Hotel Unit Owner in connection with the sale of the Guest Unit.*

ARTICLE 18. MIXED-USE PROJECT

Each Guest Unit Owner, by acceptance of a deed to his or her Guest Unit, acknowledges that the Resort is a "mixed-use" project, including hotel operations, transient occupancy, recreational and commercial elements. Each Guest Unit Owner recognizes and accepts that combining such multiple uses may present a number of issues and concerns which may not otherwise be present in a single-use project, including, without limitation, additional noise, odors, fumes, smoke, vehicular traffic, pedestrian traffic, diminished security, and other similar issues and/or disturbances associated with any area where commercial, recreational, and hotel operation activity is present or prevalent.

ARTICLE 19. INTELLECTUAL PROPERTY RIGHTS

At any time during which Declarant or any parent, subsidiary or affiliate thereof is engaged in the development, sale or management of the Project, the Identity (as such term is defined below) may be made available for use by the Project, the Association and the management company for the Guest Unit pursuant to a license agreement with the party or parties owning the rights to the use of the Identity; *provided, however*, the terms of such use are at all times subject to the terms and conditions of, and the privileges established in, the license agreement granting such rights, which license may be revoked at any time. Neither the Association, the Board nor any Guest Unit Owner (by virtue of any such Guest Unit Owner's ownership interest in a Guest Unit) shall have any right to the use of the Identity in any manner whatsoever by virtue of any such party's interest in the Project or otherwise.

ARTICLE 20. HOTEL OPERATOR

The Operation of the Resort shall at all times be conducted by a Hotel Operator, who may be the Hotel Owner. The Hotel Owner shall have the sole and absolute discretion to select, appoint, designate, terminate, renew and otherwise engage such Hotel Operator, from time to time, on such terms and conditions as the Hotel Owner shall determine. Except as may be provided in the Resort Covenant, neither the Association nor any Guest Unit Owner shall have any right to determine which company the Hotel Owner selects as the Hotel Operator or the terms and conditions of such engagement.

ARTICLE 21. USE RESTRICTIONS

21.1. IN GENERAL

The Property shall be used for hotel and ancillary uses in accordance with the provisions therefor contained in the Permits, these CC&RS and the Resort Covenant. If ancillary uses include a restaurant and conference facilities, such facilities shall be available for use to the general public, as well as to Guests, subject to the Hotel's schedule of charges that are in effect at the time of such usage.

21.2. INSURABILITY

No Guest Unit, Exclusive Use Area or Improvements situated thereon shall be occupied or used for any purpose or in any manner which shall cause such Improvements to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause the rate of insurance to increase, or cause any such policy or policies representing such insurance to be canceled or suspended, or the company issuing the same to refuse renewal thereof.

21.3. ANIMAL REGULATIONS

The right to have common domesticated pets within any Guest Unit or otherwise on the Property shall be at the discretion of the **Hotel Operator**. Otherwise, no livestock, reptiles, insects, poultry or other animals of any kind shall be raised, bred or kept in any Guest Unit. The foregoing notwithstanding, a Guest Unit Owner may impose more stringent requirements on such Guest Unit Owner's Lessees, Private Guests and/or their Invitees, as such Owner may deem appropriate, notwithstanding the provisions of this Section. To the extent permitted in the Resort, the foregoing shall be applicable:

(a) The foregoing notwithstanding, no pets may be kept on the Property which result in an annoyance or are obnoxious to other Owners or Permitted Users; provided, however, that the Association Rules may further limit or restrict the keeping of such pets. No pets shall be permitted in any area designated in the Association Rules as being restricted to pets. No dog shall enter the Resort Facilities except while on a leash which is held by a person capable of controlling it.

(b) The Hotel Operator or the Association may cause any unleashed or tethered dog found within the Resort Facilities to be removed to a pound or animal shelter under the appropriate governmental jurisdiction.

(c) No animal whose prolonged barking or other prolonged noise unreasonably disturbs other Owners or Permitted Users shall be permitted to remain within the Property.

(d) Persons bringing or keeping a pet within the Property shall prevent their pets from soiling all portions of the Property where other persons customarily walk or otherwise occupy from time to time and shall promptly clean up any mess left by their pets.

21.4. INTERFERENCE OF OTHER PERMITTED USERS

No Unit or Exclusive Use Area shall be used in such manner as to obstruct or interfere with the enjoyment of Permitted Users of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Condominium nor on the Association Property.

21.5. SIGNS

21.5.1. ON THE ASSOCIATION PROPERTY

Subject to the provisions of **CIVIL CODE §§712 and 713**, no signs, placards, decals or other similar objects, visible from the Association Property, neighboring property or streets, shall be erected or displayed on the Association Property (including any Exclusive Use Area), without the prior written permission of the Board; provided however, the following signs shall be permitted, all of the foregoing of which shall conform with Applicable Law:

(a) Such signs as may be required by legal proceedings;

(b) One or more signs displayed by an Owner or the Owner's agent, on such Owner's Condominium or on real property owned by another with that Owner's consent, which is reasonably located, in plain view of the public, and is of reasonable dimensions and design, advertising the following: (i) that the Condominium is for sale, lease or exchange by the Owner or the Owner's agent (ii) directions to the Condominium, (iii) the Owner's or agent's name, and (iv) the Owner's or agent's address and telephone number.

21.5.2. FROM A GUEST UNIT

Subject to the provisions of **CIVIL CODE §1353.5**, as it may be amended, an Permitted User may post or display from within his or her Guest Unit such non-commercial signs, posters, flags, banners or other similar objects, except for those that would violate any local, state or federal law or pose a potential risk to public health or safety. For purposes of this Section, a non-commercial sign, poster, flag, or banner may be made of paper, cardboard, cloth, plastic, or fabric, but may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or include the painting of architectural surfaces.

Anything contained in this Declaration to the contrary notwithstanding, Declarant and its authorized agents, shall have the right during the Marketing Period to install and maintain Development and Marketing improvements.

21.6. ANTENNAS, SATELLITE DISHES

There shall be no outside television or radio antennas, masts, satellite dishes, transmitter tower or facility installed or maintained in the Project for any purposes whatsoever without approval of the Board. However, in considering whether to approve an antenna or to impose requirements on such approval, the Board shall not violate any applicable law or regulation, including, but not limited to, any Applicable Law, including regulations of the Federal Communications Commission.

21.7. INSIDE AND OUTSIDE INSTALLATIONS

No outside installation, including but not limited to clotheslines, masts, poles or lighting, may be installed or maintained in the Common Area, except with the prior consent of the Declarant or the Hotel Operator. No balcony, patio or deck covers, wiring, installation of air conditioning, water softeners, or other machines and any related equipment may be installed on the Building's exterior or be allowed to protrude through the walls or roofs of the Building (with the exception of those items installed during the original construction of the Project and/or the Units, by Declarant), unless Declarant's or the Hotel Operator's prior written approval is obtained. Any exterior lighting installed within the Project, including installations appurtenant to a Unit, shall either be indirect, shielded or of such controlled focus and intensity as to prevent glare on surrounding Units. Notwithstanding the specificity of the foregoing, no exterior addition, change or alteration to the Building may be commenced without the prior written approval of Declarant or the Hotel Operator. No Owner may cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any Unit for such Owner, and any Owner who does so, shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from Declarant, the Board or the Hotel Operator. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Reimbursement Assessment for such cost of discharge, which right to discharge is hereby granted to Declarant or the Hotel Operator.

21.8. ACCESS RESTRICTIONS

Without the prior approval of the Hotel Operator, Owners and Permitted Users shall not at any time or for any reason whatsoever enter upon or attempt to enter upon (a) the roof of any Building (excepting therefrom those roof areas which may be improved for specific authorized use by Owners and/or Permitted Users, (b) any portion of the Association Property used by the Association or the Hotel Operator for management or administrative purposes; and (c) utility closets and rooms.

21.9. OWNER, PERMITTED USER AND INVITEE ACKNOWLEDGMENTS – RE: NOISE TRANSMISSIONS

Each Owner acknowledges and agrees by acceptance of a deed or other conveyance to a Condominium and each Invitee of Owner who occupies a Condominium acknowledges and agrees by acceptance of such occupancy that:

(a) In any multi-unit structure where Units are located in close proximity to one another – resulting in the sharing of common or adjacent walls, floors and ceilings -- sounds will be transmitted and heard between and among those and as well as other Units no matter how much sound-proofing may be installed.

(b) Sound transmission may be especially conveyed when the sound level of the source is either sufficiently high or of a "bass" tone or a "vibration" and the background noise in adjacent or other condominiums is very low.

(c) It is mandatory for the mutual interest and protection of all Owners, Permitted Users and their respective Invitees to recognize that acoustical privacy may be achieved only through understanding and compliance with certain limitations and restrictions on the production and transmission of sounds; and, even then, there will usually be some audio awareness of one's neighbors.

(d) The modification of design of the interior structure of a Unit, the installation or removal of flooring and floor-coverings, the installation of pictures and other decorative items in the ceilings and walls of a Unit may alter the way that sound is transmitted.

Therefore, each Owner, Permitted User and respective Invitee thereof, further agrees:

(1) To accept ownership and/or occupancy of a Condominium subject to sound impacts from sources outside of such Condominiums, including other neighbors both within and outside of the Resort; and

(2) To accept responsibility for minimizing noise transmission from the Condominium so occupied, in accordance with the provisions so provided in this Declaration and any related Governing Document, including any Rules, Applicable Law and common courtesy.

21.10. OFFENSIVE ACTIVITIES AND CONDITIONS

No noxious or offensive activity shall be carried in any Condominium, or on the Association Property. No odor shall be permitted to arise from any Condominium which renders the Condominium or any portion thereof unsanitary or offensive to any portion of the Project or to its Permitted Users. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Condominium so as to be unreasonably offensive or detrimental to any other part of the Project or to its Permitted Users. No exterior speakers, horns, whistles, bells or other sound devices which unreasonably disturb other Owners or Guests shall be located, used or placed in any Condominium or the Association Property without the express written approval of the Hotel Operator, and provided that the devices do not produce annoying sound or conditions as a result of frequently occurring false alarms.

21.11. GARBAGE AND REFUSE DISPOSAL

Trash, garbage, or other waste shall be disposed of by Occupants or their Invitees only by depositing the same into trash receptacles designated for such use. No rubbish, trash or garbage or containers therefor shall be visible or allowed to accumulate on the Association Property outside Units except in locations specifically designated by the Hotel Operator for such use. Trash cans and other rubbish containers shall not be allowed to be visible from any portion of any of the Association Property

21.12. EXTERIOR FIRES; BARBECUES

No exterior fires shall be permitted within the Resort. Barbecues not a part of built-in kitchen facilities and/or equipment of Guest Units may not be used within the Resort. Cooking in any fireplaces of Guest Units, if any, is prohibited.

21.13. DRYING OR LAUNDERING OF CLOTHES, ETC.

No exterior clothes lines shall be erected or maintained, and no clothing, household fabrics or other unsightly articles shall be hung, dried or aired on any portion of the Property, including the interior of any Guest Unit, so as to be visible from other portions of the Resort or any public or private street.

21.14. WINDOW COVERINGS

All drapes, curtains, window coverings, shutters or blinds visible from the any portion of the Resort of any public or private street shall be on as authorized and approved by the Hotel Operator. No window shall ever be covered with paint or aluminum foil.

21.15. STRUCTURAL ALTERATIONS

(a) Except as permitted in **Sections (b)(1) and (b)(2)** below, no structural alterations to the interior of any Unit or the Association Property surrounding such Unit shall be made and no plumbing, electrical or other work which would result in the penetration of the unfinished surfaces of the ceilings, walls or floors shall be performed by any Owner without the prior written consent of the Hotel Operator. An Owner who acquires fee title to two (2) or more adjoining Units, may be permitted to remove the demising wall dividing the two (2) or more Units, so long as the Owner has complied with the requirements of **Section 21.16** herein and obtained the approvals required under **ARTICLE 22** of this Declaration.

(b) Subject to the provisions of this Declaration and Applicable Law, each Owner shall have the right, at such Owner's sole cost and expense:

(1) To make any improvement or alteration within the boundaries of such Owner's Units that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Association Property;

(2) To maintain, repair, repaint, paper, panel, plaster, tile and finish the interior surfaces of the ceiling, floors, window frames, trim, door frames and perimeter walls of the Unit and the surfaces of the bearing walls and partitions located within the Unit and to substitute new finished surfaces in place of those existing on said ceiling, floors, walls, and doors of said Unit; however, for installation of floor surfaces separating Units, a sound control underlayment shall be installed as required by the Aesthetics Standards or as may otherwise be approved in writing by the Hotel Operator Declarant and thereafter the Board.

(3) To modify such Owner's Unit to facilitate access for handicapped/disabled persons pursuant to **CIVIL CODE §1360(a)(2)**, as it may be amended from time to time.

21.16. MERGING UNITS: HOTEL SUITES.

(a) Declarant and, subject to the provisions of this **Section** and **ARTICLE 22** herein, Declarant and thereafter the Hotel Operator, shall have the right to grant to the Owner who acquires fee title to or Leases two (2) or more adjacent Guest Units, (i) an Exclusive Use Easement on and through the Demising Areas separating such Guest Units, together with (ii) the right, after obtaining a Coastal Development Permit for such development, to alter, modify or remove the improvements within such Demising Areas ("*Demising improvement(s)*") at such Owner's expense, and in accordance with detailed plans approved by Declarant and thereafter the Hotel Operator, thereby effecting a merger of the adjacent Guest Units into a single hotel residential occupancy area ("*Hotel Suite*" or "*Suite*"). Such Exclusive Use Easement shall exist only for so long as the Guest Units function as a Hotel Suite. The merger of two or more Guest Units into a Hotel Suite shall not change the Separate Interest status of each Guest Unit comprising such Hotel Suite, each of which shall continue to be treated legally as a separate Guest Unit required to pay its separate Assessment allocations as may be levied pursuant to these CC&RS.

(b) At such time that a Hotel Suite configuration shall terminate as between any two Guest Units, the Demising Area Exclusive Use Easement between such two Guest Units shall also terminate, automatically. The Owner(s) of such former Suite of Guest Units shall have a duty and obligation to reconstruct the Demising improvements and any related Association Property to their original as-built condition at such Owner's/Owners' expense.

(c) No bearing walls shall be removed, altered or damaged to effect either the merger or restoration of two Guest Units. No modifications to any portion of the Association Property shall be made which affect the structural integrity of the Project or impair any other Owner's reasonable use of such Association Property, or any Utilities Systems that may be located therein, or the value of the Project. All costs and expenses of alteration, modification or restoration of the Demising improvements and any related Association Property shall be borne by the Owner(s) of the Guest Units so merged or restored. At the request of the Board, after approval of the proposed modifications by the Board and prior to commencement of work, the Owner(s) making such modifications shall post a bond or bonds in an amount acceptable to the Board to protect the Association and the Project against liens and to insure completion of the work. In merging or restoring Guest Units, an Owner shall have such reasonable access to other Guest Units that he does not own as may be required to accomplish the modifications approved by the Board.

21.17. NO CHANGES IN PLUMBING WITHOUT APPROVAL

No internal plumbing or plumbing fixtures shall be revised in any Guest Unit without approval by the Hotel Operator.

21.18. VEHICLE RESTRICTIONS

The type of vehicles authorized within the Resort shall be subject to specific rules and regulations as determined from time to time by the Hotel Operator in its sole discretion.

21.19. PARKING

Guest Unit Owners shall have the right to access and use the Parking Area in an unreserved, non-exclusive manner for **valet** (which Hotel owner may require exclusively from time to time in its sole discretion) or **self vehicular parking**; provided, however, that use of such Parking Area will require payment to Hotel owner of a fee, as determined by Hotel owner from time to time in its sole discretion.

Each Guest Unit Owner, by acceptance of a deed to a Guest Unit, acknowledges, recognizes and understands that such Guest Unit Owner may not own any parking spaces located on or related to the Property, rather Guest Unit Owners may only be granted non-exclusive license rights to use Vehicular Spaces subject to the Rules.

21.20. TOWING

(a) Any vehicle within the Resort parked in violation of this Declaration or the Rules and Regulations of the Board may be removed as provided for in accordance with the provisions of **VEHICLE CODE §22658.2** and any amendments thereto, or in accordance with Applicable Law.

(b) Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, or in a manner which interferes with any entrance to or exit from the Project or any Guest Unit, Vehicular Space or driveway located thereon.

(c) The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

21.21. LIABILITY FOR DAMAGE TO COMMON EXPENSE AREAS

Each Owner shall be legally liable to the Hotel Operator and/or the Association for any damages to the Common Expense Area or to any improvements therein that may be sustained by reasons of the negligence of that Owner and/or such Owner's Invitees, as such liability may be determined under California law.

21.22. OWNERS' AGREEMENTS BY ACCEPTANCE OF DEED TO UNIT

Each Owner, by acceptance of deed or other conveyance of title to such Owner's Unit, agrees: (a) to be responsible for compliance with the provisions of this Declaration, the Resort Covenant, the Articles, Bylaws and Rules of the Board or any Aesthetic Standards, and for compliance by such Owner's Invitees, (b) to hold each other Owner harmless from, and to defend each other Owner against, any claim of any person for personal injury or property damage occurring within such Owner's Unit and/or Exclusive Use Area appurtenant thereto, unless the injury or damage occurred by reason of the negligence of any other Owner; and (c) after written notice and an opportunity for a hearing as provided in **Section 9.1.3.B** herein entitled "**Penalties Against Members,**" to pay any fines and penalties assessed pursuant hereto, the Bylaws or the Rules or Aesthetic Standards, for any violation by such Owner or such Owner's Invitees.

ARTICLE 22. AESTHETICS AND DESIGN CONTROL

22.1. DECLARANT CONTROL

22.1.1. ESTABLISHMENT OF COMMITTEE

The Aesthetics Committee is hereby created, consisting of three (3) individuals, for the purpose of establishing and maintaining specific architectural control for the Common Area and the interior and exterior of the Guest Units, to the extent not otherwise provided for herein or in the Resort Covenant.

22.1.2. CONTROL

The Declarant or the Hotel Operator, shall retain control over any or all architectural and aesthetic elements of the Resort Facilities Use Areas and Common Area, so long as such areas are owned or otherwise under the control by Declarant or the Hotel Operator by easement, other interest or pursuant to the Resort Covenant; provided, however, Declarant or the Hotel Operator may from time to time assign its rights hereunder to the Aesthetics Committee pursuant to such terms as Declarant or the Hotel Operator may deem appropriate. If, at any time in the future, the Association shall acquire the ownership of any Resort Facilities Use Areas (which shall thereafter be deemed Common Area), the Aesthetics Committee shall establish and maintain architectural controls with respect to the making of any modifications to the Common Area or any portions thereof and the reimbursement of reasonable costs incurred in connection therewith, subject to any requirements or restrictions imposed by Declarant in connection with the conveyance of the Resort Facilities Use Areas to the Association and provided that all such modifications to the Common Areas comply with the Resort Quality Standards. Declarant shall also establish and maintain aesthetic control for any modifications within any Guest Unit or any Exclusive Use Area appurtenant thereto, including the floors, walls, ceilings, fixtures and furnishings, as more fully described in the Resort Covenant. Anything herein to the contrary notwithstanding, for so long as Declarant or the Hotel Operator shall retain control over any or all architectural and aesthetic elements of the Property, as described in this Article, the powers granted to the Aesthetics Committee herein shall be held by Declarant and or the Hotel Operation; further provided, however, the provisions of this Article shall at all times be subject to the Resort Covenant.

22.1.3. INITIAL MEMBERS

Prior to the "Transfer Date" (as hereinafter defined), all of the members of the Aesthetics Committee shall be designated by Declarant. All of the rights, powers and duties of the Aesthetics Committee as set forth in this Article are hereby delegated to the Aesthetics Committee established hereby. Such delegation may not be revoked except by Declarant until the later to occur of (i) expiration of five (5) years after the first sale of a Guest Unit, or (ii) sale by Declarant of seventy-five percent (75%) of the Guest Units in the Condominium Project (the "**Transfer Date**").

22.1.4. APPOINTMENT, REMOVAL AND RESIGNATION

After the Transfer Date, the right to appoint and remove all members of the Aesthetics Committee at any time, shall be and is hereby vested solely in the Board; *provided, however*, no initial member of the Aesthetics Committee, nor any successor appointed by Declarant for an initial member who dies or resigns, may be removed except by Declarant prior to the expiration of such member's term of office pursuant to **Section 22.1.3** above. The Board shall appoint one (1) member to the Aesthetics Committee and the Declarant shall appoint two (2) members to the Aesthetics Committee. Any member of the Aesthetics Committee may at any time resign from the Aesthetics Committee by giving written notice thereof to the Declarant, if, pursuant to this subparagraph, Declarant has the right to appoint a successor to such member, or, if Declarant does not have the right, to the Board.

22.1.5. VACANCIES

Except as otherwise provided in **Sections 22.1.3 and 22.1.4**, after the Transfer Date, all vacancies, however caused, on the Aesthetics Committee of seats held by members appointed by the Board, shall be filled by vote of a majority of the Board, and any vacancy, however caused, of the seat held by the member appointed by the Declarant shall be filled by the Declarant. A vacancy shall be deemed to exist in case of the death, resignation or removal of any member of the Aesthetics Committee. Failure of the Board to fill any vacancy in the Aesthetics Committee shall not prevent: (i) the running of the sixty (60) day automatic approval period specified in **Section 22.4(f)**; or (ii) action by the Aesthetics Committee on any matter to the extent that a majority thereof each join in and consent thereto.

22.2. MEETINGS AND COMPENSATION

The Aesthetics Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any two (2) members, at a meeting or otherwise, shall constitute the act of the Aesthetics Committee. The Aesthetics Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Aesthetics Committee shall not receive any compensation for services rendered.

22.3. DUTIES

It shall be the duty of the Aesthetics Committee to:

(a) Consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, including all proposals or plans for modification or renovation of any Guest Units that would impact any structural elements of the Condominium Project;

(b) Ensure that any landscaping and/or Improvements constructed on the Common Area conform to plans approved by the Aesthetics Committee and otherwise comply with applicable laws and regulations;

(c) If requested by Declarant, the Hotel Operator or the Association, adopt Aesthetics Committee standards and rules (the "**Aesthetic Standards**");

(d) To perform other duties delegated to it by the Declarant or the Hotel Operator within the time periods set forth herein and thereafter by the Board; and

(e) to carry out all other duties imposed upon it by this Declaration. The Aesthetics Committee, in its own name or on behalf of the Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction or Improvements on the Common Area or any portion thereof.

22.4. OPERATION OF COMMITTEE

The Aesthetics Committee shall function as follows:

(a) The Aesthetics Committee may require the submission to it of any or all of the following documents and such additional documents which it determines to be reasonably appropriate to the activity for which consent is requested:

- (1) a written description;
- (2) plans and specifications;
- (3) schematics;
- (4) elevations; and
- (5) a plot plan showing the location of the proposed structure or Improvements.

(b) All submissions to the Aesthetics Committee shall:

- (1) show the name and address of the party submitting the same;

- (2) be in triplicate;
- (3) be deemed made when actually received by the Aesthetics Committee; and
- (4) state in writing the specific matters for which approval is sought.

(c) The Aesthetics Committee, before giving such approval, may require that changes be made to comply with such requirements as the Aesthetics Committee may, in its absolute discretion, impose as to structural features of any proposed Improvement, the types of materials used, or other features or characteristics thereof not expressly covered by any provisions of this instrument. The Aesthetics Committee may also require that the exterior finish and color, and the architectural style or character of any proposed Improvement shall be suitable, in the discretion of the Aesthetics Committee, in view of the general architectural style and character of existing Improvements within the Property. Notwithstanding the foregoing, no approval by the Aesthetics Committee shall be deemed to excuse the applicant from complying with the applicable requirements of the City or any other governmental body with jurisdiction over the Property, including, without limitation, any prior planning approvals and building code requirements. In connection therewith, as a condition of approval, the City or such other governmental body may require, as part of any submittal by a Guest Unit Owner, confirmation that the requested modification or Improvement has been considered by and approved by the Aesthetics Committee. Neither the Aesthetics Committee nor the Association shall be liable for any loss, cost, or damage resulting from any delay caused by a Guest Unit Owner's inability to submit an application to the City or any other governmental body prior to the time approval is obtained from the Aesthetics Committee.

(d) The Aesthetics Committee, before giving its approval, may impose conditions (including, without limitation, adequate security, in the form of insurance or otherwise, protecting the Association or other Guest Unit Owners) or require changes to be made which in its discretion are required to ensure that the proposed Improvement will not detract from the appearance of the Common Area or any Association Property, or otherwise create any condition unreasonably disadvantageous to other Guest Unit Owners or detrimental to the Condominium Project as a whole.

(e) The Aesthetics Committee shall retain one (1) of the three (3) sets of submitted documents. In the event the Aesthetics Committee approves or is deemed to approve the activity for which consent is required, the Aesthetics Committee shall endorse its consent on all three (3) copies and two (2) sets of such documents shall be mailed by the Aesthetics Committee, postage prepaid, to the address specified by the submitting party unless such party shall elect to accept delivery thereon in person or by agent so authorized in writing.

(f) If the Aesthetics Committee fails to mail its certificate with regard to any material or matter submitted to it hereunder, within sixty (60) days after submission to it, it shall be conclusively presumed that the Aesthetics Committee has denied approval to the specific matters as to which approval was sought in the submission. It shall thereupon be the duty of the members of the Aesthetics Committee, forthwith upon the request of the submitting party, to sign and acknowledge a certificate evidencing such approval. Notwithstanding the foregoing, the approved specific matters shall be subject to the Architectural Rules, as may be adopted from time to time.

(g) As a condition precedent to its consideration of or action upon any material or matter submitted to it hereunder, the Aesthetics Committee shall be entitled to receive a reasonable sum fixed by it from time to time for each set of plans, specifications, drawings or other material so submitted. Notwithstanding the provisions of Section (f) above, until the requisite sum shall have been paid to it as provided herein, any material delivered to the Aesthetics Committee shall not be considered to have been submitted to it for the purposes of this Declaration.

(h) All actions of the Aesthetics Committee shall be noted in the minutes of the Board.

(i) No certificate of the Aesthetics Committee shall be recorded by the Aesthetics Committee or any member thereof, but the same may be recorded by the party submitting the material concerning which the certificate was made.

(j) All action by the Aesthetics Committee authorized in this Declaration, except as otherwise provided herein, shall be within its sole discretion.

(k) Notwithstanding any other provisions herein, the provisions of this ARTICLE shall not apply with respect to the initial construction by Declarant of Improvements within the Resort Facilities Use Areas or the Condominium Project or to any modifications thereto made by Declarant pursuant to Declarant's authority to make such modifications pursuant to the terms of this Declaration or the Resort Covenant.

22.5. DILIGENCE IN CONSTRUCTION

Upon approval by the board of any Plans and Specifications, the Owner(s) shall promptly commence construction and diligently pursue the same to completion.

22.6. FEE FOR REVIEW; DEPOSIT FOR CONSTRUCTION CLEANUP

22.6.1. FEE FOR REVIEW

The Board shall have the right to establish a *reasonable* fee for the review and approval of Plans and Specifications which must be submitted to it pursuant to the provisions of this Article or the Bylaws, which shall be reasonably related to the duties performed and to cover any expense incurred in obtaining professional review assistance from licensed engineers, architects or contractors.

22.6.2. OWNERS RESPONSIBILITY FOR CLEANUP; DEPOSIT TO ASSOCIATION

(a) Each Owner shall be responsible for the *daily cleanup* of any and all construction debris that is left within the Common Expense Areas as a result of any construction activity within such Owner's Unit, and/or the ingress and egress of any construction-related vehicles or workers through the Association Property.

(b) The Board may require that an Owner deposit funds from time to time with the Association in amount that the Board deems sufficient and appropriate, so that in the event any such Owner fails to cleanup any construction debris as required by the Board, the Association shall have sufficient funds to cause the cleanup thereof. The Board may require that such Owner's deposit be made to the Association (1) as a condition of its approval of an Owner's Plans and Specifications and (2) prior to the commencement and/or during the course of any such construction activity. In the event such Owner fails to remit the requested deposit, and the Association nonetheless proceeds to perform or cause to perform cleanup, the costs of such cleanup shall be assessed to such Owner as a Compliance Assessment.

22.7. ACCESS TO PROPERTY

Each member of the Aesthetics Committee, or any other agent or employee of the Board, shall at all reasonable hours have the right of access to any part of the Property, and to any structures being built thereon, for the purpose of inspection relative to compliance with this Declaration and entry onto any part of the Condominium Project in accordance herewith shall not be deemed a trespass.

22.8. WAIVER

The approval or disapproval by the Aesthetics Committee of any plans, specifications, drawings, heights, or any other matters submitted for approval or consent shall not be deemed to be a waiver by the Aesthetics Committee of its right to approve, disapprove, object or consent to any of the features or elements embodied therein when the same features or elements are embodied in other plans, specifications, drawings or other matters submitted to the Aesthetics Committee.

22.9. LIABILITY

Each Guest Unit Owner shall be solely responsible for any violation of this Declaration, the Aesthetic Standards, or any applicable instrument, law or regulation, caused by an Improvement made by such Guest Unit Owner even though same is approved by the Aesthetics Committee. Plans and specifications shall be approved by the Aesthetics Committee as to style, design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, this Declaration, easements, deed restrictions and other rights and obligations affecting the Property. By approving such plans and specifications neither the Aesthetics Committee, the members thereof, the Association, the Members, the Board, nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. The Aesthetics Committee shall have the right to require, as a condition of approval, that a Guest Unit Owner provide indemnification on terms and conditions satisfactory to the Aesthetics Committee.

22.10. ESTOPPEL CERTIFICATE

Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall provide to the Owner an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Unit of said Owner) that as of the date thereof, either: (a) all improvements made and other work completed by said Owner comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Unit through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

22.11. VARIANCES

The Board may authorize variances from compliance with any of the architectural provisions of this Declaration. Such variances must be in writing, and must be signed and acknowledge by at least a majority of the members of the Board. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular Unit and particular provision hereof covered by the variance, nor shall it affect in any way affect the Owner's obligation to comply with all Applicable Law affecting its use of the Unit, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the City or any other governmental authority.

22.12. CITY-IMPOSED RESTRICTIONS

Notwithstanding any other provision herein to the contrary, any Improvements in the Condominium Project which have been constructed in accordance with building, utility and/or landscaping plans approved by the City shall not be modified without the prior approval of the City's planning commission. This provision shall not be modified or amended without the City's consent.

22.13. AMENDMENTS

Notwithstanding the Article of this Declaration entitled **AMENDMENTS**, no amendment, verification or rescission of this Article may be made, prior to last Close of Escrow without the (a) written consent of Declarant and (b) the Recording of such consent.

ARTICLE 23. RESPONSIBILITIES OF OPERATION

23.1. ASSOCIATION OPERATION OF ASSOCIATION PROPERTY /COMMON EXPENSE AREAS

The Association shall Operate those portions of the Association Property and Common Expense Areas, which are not Covenant Obligations, or shall contract for such Operation, to assure Operation thereof in accordance with the Resort Quality Standards; *provided, however*, the Association shall not be responsible for or obligated to perform those items of Operation of the Guest Units, which are the responsibility of the Guest Unit Owners as provided herein.

23.1.1. COMMON AREA MAINTENANCE ITEMS

Association Obligations shall include, without limitation, the Common Expense items described in EXHIBIT "C" hereto, as it may be amended from time to time pursuant to the rights therefor granted to the Hotel Operator herein and in the Resort Covenant. The Association shall, at all times, itemize the Common Expenses incurred with respect to all of the foregoing maintenance items to allocate same to the Guest Unit Owners in the correct proportions as further specified herein.

23.1.2. COMMON EXPENSES TO BE CHARGED TO GUEST UNIT OWNERS

All Common Expenses shall be paid out of the Association Accounts as provided in this Declaration and shall be charged to the individual Guest Units and their respective Guest Unit Owners at their allocated Proportional Shares.

23.1.3. BOARD'S AFFIRMATIVE DUTY

It shall be the affirmative duty of the Board to require strict compliance with all provisions of this Declaration and to cause the Property to be inspected by the Board for any violation thereof. The cost of any maintenance, repairs or replacements by the Association which is not the responsibility of the Association or which arises out of, or is caused by, the act of a Guest Unit Owner or such Guest Unit Owner's Family or Invitees shall, after Notice and Hearing, be levied by the Board as a Reimbursement Assessment against such Guest Unit Owner.

23.2. GUEST UNIT OWNERS OBLIGATIONS

23.2.1. OBLIGATIONS TO OPERATE GUEST UNITS

Each Guest Unit Owner shall maintain, repair, replace, finish and restore or cause to be so maintained, repaired, replaced and restored, at such Guest Unit Owner's sole expense, all portions of such Guest Unit Owner's Guest Unit in accordance with the **Resort Quality Standards**, the Association Rules, and the original construction design of the Improvements in the Resort. Such maintenance and repair obligations of the Guest Unit Owners include, without limitation, shower pans within any bathroom, heating, ventilation and air conditioning ("**HVAC**") equipment serving only such Guest Unit Owner's Guest Unit (wherever same may be located), as well as the windows, doors, light fixtures actuated from switches controlled from, or separately metered to, such Guest Unit Owner's Guest Unit, and the interior surfaces of the walls, ceilings, floors, permanent fixtures and firebox in the fireplace. All Guest Units must be maintained in a clean, sanitary and attractive condition, in accordance with the Resort Quality Standards, the Association Rules, and the original construction design of the Improvements in the Resort. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the Resort housing the Guest Units shall be pierced or otherwise altered or repaired, without the prior written approval by the Declarant. It shall further be the duty of each Guest Unit Owner, at such Guest Unit Owner's sole expense, to keep any Limited Use Area (as described in the Resort Covenant) over which an exclusive easement has been reserved for the benefit of such Guest Unit Owner free from debris and reasonably

protected against damage. Notwithstanding any other provision herein, each Guest Unit Owner shall also be responsible for all maintenance and repair in accordance with the Resort Quality Standards of any internal or external telephone wiring (including, without limitation, such wiring utilized for DSL, T-1, modem, or other electronic communication) and HVAC ducts and conduit, wherever located, which is designed to serve only such Guest Unit Owner's Guest Unit, and shall be entitled to reasonable access over the Common Area and Association Property, as applicable, for such purposes, subject to reasonable limitations imposed by the Association. It shall further be the duty of each Guest Unit Owner to pay when due all charges for any utility service which is separately metered to such Guest Unit Owner's Guest Unit.

23.2.2. OBLIGATION TO OBTAIN REPAIR SERVICES FROM DECLARANT, HOTEL OPERATOR OR APPROVED SERVICE PROVIDER

In order to maintain the Resort Quality Standards, Guest Unit Owners shall be required to obtain all maintenance and repair services from the Declarant or Hotel Operator unless the Declarant or Hotel Operator does not offer such maintenance and repair services, in which event such services shall be obtained by every Guest Unit Owner from service providers authorized and approved by the Declarant or Hotel Operator. In the event Declarant or Hotel Operator elects at any time to not provide maintenance and repair services for Guest Units, Declarant or Hotel Operator will maintain and notify the Guest Unit Owners of a list of approved service providers for services as determined from time to time by Declarant or Hotel Operator (the "Approved Service Providers List" or "List"). At the request of a Guest Unit Owner, Declarant or Hotel Operator will consider adding other specific service providers to the Approved Service Provider List, if Declarant or Hotel Operator does not then provide that service. No service provider will be included on the List unless the service provider is willing to comply with Declarant's or Hotel Operator's rules in effect from time to time regarding hours, means of access, parking, licensing, insurance and other matters, and compliance with the Resort Quality Standards. To the extent the Approved Service Provider List covers a particular service, each Guest Unit Owner shall use a supplier from the List. This procedure is deemed reasonable to minimize the number of service providers and vehicles within the Resort. Declarant's or Hotel Operator's inclusion of any service provider on the List shall not mean or be deemed to create any representation, warranty or guaranty by Declarant or Hotel Operator or any of their agents or representatives concerning, or make Declarant, Hotel Operator, or any of their agents or representatives responsible for, the performance, nonperformance or actions by or of any service provider. All service providers hired by Guest Unit Owner must comply with Declarant's or Hotel Operator's rules in effect from time to time regarding hours, means of access, parking, licensing, insurance and other matters as a condition of entry onto the Resort.

23.3. TERMITE ERADICATION

If the Board adopts a program for the inspection of, and/or prevention and eradication of, infestation by wood destroying pests and organisms, the Association upon reasonable notice (which shall be given no less than fifteen (15) days nor more than thirty (30) days before the date of temporary relocation) to each Guest Unit Owner and the Occupants of his or her Guest Unit, may require such Guest Unit Owner and Occupants to temporarily relocate from such Guest Unit in order to accommodate efforts to eradicate such infestation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the Occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Guest Unit by such entry shall be repaired as a Common Expense. All costs involved in maintaining the inspection and preventive program as well as repairing and replacing the Common Area and the Improvements thereon (when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms) shall be a Common Expense, as applicable, subject to the restrictions applicable to Capital Improvement Assessments.

23.4. FAILURE TO MAINTAIN

In the event an Owner fails to maintain the areas described herein pursuant to any **Aesthetic Standards** or Rules therefor set by the Hotel Operator or the Board, or if an Owner, or such Owner's Invitees or pets, cause the willful or negligent act or neglect of the same or any other area within the Project, the Board may give written notice to the Owner of the work required and request that the same be done within a reasonable time under the specific circumstances, provided, however, the Board shall have the right to approve the person or company who shall perform the maintenance or repairs and the method of repair. In the event the Owner fails to carry out such work of maintenance or repair within said time period, the Board may, following a Notice and Hearing as provided in **Section 10.2** herein entitled "**Notice and Hearing**," cause such work to be completed and shall assess the cost thereof to such Owner as an **Reimbursement Assessment** in accordance with the procedures set forth in this Declaration.

23.5. DAMAGE FROM WITHIN A UNIT

23.5.1. TO THE SAME UNIT

In the event the Board shall determine that the walls, ceilings, floors, doors, or windows forming the boundaries of a Unit have been damaged from within that Unit, the Owner of such Unit shall be responsible for repairing such damage in a timely manner in accordance with such rules as the Board or its delegated committee shall from time to time adopt (**NOTE:** the foregoing items are specifically excluded from coverage by insurance carried by the Association).

23.5.2. TO COMMON AREA

Except to the extent covered by insurance carried by the Association, in the event the Board shall determine that Common Area improvements have been damaged from an event or cause which occurred within a particular Guest Unit – such as a plumbing leak, overflowing or leaking toilet, bathtub, aquarium, or waterbed; a spill; decaying matter; or any other reason – the Owner of such Unit in which such event or cause occurred shall be responsible for the reasonable cost of: repair, reconstruction or replacement of such damage.

23.5.3. TO ANOTHER OWNER'S OR PERMITTED USER'S UNIT OR PERSONAL PROPERTY

Except to the extent covered by insurance, in the event that improvements or personal property within a Unit (the "**Damaged Unit**") have been damaged from an event or cause which occurred within a another Unit – such as a plumbing leak, overflowing or leaking toilet, bathtub, aquarium, or waterbed; a spill; decaying matter; or any other reason – the Owner of such Unit in which such event or cause occurred shall be responsible for the reasonable cost of: repair, reconstruction or replacement of such Damaged Unit's damaged improvements or personal property, together with any related derivative expense incurred by the Owner or Permitted User of such Damaged Unit as a result of such damage (e.g. temporary relocation, medical and hospital expenses).

23.6. WATER INTRUSION DAMAGE

Notwithstanding any other provision in the Governing Documents, each Owner shall be solely responsible for causing the repair or replacement of any damage to any and all interior items of its Unit, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures and trade fixtures or other items therein, caused by water intrusion from whatever source. An Owner may obtain and maintain, at their own expense, such insurance to protect against any damage or loss of property due to water intrusion, or the cost of repair or replacement of damaged items for which such Owner is responsible. The Association shall not be liable for damage to any Unit or property therein resulting from water which may leak or flow from outside of any Unit or from any

part of the Building, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of the Association, its Board, officers, agents or employees.

23.7. COOPERATION BY OWNERS WITH ASSOCIATION

To the extent necessary or desirable for the Association to accomplish its Association Obligations hereunder, individual Owners shall cooperate with the Association, its agents and vendors in the prosecution of its work.

23.8. MOLD

The Association, with respect to Association Property, and each Owner and Permitted User, with respect to its Condominium, shall take all reasonable and appropriate steps to prevent conditions that may cause mold or mildew to develop, including any recommendations contained in any Maintenance Manual or in any applicable publications of the California Department of Health Services ("DHS") or the United States Environmental Protection Agency ("EPA"). As of the date of Recordation of these CC&RS, the EPA and DHS have Internet Web sites which contain information and publications regarding mold and other biological pollutants. For example, see "*Biological Pollutants in Your Home*" and "*Mold Resources*" on the EPA Web site (<http://www.epa.gov>); and "*Indoor Air Quality Info Sheet: Mold in My Home: What Do I Do*" on the DHS Web site (<http://www.dhs.ca.gov>). An Owner or Permitted User shall promptly report to the Association any evidence the Owner or Permitted User may discover of moisture accumulation or mold in the Project. Should an Owner or Permitted User fail promptly to report to the Association any evidence of moisture accumulation or mold in that Owner's Condominium that may affect the Association Property or should an Owner or Permitted User fail promptly to report to another Owner or Permitted User any evidence of such moisture accumulation or mold that may affect such other Owner's or Permitted User's Unit, such Owner shall be obligated to reimburse the Association and the other Owner(s) for all costs incurred by the Association or other Owner(s) as a result of the unreasonable delay in reporting the condition to the Association or other Owner.

23.9. ASSUMPTION OF MAINTENANCE OBLIGATIONS

Declarant and its subcontractors, and the agents and employees of the same, shall have the right to come upon the Association Property to complete the construction, refurbishment or installation of any landscaping or other improvements to be installed thereupon. In the event that any of Declarant's subcontractors are contractually obligated to maintain the landscaping and/or other improvements on any portion of the Association Property, such maintenance shall not be assumed by the Association until the termination of such contractual obligation. If there is any excess of assessments collected over actual Common Expenses incurred by the Association, caused by reason of this Section, or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board.

23.10. USE OF LICENSED CONTRACTORS; WORKFORCE; PERMITS

All work of repair or replacement required to be performed pursuant to this Article shall be performed only by reputable and experienced contractors, appropriately licensed by the State of California or other controlling governmental jurisdiction. A contractor's workforce shall be presentable at all times and all employees shall be competent and qualified, and shall be U.S. citizens, legal residents or otherwise legally approved to be in the United States. If building or other permits are required for such work, then such permits shall be obtained before the work is commenced.

ARTICLE 24. INSURANCE

24.1. DUTY TO OBTAIN INSURANCE; TYPES

The Board shall obtain and continue in effect the following insurance coverage, the cost of which shall be allocated as a Common Expense (in connection with obtaining such insurance the Board shall confer and coordinate its efforts with the Hotel Operator, as more fully described in the Resort Covenant):

24.1.1. LIABILITY INSURANCE

(a) The Association shall obtain and maintain a policy(ies) insuring the Association, its officers, directors, agents and employees, the Owners and their Invitees and Declarant against any liability for bodily injury, death and property damage arising from the ownership, operation, maintenance or use of the Common Area and the performance by the Association of its duties under this Declaration and any property owned by the Association, including but not limited to General Liability and Business Automobile Liability Insurance, with a "*Severability of Interest Endorsement*" (or equivalent) coverage which would preclude the company from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

Coverage should include all claims for death, personal injury and property damage arising out of a single occurrence protection, and against water damage liability, liability for non-owned and hired automobile, liability for property of others and, if applicable: garage-keeper's liability, host liquor liability and such other risks as shall customarily be covered with respect to improvements similar in construction, location and use.

(b) Limits of liability under the insurance shall not be less than the minimum amounts required by **CIVIL CODE §§1365.7 and 1365.9**. The limits and coverage shall be reviewed at least annually by the Board and increased or decreased in its discretion.

24.1.2. PROPERTY / FIRE INSURANCE

(a) A master or blanket policy of fire and casualty (property) insurance in an amount as near as possible equal to the full replacement value of the Common Area and all structures and improvements located thereon and therein, *not located within a Unit*, including the Buildings and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the Building, lighting fixtures; exterior signs; personal property owned or maintained by the Association with an "*Agreed Amount Endorsement*" (or its equivalent), a "*Demolition Endorsement*" (or its equivalent), to afford protection against at least the following: loss or damage by fire and other hazards covered by the standard extended coverage endorsement and by sprinkler leakage, costs of demolition, debris removal, vandalism, malicious mischief, windstorms and water damage.

(b) This insurance shall be maintained for the benefit of the Association, the Owners/Members and their First Mortgagees, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Declaration. If required by any First Mortgagee who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an agreed amount endorsement, an inflation guard endorsement, and a construction code endorsement.

Unit Exclusions: the master policy of fire and casualty/property insurance covering the Common Area is intended to **exclude any and all improvements located within a Unit**, with the exception of any *load bearing walls*; specifically, such master policy shall exclude, but not be limited to, any Unit appliances, cabinets, carpeting, flooring, drywall, wallpaper, interior wall partitions, windows, window frames, plumbing, plumbing fixtures, lights, lighting fixtures and wiring and other utility installations which is/are used or operated or intended to be used or operated exclusively within such specific Unit.

24.1.3. DIRECTORS' AND OFFICERS' INSURANCE

CIVIL CODE §1365.7 provides for a partial limitation on the liability of a tenant of a Unit, or a Guest Owner of not more than two (2) Guest Units in a Condominium Project, who is a volunteer officer or director of the Association, provided that certain requirements, as set forth in said **CIVIL CODE**, are satisfied. The requirements include that general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions be carried by the Association in specified amounts. The Association shall maintain general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions, the minimum coverage of which shall be not less than \$500,000 in Constant Dollars if the Project consists of 100 or fewer Units, or \$1 million in Constant Dollars if the Project consists of more than 100 Units, for all claims arising out of a single occurrence, or such other minimum amount which meets the requirements of **CIVIL CODE §1365.7**.

24.1.4. DISHONEST ACTS; FIDELITY BOND

The Association shall maintain such insurance covering directors, officers and employees of the Association and employees of any manager or managing agent, or administrator, whether or not any such persons are compensated for their services, against dishonest acts on their part, or in lieu thereof, a fidelity bond, naming the Association as obligee, written in an amount equal to at least the estimated maximum of funds, including reserves in the custody of the Association or a management agent at any given time during the term of the fidelity bond. However, the bond shall not be less than a sum equal to three (3) months aggregate Regular Assessments, including reserve funds, against all Units then subject to assessment.

24.1.5. WORKERS COMPENSATION INSURANCE

Worker's compensation insurance covering any employees of the Association to the extent required by law.

24.1.6. EARTHQUAKE COVERAGE

The Association shall have the authority, but not the obligation, to obtain earthquake insurance coverage for the insured property. Any earthquake insurance coverage provided shall be in an amount recommended by one or more reputable insurance brokers or consultants. The Board must have the prior approval of majority of the Members before choosing to cancel or not renew any existing earthquake insurance policy for the insured property.

24.1.7. INSURANCE REQUIRED BY FEDERAL AGENCIES

To the extent determined necessary, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bond coverage meeting the insurance and fidelity bond requirements for condominium projects established by any Federal Agencies, so long as any of which is a Mortgagee or Guest Unit Owner of a Guest Unit, except to the extent such coverage is not available or has been waived in writing by such Federal Agencies, as applicable.

24.1.8. OTHER INSURANCE

Such other insurance as the Board in its discretion considers necessary or advisable.

24.1.9. ADDITIONAL INSURED

The insurance policies shall name as insured the Association, the Owners, Declarant, as long as Declarant is the Owner of any Condominium and/or has any rights under this

Declaration, any Association manager, and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the Trustee (as defined below).

24.1.10. WAIVER OF CLAIM AGAINST ASSOCIATION

As to all insurance policies maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another and the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of, or breach of any agreement by any of said Persons.

24.1.11. CANCELLATION NOTICES; ADDITIONAL INSURANCE PROVISIONS AND LIMITATIONS

All insurance policies shall provide that they shall not be cancelable by the insurer or substantially modified, without first giving at least thirty (30) days' prior notice in writing to the Association; provided, however, ten (10) days prior written notice shall be required if the cancellation is for non-payment of premiums. Owners and their respective First Mortgagees may file written requests with the insurance carrier for receipt of such notices. All property and liability insurance policies shall be subject to the following provisions and limitations:

(1) The named insured under any such policies shall be the Association or its authorized representative, including any trustee with which the Association may enter into any insurance Trust Agreement, or any successor trustee, each of which shall be herein elsewhere referred to as the "*Insurance Trustee*" who shall have exclusive authority to negotiate losses under said policies

(2) Policies shall provide that coverage shall not be prejudiced by [a] any act or neglect of the Owners which is not within the control of the Association [b] failure of the Association to comply with any warranty or condition with regard to any portion of the Project over which the Association has no control and [c] making a cash settlement, such option shall not be exercisable without the prior written approval of the Association or which are in conflict with the provisions of any Insurance Trust Agreement which the Association may be a party or any requirement of law.

24.2. TRUSTEE; ADJUSTMENT OF LOSSES

Each Owner, by acceptance of a deed or other conveyance to such Owner's Unit, hereby agrees:

24.2.1. TRUSTEE

That all insurance proceeds payable under Sections 24.1.1 and 24.1.2 above, may be paid to a trustee (the "*Trustee*"), to be held and expended for the benefit of the Association, the Owners, Mortgagees and others, as their respective interests shall appear. The Trustee shall be a commercial bank or other institution with trust powers in the County that agrees in writing to accept such trust.

24.2.2. ADJUSTMENT OF LOSSES

That the Board may act as attorney-in-fact on behalf of each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant Section 24.1.1 above, and shall have full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

24.3. DUTY TO CONTRACT

If repair or reconstruction is authorized as a result of damage or destruction, the Board and any the duly appointed Trustee shall have the duty to contract for such work as provided for in the Resort Covenant.

24.4. FAILURE TO ACQUIRE

The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is not available or, if available, can be obtained only at a cost that the Board in its sole discretions determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Eligible Mortgagee that the liability insurance will not be obtained or renewed.

24.5. PERIODIC REVIEW OF POLICIES

The Board shall review the adequacy of all insurance as least once every year. The review shall include a replacement cost appraisal of all insurable Common Expense Area improvements and Association Property without respect to depreciation. The Board shall adjust and modify the policies to provide coverage and protection that is customarily carried by and reasonably available to prudent owners of similar property in the area in which the Project is situated.

24.6. BOARD’S AUTHORITY TO REVISE INSURANCE COVERAGE

Subject to the provisions of Section 14.1 and the requirements regarding insurance set forth in the Bylaws, the Board shall have the power and right to deviate from the insurance requirements contained in this Article in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction.

24.7. DISTRIBUTION TO MORTGAGEES

Any Mortgagee has the option to apply insurance proceeds payable directly to an Owner on account of a Unit as provided in this Declaration in reduction of the obligation secured by the Mortgage of such Mortgagee.

24.8. INSURANCE INFORMATION TO MEMBERS.

Pursuant to CIVIL CODE §1365(e), the Board shall annually prepare and distribute or cause to be prepared and distributed a summary of the following:

24.8.1. GENERAL LIABILITY POLICY

The Association’s general liability policy covering the Association Property that states all of the following:

- (a) The name of insurer;
- (b) The policy limits of the insurance;

If an insurance agent, as defined in INSURANCE CODE §1621, or any successor statute, or an agent of an insurance agent or insurance broker has assisted the Association in the development of the general liability policy limits and if the recommendations of the insurance agent or insurance broker were followed;

- (c) The insurance deductibles;
- (d) The person or entity that is responsible for paying the insurance

deductible in the event of a loss;

(e) Whether or not the insurance coverage extends to the improvements located within a Unit;

(f) A summary of the Association's earthquake and flood insurance policy, if one has been issued, that states all of the following: (1) name of the insured, (2) the policy limits of the insurance, (3) the insurance deductibles and (4) the person or entity that is responsible for paying the insurance deductible in the event of a loss.

24.8.2. DIRECTOR AND OFFICER LIABILITY COVERAGE.

(a) The Association's liability coverage policy for the directors and officers of the Association that lists all of the following:

(b) The name of the insurer;

(c) The limits of the insurance.

The foregoing notwithstanding, the Board shall, as soon as reasonably practical, notify the Members by first-class mail if any of the insurance policies have been canceled and not immediately replaced. If the Board renews any of the policies a new policy is issued to replace an insurance policy of the Association, and where there is no lapse in coverage, the Board shall notify the Members of that fact in the next available mailing to all Members pursuant to **CORPORATIONS CODE §5016**, or any successor statute thereto.

To the extent that the information to be disclosed pursuant to this Section is specified in the insurance policy declaration page, the Board may meet the requirements of this Section by making copies of that page and distributing it to all Members.

24.8.3. INSPECTION OF POLICIES.

Copies of all Association insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and be open for inspection by Owners at any reasonable times.

24.9. DUTY OF OWNERS TO INSURE THEIR RESPECTIVE UNITS

(a) Each Owner shall obtain **fire and casualty insurance** for any losses: (i) to personal property located within its Unit or Exclusive Use Area, (ii) to any improvements located within its Units, and (iii) any upgrades to the improvements initially installed in an Owner's Exclusive Use Area (including landscaping improvements, if any), in such amount as each Owner deems sufficient to cover such damage, destruction, other loss and replacements of such improvements and personal property as each Owner deems appropriate.

(b) NOTICE TO OWNERS:

NOTICE TO OWNERS: the Association's master policy of fire and casualty insurance is intended to insure the **Common Area** only and is specifically intended **to exclude** from its coverage: any Unit or portion thereof and any and all improvements within a Unit, including, but not limited to:

appliances, cabinets, carpeting, flooring, ceilings, drywall, wallpaper, interior wall partitions, windows, window frames, plumbing, plumbing fixtures, lights, lighting fixtures and wiring and other utility installations which is/are used or operated or intended to be used or operated exclusively within such specific Unit.

Thus, each Owner should take special care to determine that the fire and casualty insurance it obtains for its Unit and the improvements and personal property therein, covers the above noted improvements to the extent that each such Owner deems appropriate.

(c) Each Owner shall also carry **public liability insurance** in such amounts it deems appropriate - *but not less than \$1 million* - to cover its individual liability for damage to person or property occurring inside its Unit or elsewhere upon the Property. All policies carried by Owners shall contain waivers of subrogation of claims by the carrier as to the other Owners, the Association, and the institutional First Mortgagee of the Owner's Unit and the Association shall be named as an additional loss payee. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent to such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy an Enforcement Assessment against the Owner's Condominium to collect the amount of the diminution. Each Owner is responsible for integrating any personal insurance with the Association's insurance to confirm that such Owner's property will be protected in the event of a loss.

(d) In the event a Owner fails to obtain the insurance coverage described in this **Section 24.9**, the Association shall have the right, but not the duty, to obtain such insurance coverage for the failing Owner, and to thereupon levy a Single Benefit Assessment against the failing Owner's Unit and the Owner thereof to collect the amount of the cost of such insurance coverage. The Declarant, the Board, the Hotel Owner or the Hotel Operator are hereby empowered with the right to exercise such right granted herein to the Association.

24.10. WARNING TO OWNERS

The Association is required by this Article to maintain a general, comprehensive public liability insurance policy in an amount not less than the minimum amount prescribed for the number of Units contained in this Project by **CIVIL CODE §1365.9**, insuring the Association, its agents, Declarant and the Owners of the Guest Units and their Invitees and agents against any liability incident to ownership or use of the Association Property or any other Association owned or maintained real or personal property, arising out

of any single occurrence. In the event that a third party sustains injuries, the nature of which results in liability or damages in excess of the Association's insurance policy limits, the Owners of Guest Units in the Project may be held jointly and severally liable for the excess amount. Each Owner should consult with his or her insurance representative and or legal counsel to consider the merits of obtaining alternative or excess/umbrella liability insurance coverage.

ARTICLE 25. DAMAGE AND DESTRUCTION

For damage and destruction provisions, please see the **Article** entitled "*Damage and Destruction*" within the **Resort Covenant**.

ARTICLE 26. CONDEMNATION

For condemnation and eminent domain provisions, please see the **Article** entitled "*Condemnation*" within the **Resort Covenant**.

ARTICLE 27. RIGHTS OF LENDERS

27.1. GENERAL

No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Any provision within the Governing Documents to the contrary notwithstanding, First Mortgagees shall have the rights expressly provided in this Article.

27.2. NO RIGHT OF FIRST REFUSAL

This Declaration neither contains nor shall be amended to contain any provision creating a "*right of first refusal*" to the Association before a Condominium can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any first mortgagee to: (a) foreclose or take title to a Condominium pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (c) sell or lease a Condominium acquired by the Mortgagee.

27.3. UNPAID DUES OR CHARGES

Where the Mortgagee of a First Mortgage of record or other purchaser of a Condominium obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for more than six (6) months of the share of the common expenses or assessments chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer, together with any fees or costs related to the collection of the unpaid share of common expenses by the Association. The remaining unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Condominiums including such acquirer, his successors and assigns. Should such acquirer fail to pay its share of common expenses, assessments or other charges when due thereafter, the Board may file for a Notice of Delinquent Assessment in accordance with the provisions therefor contained in the Section entitled "*Effect of Non-Payment of Assessments*" herein.

27.4. APPROVAL OF FIRST MORTGAGEES

Provided that the mortgagee informs the Association in writing of its appropriate address and requests in writing to be notified, except as provided by statute in case of condemnation or substantial loss to the Association Property of the Project, unless at least sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each mortgage owned), or sixty-seven percent (67%) of the Owners (other than Declarant) of the individual Condominiums in the Project have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property, or any property owned, directly or indirectly, by the Association (the granting of easements for public utilities or other public purposes consistent with the intended use of the Association Property by the Association is not a transfer in the meaning of this clause); or

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner; or

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance or exterior maintenance of Condominiums, the maintenance of the Association Property walks or fences and driveways, or the upkeep of landscaping in the Association Property; or

(d) Fail to maintain fire and extended coverage on insurable Association Property improvements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(e) Use hazard insurance proceeds for losses to Association common property for other than the repair, replacement or reconstruction of such Association Property.

27.5. PAYMENT OF TAXES AND INSURANCE

First Mortgagees may, jointly, singly or severally: (i) pay taxes or other charges which are in default and which may or have become a charge against the Association Property, unless the taxes or charges are separately assessed against the Owners, in which case, the rights of First Mortgagees shall be governed by the provisions of their Mortgages; (ii) pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Association Property. First Mortgagees making such payments shall be owed immediate reimbursement from the Association. This provision shall constitute an agreement by the Association for the express benefit of all First Mortgagees, and upon the request of any First Mortgagee, the Association shall execute and deliver to such Mortgagee a separate written agreement embodying this provision.

27.6. PRIORITY OF PROCEED OR AWARD DISTRIBUTION

Any other provision herein contained to the contrary notwithstanding, no provision of this Declaration or any other Governing Document shall give a Condominium Owner, or any other party, priority over any rights of the First Mortgagee of a Condominium pursuant to its Mortgage in the case of a distribution to such Condominium Owner of insurance proceeds or condemnation awards for losses to or a taking of the Association Property.

27.7. NOTIFICATION TO ELIGIBLE MORTGAGEE HOLDER

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Condominium number or address, any Eligible Mortgage Holder or Eligible Insurer will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or the Condominium insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer;

(b) Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required by the Governing Documents.

27.8. INSPECTION OF GOVERNING DOCUMENTS, BOOKS AND RECORDS

The Association shall make available to Eligible Mortgage Holders current copies of the Governing Documents and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

27.9. NON-CURABLE BREACH

Any Mortgagee who acquires title to a Condominium by foreclosure or by deed-in-lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure. A "breach", as used herein, shall not apply to any lien of or obligation for Assessments owed to the Association which became due prior to the acquisition of title by deed or assignment in lieu of foreclosure.

27.10. LOAN TO FACILITATE

Any First Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

27.11. DOCUMENTS TO BE MADE AVAILABLE

The Association shall make available to First Mortgagees and to holders, insurers or guarantors of any First Mortgage, current copies of the Governing Documents, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Eligible Mortgage Holders who represent at least fifty-one percent (51%) or more of the Condominiums subject to a Mortgage shall be entitled to have an audited statement for the immediately preceding Fiscal Year prepared at their own expense, if one is not otherwise available. Any financial statement so requested shall be furnished within a reasonable time following the request.

27.12. MORTGAGEES FURNISHING INFORMATION

Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

27.13. FINANCIAL STATEMENT

The Association, at its expense, shall prepare an audited financial statement for the immediately preceding Fiscal Year and furnish the same within one hundred twenty (120) days after written request from any Eligible Mortgage Holder or Eligible Insurer or Guarantor.

27.14. TERMINATION WITHOUT SUBSTANTIAL DESTRUCTION

Neither the Association nor Owners may elect to terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Project without the written consent of Eligible Mortgage Holders who represent at least sixty-seven percent (67%) of the votes of the mortgaged Condominiums.

ARTICLE 28. PERFORMANCE BOND

28.1. CONSIDERATION BY BOARD

In the event that the Improvements to be installed by Declarant to the Association Property have not been completed prior to the issuance of a Public Report, and in the further event that the Association is the obligee under a bond to secure performance by Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Development Plan (or Planned Construction Statement) appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period.

28.2. CONSIDERATION BY MEMBERS

In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the Members, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE 29. OTHER GOVERNMENTAL AGENCY MATTERS

For "governmental agency matters", please see the Article entitled "*Government Agency Matters*" within the **Resort Covenant**.

ARTICLE 30. AMENDMENTS

30.1. PRIOR TO PUBLIC REPORT

Prior to the issuance of a Public Report for the Project, Declarant may amend this Declaration with the consents of (a) the Executive Director of the Coastal Commission as may be required pursuant to **ARTICLE 13** herein, and (b) the City of Imperial Beach, by recording an amendment instrument with the County Recorder, which shall become effective upon recordation thereof; provided, however, no "*material amendment*" (as described hereafter) of this Declaration may be made without the additional prior written consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units which are subject to Mortgages held by such Eligible Mortgage Holders.

30.2. AFTER PUBLIC REPORT; PRIOR TO FIRST CLOSE OF ESCROW

After issuance of a Public Report, but prior to the first Close of Escrow, Declarant may amend this Declaration with the consent of the DRE and with the consents of (a) the Executive Director of the Coastal Commission as may be required pursuant to **ARTICLE 13** herein, and (b) the City of Imperial Beach.

30.3. AFTER PUBLIC REPORT; AFTER FIRST CLOSE OF ESCROW

Except as may be in accordance with the provisions of **CIVIL CODE §1355** or any amendment or successor statute thereto, during the period of time after the first Close of Escrow and prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time with the consents of (a) the Executive Director of the Coastal Commission as may be required pursuant to **ARTICLE 13** herein and (b) the City of Imperial Beach, and pursuant to the vote or written assent of sixty-seven percent (67%) of the total voting power of each class of Members of the Association. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by (i) the vote or written assent of (a) **sixty-seven percent (67%)** of the total voting power of the Association, and (b) **sixty-seven percent (67%)** of the voting power of the Members of the Association other than Declarant; and (ii) the consent of the Executive Director of the Coastal Commission. **However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.** Any such amendment shall become effective upon the recording with the County Recorder of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association, or by an Incorporator of the Association, certifying that such votes or written consent have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary, or the Incorporator(s) of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the County Recorder. No material amendment may be made to this Declaration without the additional prior written consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units which are subject to Mortgages held by such Eligible Mortgage Holders. **“Material amendment”** shall mean any amendment to provisions of this Declaration that establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- (c) Reduction in reserves for maintenance, repair, and replacement of the Association Property;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Project, or rights to their use;
- (f) Redefinition of the boundaries of any Unit;
- (g) Convertibility of Units into Association Property or vice versa;
- (h) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (i) Insurance or fidelity bond coverage;
- (j) Leasing of Units;
- (k) Imposition of any restrictions on an Owner’s right to sell or transfer such Owner’s Unit;
- (l) Any decision by the Board to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgage Holder;
- (m) The restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;

(n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or

(o) Any provisions that expressly benefit Mortgage Holders, insurers or guarantors.

Any Eligible Mortgage Holder or Eligible Insurer who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within sixty (60) days after such receipt shall be deemed to have consented to such request, provided that notice was delivered by certified or registered mail, with a "return receipt" requested.

30.4. AMENDMENTS FOR MANIFEST ERRORS, AMBIGUITY AND/OR CHANGES IN LAW

Each Owner by acceptance of conveyance of title to a Condominium and each Mortgagee by acceptance of a Mortgage or Deed of Trust secured by a Condominium, hereby agrees and consents to the amendment of this Declaration, the Condominium Plan, the Bylaws and any other Governing Document (including any amendments respectively thereto) and the subordination of their respective interests in the Property for the purpose(s) of correcting manifest and technical errors, omissions or to effect clarifications and/or to effect compliance of one or more provisions of this Declaration or other Governing Document with such amendments, repeals and/or additions made to statutory law, whereby the provisions contained in this Declaration or any other Governing Document are in conflict therewith. The foregoing notwithstanding, to the extent that the provisions set forth in this Declaration are intended to comply with the provisions of the *Common Interest Development Act* as set forth at **CIVIL CODE §1350 et seq. ("CID Act")**, and any other statutory law, upon any changes to the CID Act or other statutory law relating to such provisions of this Declaration, the Board shall comply with such provisions of the CID Act and statutory law and the Board shall have the right to amend this Declaration or any other Governing Document as a result of the changes to the CID Act and other Applicable Law without any vote of the Members. Any such amendment may be executed by the President or Vice-President and Secretary or Assistant Secretary or any Incorporator of the Association (and, in the case of the Condominium Plan only, the Declarant alone may so act), each of whom is hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner and Mortgagee in certifying and executing and recording any such correctional, clarification addition or statutory law compliance amendment instrument with the County Recorder, each of which such amendments shall become effective upon its Recordation.

30.5. SUPPLEMENTAL DECLARATION

The Incorporator, Declarant, or the Association may record a Supplemental Declaration, or similar instrument containing such complementary additions and modifications of the CC&RS contained in this Declaration as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplemental Declaration revoke or add to the covenants established by this Declaration, discriminate between Owners within the Project, change the general common plan created by this Declaration, or affect the provisions hereof or thereof as covenants running with the land or equitable servitudes. The foregoing notwithstanding, so long as Declarant owns at least one Unit in the Project, the Recordation by the Association of a Supplemental Declaration shall require the written approval of Declarant prior to Recordation of a Supplemental Declaration.

ARTICLE 31. ALLEGED DEFECTS

31.1. DECLARANT'S RIGHT TO CURE ALLEGED DEFECTS

Due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect in construction exists in the Condominium Project and

Declarant's potential or alleged responsibility therefor. Declarant has elected not to engage in, follow, nor be bound by, the portions of the "*Right to Repair Act*" set forth in CIVIL CODE §§910-938. Rather, the alternative non-adversarial procedures set forth in this Article shall apply to and bind all Guest Unit Owners, the Association, and the Board. It is Declarant's intention to resolve all disputes and claims regarding any "*Alleged Defects*" (as defined below) in any portion of the Resort, including, without limitation, any Common Area, any Association Property, any Guest Unit, and any Improvements, amicably, and without the necessity of time consuming and costly litigation. Accordingly, the Association, Board and all Guest Unit Owners shall be bound by the claim resolution procedure of this ARTICLE.

31.2. DECLARANT'S RIGHT TO INSPECT AND CURE

If the Association, Board, or any Guest Unit Owner(s) (collectively, "*Claimant*") claim, contend or allege that any portion of the Condominium Project, including, without limitation, any Common Area, any Association Property, any Guest Unit, and/or any Improvements require(s) repair or that Declarant or its agents, consultants, contractors or subcontractors (collectively, "*Declarant's Agents*") were responsible for the need to make any such repair (collectively, an "*Alleged Defect*"), Declarant is hereby granted the irrevocable right to inspect, repair and/or replace any such Improvement as set forth herein; provided, however, nothing herein is intended nor shall be applied to create any obligation on Declarant to inspect, repair or replace any Improvement.

31.3. NOTICE TO DECLARANT

In the event that a Claimant discovers or purports to discover any Alleged Defect, the Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at such address at which Declarant maintains its principal place of business, of the specific nature of such Alleged Defect and such other matters as required by applicable law ("*Notice of Alleged Defect*"). Such notice shall include: (i) a description of the Alleged Defect, (ii) the date upon which the Alleged Defect was discovered, and (iii) dates and times when the Claimant will be available during ordinary business hours so that service calls or inspections by Declarant can be scheduled.

31.4. RIGHT TO ENTER, INSPECT, REPAIR, AND/OR REPLACE

Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Declarant, Declarant shall have the irrevocable right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, the Association Property, any Guest Unit, and/or any Improvement for the purposes of inspecting and, if deemed necessary by Declarant, repairing and/or replacing any Improvement which is the subject of the Alleged Defect. In conducting such inspection, repairs and/or replacement Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. If Claimant fails to cooperate to arrange a mutually-convenient date and time for inspection, or fails to permit Declarant or its agent access to perform its inspection, the time for performance for Declarant or its agent to complete the inspection and/or to take any further action hereunder shall be extended until Claimant complies, but in no event shall such Claimant's actions toll any applicable statutes of limitations nor shall Claimant have any right to seek any other rights or remedies unless Claimant complies with all the requirements hereof.

31.5. NATURE OF REPAIRS

With respect to any Alleged Defect which Declarant elects to repair, such repair shall be completed in conformance with industry standards, subject to applicable laws and regulations, including the time necessary to obtain any applicable building or other permits, and subject to unavoidable delays, including, without limitation, inclement weather, earthquake, flood, other acts of God, war, terrorism, unavailability of parts or materials, labor shortages, strikes, riots, insurrection, or other similar matters. Under no circumstances shall Declarant or any of Declarant's Agents be obligated to improve any Improvements beyond the original standard set forth in applicable building codes in effect at the time of

original construction. For example, if a painted interior wall is exhibiting abnormal cracking, the industry standard and customary repair is to properly patch and repaint the wall in its original color. It is not industry standard to remove and replace all existing sheetrock and then repaint the entire room. Each Guest Unit Owner, by acceptance of a deed to a Guest Unit acknowledges, understands and agrees that no Guest Unit Owner nor the Board nor the Association has any rights to recover any damages or expenses circumstantially or otherwise related to any Alleged Defect, including, without limitation, expenses incurred due to inconvenience or unpleasantness relating to the Alleged Defect, lost business income as a result of nuisance, delays or disruptions, or any similar costs or expenses. In the event that any Guest Unit Owner or the Association alleges that a repair completed pursuant to the procedures set forth in this Section is not properly completed, or if Declarant fails to follow such procedures, such Guest Unit Owner or the Association shall have the right to institute arbitration proceedings pursuant to ARTICLE XX of this Declaration.

31.6. RELINQUISHMENT OF CONTROL

Notwithstanding any other provision in the Declaration to the contrary (including, without limitation, any provision which expressly or implicitly provides Declarant with control over Association decisions for any period of time), Declarant hereby relinquishes control over the Association's ability to decide whether to initiate any claim against Declarant or any of Declarant's Agents with respect to any Alleged Defects in any Association Property and/or Common Areas. The decision to initiate any such claims for Alleged Defects in any Association Property and/or Common Areas shall, instead, rest with the majority of the Guest Unit Owners of Guest Units other than Declarant.

31.7. NO ADDITIONAL OBLIGATIONS

Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, repair or replace any Improvement or otherwise address any Alleged Defect for which Declarant is not otherwise obligated under applicable state and federal law or any limited warranty provided by Declarant in connection with the sale of a Guest Unit. Notwithstanding any other provision of this Declaration, this ARTICLE shall not be amended without the prior written approval of Declarant.

31.8. MANUFACTURED PRODUCTS

Each Guest Unit Owner, by acceptance of a deed to a Guest Unit, acknowledges and understands that:

(a) There are certain appliances and other equipment included in or exclusively benefiting the Guest Unit Owner's Guest Unit which are manufactured by third parties (e.g., the dishwasher, heating, ventilation and air conditioning equipment, etc.) ("*Manufactured Products*"); and

(b) The only warranties for such Manufactured Products are those provided by the manufacturer.

31.9. SIMILAR REQUIREMENTS OF CIVIL CODE §1375

CIVIL CODE §1375 sets forth a process which must be followed by homeowners' associations prior to filing complaints for damages against persons such as Declarant and Declarant's Agents with respect to design and/or construction of common interest developments. Such process includes requirements to provide various notices and time to respond. To the extent that (i) the provisions hereunder in this ARTICLE are enforced by the Association, (ii) the provisions hereunder in this ARTICLE are substantially similar to such provisions in CIVIL CODE §1375, and (iii) an action is subsequently commenced under CIVIL CODE §1375, the Association shall be excused from performing the substantially similar requirements under CIVIL CODE §1375.

31.10. NO AFFECT ON CODE OF CIVIL PROCEDURE SECTION 411.35

CODE OF CIVIL PROCEDURE §411.35 requires that before claims for professional negligence may be filed against certain design professionals (e.g., architects, engineers or land surveyors),

the claimant's attorney must provide certification that (i) it has reviewed the applicable facts, consulted with experts, and concluded that there is a reasonable and meritorious cause for filing an action, or (ii) the attorney was unable to so consult with such experts (a) despite making at least three (3) good faith attempts, or (b) because of pending expiration of the applicable statute of limitations for filing of the claim. Nothing herein shall be interpreted to eliminate or abrogate the requirement to comply with **CODE OF CIVIL PROCEDURE §411.35** or to affect the liability of design professionals, including architects and architectural firms, for matters not covered by **CIVIL CODE §895 et seq.**

ARTICLE 32. CC&RS: TERM; ENFORCEMENT

32.1. TERM

These CC&RS shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is Recorded, after which time said CC&RS shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by sixty-seven percent (67%) of the then Members has been recorded, at least one (1) year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

32.2. ENFORCEMENT AND NON-WAIVER

The Association or any Owner/Member, including Declarant (collectively, the "Parties," individually, a "Party"), shall have the right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all CC&RS now or hereafter imposed by the provisions of this Declaration, the Bylaws, the Articles or any respective amendment thereto, including the right to prevent the violation of such CC&RS and the right to recover damages or other dues from such violation except that Guest Owners shall not have any right of enforcement concerning Assessment Liens or those provisions contained herein concerning the relationship between the Hotel Owner and the Hotel Operator. The Association shall have the exclusive right to the enforcement of provisions relating to aesthetics control (which shall include architectural control) and the Operating Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any of the CC&RS herein shall in no event be deemed a waiver of the right to do so thereafter.

32.3. PROCEDURE FOR ENFORCEMENT BY PARTIES

Anything herein to contrary notwithstanding set forth in **Section 32.2** above, in enforcing any action under the Governing Documents for injunctive relief, declaratory relief and/or monetary damages (excluding actions in Small Claims Court), the Parties shall comply with the provisions of **CIVIL CODE §1354, §1363.810 et seq., §1368.3 et seq. and §1369.510 et seq.**, and any successor statute or law. The Board shall annually provide to the Members a summary of the provisions of **CIVIL CODE §§ 1354, 1363.810, 1363.840 et seq., 1369.590** and any successor statutes or laws, which shall include language required and shall be delivered in the manner provided in **CIVIL CODE §1365**. The exception for disputes related to Association assessments set forth in **CIVIL CODE §1369.520(d)** shall not apply to disputes between a Member and the Association regarding Assessments imposed by the Association, if the Member choose to pay in full the Association all of the assessments as specified in **CIVIL CODE §1366.3** and any successor statutes or laws.

32.4. DECLARANT-RELATED DISPUTE RESOLUTION

32.4.1. NOTICE OF ACTIONS AGAINST DECLARANT

Not later than thirty (30) days prior to the filing of any civil action by the Association against Declarant or other developer of the Project for alleged damage to the Common Area, alleged damage to the Units that the Association is obligated to maintain or repair, or alleged damage to the Units that arises out of, or is integrally related, to damage to the Common Area or Units that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the records of the Association at the time notice is given, specifying (a) that a meeting of Members will be held to discuss problems that may lead to the filing of a civil action, (b) the options, including civil actions, that are available to address the problems, and (c) the time and place of the meeting. If the Association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the Association may give the foregoing notice not later than thirty (30) days after the filing of the action. Such notice shall specify all of the matters set forth in **CIVIL CODE §1368.4** and any successor statutes or laws.

32.4.2. ALTERNATIVE DISPUTE RESOLUTION

Any disputes between all or any of the Association, Owner(s), Declarant, or any director, officer, partner, employer, contractor, design professional, consultant, subcontractor or agent of Declarant (collectively "*Declarant Parties*"), arising under this Declaration or relating to the Property, shall be subject to the following provisions of this **Section 32.4.2** and the following **Sections 32.4.3, 32.4.4 and 32.4.5**.

THIS PROCESS INVOLVES WAIVERS OF THE RIGHTS TO A JURY TRIAL. BY EXECUTING THIS DECLARATION OR ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY, DECLARANT, EACH OWNER AND THE ASSOCIATION, AGREE TO BE BOUND BY THE PROVISIONS OF THIS SECTION.

32.4.3. CONSTRUCTION DEFECT DISPUTES

Notice of Construction Claims Statute. **CIVIL CODE §895 et seq.**, as hereafter amended ("*Construction Claims Statute*"), delineates standards for how various components of Units should be constructed and function, limits the time frames for bringing various claims against the builder to anywhere from one year to ten years (as listed in the Construction Claims Statute) from the Close of Escrow for the Unit, imposes an obligation on all Owners of Units and the Association to follow Declarant's maintenance recommendations and schedules, or other applicable maintenance guidelines, and establishes a non-adversarial claims resolution procedure that must be followed by an Owner and the Association before the Owner of Units or the Association can initiate an adversarial claim and proceed to judicial reference or binding arbitration, as described in **Section 32.4.5** below. **THE CONSTRUCTION CLAIMS STATUTE AFFECTS EACH UNIT OWNER'S AND THE ASSOCIATION'S LEGAL RIGHTS. UNIT OWNERS, ON BEHALF OF THEMSELVES, AND AS MEMBERS OF THE ASSOCIATION, ARE ADVISED TO READ THE STATUTE CAREFULLY AND SEEK LEGAL ADVICE IF OWNER HAS ANY QUESTIONS REGARDING ITS AFFECT ON OWNER'S OR THE ASSOCIATION'S LEGAL RIGHTS. PURSUANT TO CALIFORNIA CIVIL CODE SECTION 914, DECLARANT IS PERMITTED TO ELECT TO USE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES INSTEAD OF USING THE STATUTORY PRE-LITIGATION PROCEDURES PROVIDED IN THE CONSTRUCTION CLAIMS STATUTE, AND DECLARANT HAS ELECTED TO USE ITS OWN CONTRACTUAL NON-ADVERSARIAL PROCEDURES AS PROVIDED BELOW.**

(a) **Obligation to Follow Maintenance Recommendations and Schedules.** All Owners of Units and the Association are obligated by **Section 907** of the Construction

Claims Statute to follow Declarant's maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with such Owner's Unit or the Common Area, or any improvements thereon, as well as all commonly accepted maintenance practices (collectively, "Maintenance Recommendations"). Per **Section 945.5** of the **Construction Claims Statute**, failure to follow the Maintenance Recommendations may reduce or preclude Owner's and the Association's right to recover damages relating to such Unit or Common Area, which could have been prevented or mitigated had the Maintenance Recommendations been followed.

(1) **Obligation to Retain Documents and Provide Copies to Successors.** All Owners, who originally purchased a Unit from Declarant were provided copies of certain documents in conjunction with the purchase of their Unit, including copies of this Declaration, maintenance recommendations from Declarant, maintenance recommendations for manufactured products or appliances included with the Unit, a limited warranty, claim forms, and other documentation relating to the Construction Claims Statute. All Unit Owners are required by the Construction Claims Statute to retain these documents and provide copies of such documents to their successors in interest upon the sale or transfer of such Owner's Unit.

(2) **Unit Owners' Construction Defect Claims.** Prior to the commencement of any legal proceeding by any Unit Owner against Declarant or any Declarant Party based upon a claim for defects in the design or construction of any Unit, Common Area, or any improvements thereon, the Owner must first comply with the provisions of this paragraph. If at any time during the ten (10) year period following the close of escrow for the original Owner's purchase of such Owner's Unit from Declarant, as such period may be extended by any applicable tolling statute or provision, or any shorter period as provided by applicable law, such Owner believes Declarant has violated any of the standards set forth in the Construction Claims Statute ("**Claimed Defect**"), which such Owner feels may be the responsibility of Declarant, such Owner shall promptly notify Declarant's agent pursuant to the "Notice" provisions of the **Section** hereinafter entitled "**Notice; Demand Document Delivery**" (NOTE: a Claimant may confirm the current name and address of Declarant's agent by contacting, as of the date of Recordation of these CC&RS, the California Secretary of State, Special Filings Unit, P.O. Box 94244-2250, or by telephone at (916) 653-3984); and/or through the following internet address: <http://kepler.ss.ca.gov/list.html>). Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (i) a detailed description of the Claimed Defect, (ii) the date upon which the Claimed Defect was first discovered, and (iii) dates and times when Owner or Owner's agent will be available during ordinary business hours, so that service calls or inspections by Declarant can be scheduled. Declarant shall, in its sole discretion, be entitled to inspect the applicable property regarding the reported Claimed Defect and, within its sole discretion, shall be entitled to cure such Claimed Defect. Nothing contained in this Article shall obligate Declarant to perform any such inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner. Owner's written notice delivered to Declarant shall be a condition precedent to Owner's right to institute any legal proceeding and to proceed to judicial reference or binding arbitration as set forth **Section 32.4.5** below, and Owner shall not pursue any other remedies available to it, at law or otherwise, including without limitation the filing of any legal proceeding or action, until Declarant has had the reasonable opportunity to inspect and cure the Claimed Defect. During the term of any written Limited Warranty provided to the original Owner of the Unit by Declarant, any conflict between the provisions of this Section and the Limited Warranty shall be resolved in favor of the Limited Warranty. Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which Owner may suffer as a result of any Claimed Defect in the Unit, which reasonably might have been avoided had Owner given Declarant the notice and opportunity to cure as described above within a reasonable time of discovering the Claimed Defect. Except as otherwise provided in the written Limited Warranty, if any, provided to Owner, nothing contained herein shall establish any contractual duty or obligation on the part of Declarant to repair, replace or cure any Claimed Defect. If an Owner sells or otherwise transfers ownership of such Owner's Unit to any other person during such ten

(10) year period, as such period may be extended by any applicable tolling statute or provision, Owner covenants and agrees to give such other person written notice of these procedures by personal delivery. Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns.

(b) **Association's Construction Defect Claims.** DECLARANT ELECTS TO USE THE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES CONTAINED IN **CIVIL CODE §1375**, EXCEPT AS OTHERWISE PROVIDED HEREIN, RATHER THAN THE STATUTORY PRE-LITIGATION PROCEDURES OF THE CONSTRUCTION CLAIMS STATUTE, WITH RESPECT TO CLAIMS BY THE ASSOCIATION. Prior to the commencement of any legal proceeding by the Association against Declarant or any Declarant Party based upon a claim for defects in the design or construction of the Common Area, or any improvements thereon, or any other area within the Project which the Association has standing to make a claim for defects in the design or construction thereof, the Association must first comply with all of the applicable requirements of **CIVIL CODE §1375**, as the same may be amended from time to time, or any successor statute thereto. For purposes of claims under this Section, notice to "builder" under **CIVIL CODE §1375** shall mean notice to Declarant's agent for notice of construction defect claims on file with the Secretary of State, with a copy to Declarant, as provided above. In addition to the requirements of **CIVIL CODE §1375**, Declarant shall have an absolute right, but not an obligation, to repair any alleged defect or condition claimed by the Association to be in violation of the standards set forth in the Construction Claims Statute, within a reasonable period of time after completion of the inspection and testing provided for in such Section and prior to submission of builder's settlement offer under such Section. If the parties to such dispute are unable to resolve their dispute in accordance with the procedures established under **CIVIL CODE §1375**, as the same may be amended from time to time, or any successor statute, the dispute shall be resolved in accordance with the judicial reference or binding arbitration provisions of **Section 32.4.5** below and the parties to the dispute shall each be responsible for their own attorneys' fees. The Association shall have the power to initiate claims against a Declarant Party for violations of Construction Claims Statute, as soon as the Association has one (1) Class A Member other than Declarant. Upon the written request of any Class A member to the Board of Directors, the Board shall establish a committee consisting exclusively of Class A Member(s) other than Declarant to investigate claimed violations of the standards of the Construction Claims Statute. Upon the committee's determination that cause exists to initiate a claim, the decision of whether to initiate a claim shall be made by a vote of the Class A members other than Declarant. A majority of the votes cast shall be deemed to be the decision of the Association, which the Board shall carry out by submitting the necessary claim to Declarant or the appropriate Declarant Party; provided, however, that the vote is conducted in accordance with Voting Policy.

32.4.4. OTHER DISPUTES.

Any other disputes arising under this Declaration, or otherwise, between the Association or any Owner and Declarant or any Declarant Party (except for any action taken by the Association against Declarant for delinquent assessments, and any action involving enforcement of any completion bonds) shall be resolved in accordance with the alternate dispute resolution provisions of **Section 32.4.5** below; provided, however, that with regard to disputes between the Association and an Owner where the alternative dispute resolution procedure is invoked by the Association, the Owner may elect not to participate in the procedure. The dispute resolution procedure in **Section 32.4.5**, as it applies solely to disputes under this **Section 32.4.4**, shall be deemed to satisfy the alternative dispute requirements of **CIVIL CODE §§ 1363.810, 1369.510**, and following, or any successor statute, as applicable.

32.4.5. ALTERNATE DISPUTE RESOLUTION PROCEDURES

The following procedures provide for resolution of disputes through binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Declarant, the Association and each Owner of a Unit within the Project, expressly

acknowledge and accept that, by invoking or electing to participate in the procedure, they are waiving their respective rights to a jury trial.

(a) **ARBITRATION.** Subject to compliance with the provisions of Sections 32.4.2 through 32.4.4, to the extent applicable, it is the intention of Declarant that, except as otherwise expressly provided herein, any and all disputes, based upon which litigation is filed, shall be resolved by binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”). Accordingly, except as otherwise expressly provided in this Declaration (such as the collection of delinquent assessments), any dispute, between the Association or any Owner(s) and Declarant, or other developer of the Project, or between the Association and any Owner with respect to the interpretation of any of the provisions of this Declaration, or with respect to any alleged breach hereof, or with respect to any other claim related to a Unit or the Common Area, including, without limitation, any alleged latent or patent construction or design defect in the Project, any Unit or any part thereof, any alleged violation of the standards set forth in the Construction Claims Statute, any judicial determination to be made under **CIVIL CODE §1375(h)**, or for alleged damage to the Common Area, alleged damage to the Units that the Association is obligated to maintain or repair, or any alleged damage to Units that arises out of, or is integrally related to the Common Area or Units that the Association is obligated to maintain or repair, shall be heard by an arbitrator in accordance with the Commercial Arbitration Rules of the AAA. Notwithstanding any other provision of this Declaration, this Article shall not be amended without the written consent of Declarant. In the event litigation is filed based upon any such dispute, the following shall apply:

(1) **Selection of Arbitrator.** There shall be only one arbitrator who shall be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within ten (10) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by the AAA.

(2) **Applicable Laws and Remedies.** Venue for the arbitration shall be San Diego County, unless the parties mutually agree to another venue at the time the arbitration is initiated. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. The arbitration shall commence and conclude promptly, in accordance with the commercial rules of the AAA.

(3) **Resolution Opportunity.** When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10) day period, the arbitrator shall make the award on the eleventh day following the arbitrator’s notice of being prepared to make the award.

(4) **Fees and Costs.** Declarant shall promptly pay the fees necessary to initiate, prosecute and complete the arbitration proceeding. The arbitrator may award the prevailing party those costs that would be awarded to the prevailing party under California law if the matter had been resolved by court trial. In addition, to the extent permitted by Applicable laws, the arbitrator may award or divide the post-initiation arbitration fees and costs to prosecute and complete the arbitration as the arbitrator finds just and reasonable, subject to the restrictions set forth in **CODE OF CIVIL PROCEDURE § 1284.3(a)**. If the arbitrator makes no award or division of such arbitration fees and costs, the parties shall divide them equally with each party bearing one-half of such fees and costs of the arbitration, to the extent permitted by law. Notwithstanding anything herein to the contrary, the parties shall each bear their own costs, expenses and attorneys’ fees.

(5) **Preliminary Procedures.** If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case

may be, before commencing the arbitration. Nothing contained herein shall be deemed a waiver or limitation of the provisions of **CIVIL CODE §§ 1368.4, 1375, 1375.05 or 1375.1.**

(6) **Participation by Other Parties.** An Owner, the Association and Declarant, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

(7) **Decisions.** The parties agree that the decision of the arbitrators shall be binding and non-appealable.

(8) **Judgment by a Court.** Judgment upon the decision rendered by the arbitrator may be entered in any court having proper jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement.

(9) **Federal Arbitration Act.** Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the **FEDERAL ARBITRATION ACT (9 U.S.C. §1, et seq.)** now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein.

(b) **Applicability of Federal Arbitration Act.** The binding arbitration procedures contained in **Section 32.4.5(b)** are implemented for the Project in accordance with the philosophy and intent of the **FEDERAL ARBITRATION ACT (9 U.S.C. Section 1 et seq.) ("FAA")**, which is designed to encourage the use of alternative methods of dispute resolution and avoid costly and potentially lengthy traditional court proceedings. The binding arbitration procedures in said Section are to be interpreted and enforced as authorized by the FAA. Parties interpreting this Section shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional declaration of liberal federal policy favoring alternate dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary, (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

32.4.6. DISPUTES RELATING TO ENFORCEMENT OF GOVERNING DOCUMENTS

In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of the governing documents of the Association, the parties shall comply with the provisions of **CIVIL CODE §§ 1363.810, 1369.510**, and following, prior to filing of any civil action.

32.4.7. CIVIL CODES §§ 1368.4, 1375, 1375.05 AND 1375.1.

Nothing contained herein shall be deemed a waiver or limitation of the provisions of **CIVIL CODE §§ 1368.4, 1375, 1375.05, or 1375.1.**

32.4.8. USE OF DAMAGE AWARD FUNDS

Any and all amounts awarded (other than a specific award of attorney's fees and costs) to a claimant on account of a claimed construction or design defect in the Project, or damage suffered as a result thereof, shall be expended by such claimant for the repair, rehabilitation, or remediation of the claimed defect or damage.

32.4.9. MISCELLANEOUS

Nothing in this Article shall constitute a waiver of any of the benefits of statute of limitations or equitable defense by any party. Notwithstanding any other provision of this Declaration, this Article may not be amended without the prior written consent of Declarant.

**32.4.10. EXCEPTIONS TO DISPUTE RESOLUTION PROVISIONS;
STATUTES OF LIMITATION**

The procedures set forth in this Section 32.4 shall apply only to Post-Closing Disputes and shall not apply to any Dispute, matter or issue described in Section 32.3. Nothing in this Section 32.4 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that the Parties shall be entitled to commence a legal action which in the good faith determination of any Party is necessary to preserve the Parties' respective rights under any applicable statute of limitations, provided that a Party shall take no further steps in prosecuting the action until it has complied with the procedures described in this Section 32.4.

32.4.11. SURVIVAL; SUCCESSORS AND ASSIGNS

The rights and obligations of the Parties pursuant to this Section 32.4 shall survive the Close of Escrow. This Section 32.4 and the rights, duties and obligations of the Parties shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties.

32.5. ENFORCEMENT BY CITY

The City of Imperial Beach shall be a third-party beneficiary to these CC&RS and shall have the right, but not the obligation, to enforce those provisions of these CC&RS which are referenced in the City Development Agreement. Nothing contained herein shall limit any other right or remedy which the City may exercise by virtue of authority contained in Applicable Law.

ARTICLE 33. GENERAL PROVISIONS

33.1. SEVERABILITY

Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment of court order, the remaining provisions hereof shall be and remain in full force and effect.

33.2. ANNEXATION

Upon approval in writing of the Association, pursuant to sixty-seven percent (67%) majority of the voting power of its Members, excluding the voting power of Declarant, the Owner of any property who desires that it be added to the scheme of this Declaration and be subjected to the jurisdiction of the Association, may file of record a Declaration of Annexation, which shall extend the scheme of this Declaration to such property. After conversion of the Class B membership in the Association to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (a) sixty-seven percent (67%) of the voting power of Members of the Association, and (b) sixty-seven percent (67%) or more of the voting power of Members of the Association other than Declarant.

33.3. INCORPORATOR

The Incorporator shall have the right to do all things necessary and proper to perfect the organization of the Association, including, but not limited to: adopting or amending the Bylaws, supplementing or amending this Declaration, the Condominium Plan, any other Governing Document, including any respective amendment of any Governing Document, and taking any other action with respect to the Association not prohibited by Applicable Law.

33.4. NOTICE; DEMAND; DOCUMENT DELIVERY

Except as may otherwise be prescribed in a particular clause or Section within this Declaration or by Applicable Law which specifies a particular method of service or delivery, in each instance

in which notice, demand or a document is to be given or delivered ("Notice") to the Owner of a Unit, the same shall be served in one or more of the following methods:

33.4.1. PERSONAL SERVICE

By personal service to the Owner or to any one or more co-Owners of the Unit; to any general partner of a partnership which is the Owner of Record of the Unit; to the manager of a limited liability company which is the Owner of Record of the Unit; and/or to any officer or agent for service of process of a corporation which is the Owner of Record of the Unit, shall be deemed delivered to such Owner, co-Owners, partnership, limited liability company or corporation, as the case may be. Service and/or delivery by personal service shall be deemed completed at the time of such service or delivery.

33.4.2. SERVICE BY U.S. POSTAL SERVICE

By First Class U.S. Mail or by Express Mail, deposited in a post office, mailbox, subpost office, substation or mail chute or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with proper postage paid, addressed:

(a) **TO OWNER:** To the Owner or Co-Owners of the Unit at the most recent address furnished by such Owner to the Secretary of the Board, or, if no such address shall have been furnished then to the street (or Post Office Box) address of such Unit;

(b) **TO THE ASSOCIATION:** To the Association at its principal office address (or to such other address as the Association may from time to time designate in writing to the Owners).

(c) **TO DECLARANT:** To the Declarant at its principal office address (or to such other address as the Association may from time to time designate in writing to the Owners).

Service and/or delivery by: (i) First Class U.S. Mail shall be deemed completed three (3) days after deposit; and, (ii) Express Mail shall be deemed completed one (1) day after deposit.

33.4.3. E-MAIL; FACSIMILE

Service by E-mail or facsimile, provided that the recipient has previously agreed by a duly signed writing to such method of delivery. If service is delivered by e-mail or facsimile, delivery shall be deemed complete twenty-four (24) hours after the time of transmission.

33.4.4. OTHER METHOD

Any other method of delivery, provided that the recipient has agreed to such other method of delivery by a duly signed writing.

The foregoing notwithstanding, a notice, demand or document may be included in or delivered with a billing statement, newsletter or other document that is delivered by one of the methods provided above.

33.4.5. NOTICE TO PERMITTED USERS

Notice and/or demand and completion thereof to an Permitted User, shall be served in the same manner as described herein for service to an Owner.

33.5. CIVIL CODE §1368

The Owner of a Condominium shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in **CIVIL CODE §2985**, provide copies of the Governing Documents and such disclosures and certificates as may be required by **CIVIL CODE §1368**, or any successor statute or law. The Association shall, if requested by said Owner, provide copies of the same

to such Owner within ten (10) days of the mailing or delivery of the request, in the same manner as prescribed in **Section 33.4** above for delivery of Notices.

33.6. NOTIFICATION OF SALE OR CONVEYANCE

Concurrently with the consummation of the sale or other conveyance of any Unit where the transferee becomes an Owner of the Unit, within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale or conveyance. Such notification shall set forth the name of the transferee and his Mortgagee and transferor, the common address of the Unit purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale or conveyance. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board, the Board's delegated committee or the Association's manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed given and given in accordance with the provisions of the Section herein entitled "*Notice.*"

33.7. EASEMENTS RESERVED AND GRANTED

Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Unit.

33.8. AMENDMENTS: DOCUMENTS AND/OR APPLICABLE LAWS

Reference in this Declaration and the other Governing Documents to any Applicable Law or to the Governing Documents, individually or collectively, shall also include any amendment respectively thereof.

33.9. GOVERNING DOCUMENTS

In the event of a conflict between this Declaration and any other Governing Document, the provisions of the Resort Covenant shall control, and thereafter the provisions of this Declaration shall control.

33.10. SINGULAR INCLUDES PLURAL

Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

33.11. LIBERAL CONSTRUCTION

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a hotel Resort and for the maintenance of the Project. The titles or headings of the Articles or Sections of this Declaration have been inserted for convenience only and shall not be considered or referred to in resolving questions or interpretation or construction.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument
this _____ day of _____, 20_____.

DECLARANT:

IMPERIAL COAST LIMITED PARTNERSHIP,
a California limited partnership

By

Please Attach Proper Notary Certificate(s) of Acknowledgment

EXHIBIT "A" – LEGAL DESCRIPTION

**LOT 1 OF SEACOAST INN IN THE CITY OF IMPERIAL BEACH,
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO
THE OFFICIAL MAP THEREOF NO. 15792 RECORDED SEPTEMBER 2,
2010 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO
COUNTY.**

**EXHIBIT "B" OFFICIAL GUEST UNIT SQUARE FOOTAGES;
PERCENTAGE SHARES**

UNIT #	SQ. FT.	PERCENTAGE SHARE	UNIT #	SQ. FT.	PERCENTAGE SHARE	UNIT #	SQ. FT.	PERCENTAGE SHARE
1			31			61		
2			32			62		
3			33			63		
4			34			64		
5			35			65		
6			36			66		
7			37			67		
8			38			68		
9			39			69		
10			40			70		
11			41			71		
12			42			72		
13			43			73		
14			44			74		
15			45			75		
16			46			76		
17			47			77		
18			48			78		
19			49					
20			50					
21			51					
22			52					
23			53					
24			54					
25			55					
26			56					
27			57					
28			58					
29			59					
30			60					
TOTAL SQUARE FOOTAGES:								

EXHIBIT "C" – ASSOCIATION OBLIGATIONS; COMMON EXPENSES

<To Be Inserted By Amendment>

EXHIBIT "D" – _____ DISCLAIMER

(1) **License Relationship:** THE UNITS ARE NOT OWNED, DEVELOPED OR SOLD BY _____ OR ANY OF ITS AFFILIATES. DECLARANT AND THE HOTEL OPERATOR USE THE _____ TRADEMARK(S) UNDER A LICENSE AGREEMENT WITH _____ ("LICENSOR). WHICH LICENSE AGREEMENT MAY BE TERMINATED IN ACCORDANCE WITH THE TERMS AND CONDITIONS THEREOF.

(2) **License:**

(a) The right to use the licensed _____ Trademarks ("Trademarks") in connection with the Project is a right of Declarant and the Hotel Operator under and pursuant to a License Agreement ("License") and is limited strictly by such License, and no Unit Owner shall have any right, title or interest in the Trademarks or any other rights that are licensed to Declarant or the right to use such Trademarks or any licensed rights. Licensor shall have no obligation of any sort to Unit Owners, including, but not limited to, any contractual or fiduciary duty or obligation express or implied.

(b) Licensor may, without notice or liability to any Unit Owner, terminate the License in accordance with the terms of such License, and such termination shall terminate any right, power, authority or ability of Declarant and the Hotel Operator to utilize any Trademarks or rights licensed under the License. Licensor shall have no express or implied obligations to provide notice of any termination of the License, or provide any right to cure, to any Unit Owner or mortgagee of a Unit nor shall Licensor have any obligation of any kind to any such Person under the License.

(3) **Relationship and Authority:** Licensor is not making any representation, warranty or guaranty or providing any assurances with respect to the Project or the Units; and Licensor is not acting as an owner, developer, seller, principal, guarantor or surety with respect to the design, development, construction, sales, maintenance or management of the Units or the Project or any aspect thereof. Neither Declarant nor the Hotel Operator is acting or has any authority to act as an agent, representative or otherwise on behalf of Licensor in any way with respect to the Project or the Trademarks, nor is Licensor a partner or joint venturer with Declarant or the Hotel Operator; and Declarant's and the Hotel Operator's rights to use the Trademarks derive exclusively from and are strictly subject to the terms of the License. Licensor has not assumed and shall not have any liability or responsibility for any financial statements, projections, or other financial information contained in this document. Nothing contained in this document shall modify the terms and conditions of the License, or any other agreement between Declarant, the Hotel Operator and Licensor.

(4) **Third Party Rights.** Licensor's rights of review, approval and consent under the License are solely and exclusively for the benefit of Licensor and are not and shall not be deemed to create any right in or obligation on the part of Licensor to any other person, including, but not limited to, any Unit Owner or any governmental authority, nor shall any approval or consent by Licensor pursuant to its rights constitute any assurance of any sort by Licensor that any actions of Declarant, the Hotel Operator or any other person under, pursuant to or in connection with the Project are in compliance with any legal or contractual obligations.

SUBORDINATION AGREEMENT

(Name of Lender)

being the beneficiary under that certain Deed of Trust:

Recorded _____, **as Document No.** _____

of Official Records in the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate to that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR "SEACOAST INN" to which this Subordination Agreement is attached.

DATED: _____, 2010

(Name of Lender)

By:

(Signature)

(Printed Name)

(Please Attach Proper Notary Certificate)

State of _____)

_____)

County of _____)

On _____ before me, _____, a Notary
Public in and for said State, personally appeared _____

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

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

WITNESS my hand and official seal.

Signature: _____

(Area for Notary Seal)