

AMENDED AND RESTATED

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between the

ESCONDIDO COMMUNITY DEVELOPMENT COMMISSION

and

ESCONDIDO DEVELOPMENT, LLC

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Attachment No. 1	Legal Description
Attachment No. 2	Site Map
Attachment No. 3	[Intentionally Omitted]
Attachment No. 4	Ground Lease
Attachment No. 5	[Intentionally Omitted]
Attachment No. 6	Schedule of Performance
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Attachment No. 10	Acquisition of Covenant Agreement
Attachment No. 11	Budget
Attachment No. 12	Guaranty Agreement
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Attachment No. 15	Construction Loan Agreement
Attachment No. 16	Labor and Materials and Payment Bond
Attachment No. 17	Performance Bond

**AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT**

This **AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT** (this "Agreement") is entered into as of June __, 2010 by and between the **ESCONDIDO COMMUNITY DEVELOPMENT COMMISSION**, a public body, corporate and politic (the "Commission") and **ESCONDIDO DEVELOPMENT, LLC**, a Delaware limited liability company (the "Developer").

RECITALS

The following recitals are a substantive part of this Agreement:

A. The Escondido Joint Powers Financing Authority ("JPA") owns certain property consisting of approximately two and thirty-eight one hundredths (2.38) acres on West Valley Parkway immediately adjacent to the City Hall and adjacent to the California Center for the Arts ("CCA") which property (the "Site") is located within the boundary of the Project Area for the Redevelopment Plan. The Site is leased to the City and is used, in part, for public parking and, in part, for a conference center (the "Conference Center"). The Site is currently encumbered by an outstanding bond issue (the "Conference Center Bond Issue"). Subject to the JPA's ability to cause the release of the lien of the Conference Center Bond Issue on the Site, the City will enter into an agreement with the JPA pursuant to which it will acquire the Site. The Commission will concurrently enter into an agreement with the City pursuant to which the Commission will, in turn, acquire the Site from the City. The Legal Description for the Site is attached hereto as Attachment No. 1. The Site is depicted on the Site Map attached hereto as Attachment No. 2.

B. City and Developer previously entered into that certain Disposition and Development Agreement dated as of August 23, 2006 with respect to the acquisition and development of the Site (the "Original Agreement"). Various Land Use Approvals and Permits were approved by the City concurrent with, or subsequent to the date of the Original Agreement, and remain in effect, as listed in Attachment No. 14 hereto (the "Existing Land Use Approvals and Permits").

C. The parties now desire to amend and completely restate the Original Agreement in its entirety to, among other things, provide for the Commission to take the place of the City and to modify the Original Agreement to accommodate certain changes in the financial structure. To that end, and subject to the fulfillment of the Conditions Precedent, the following will occur:

(1) The Commission will convey a leasehold interest to Developer in the Site as provided in Section 201.1 (the "Conveyance").

(2) Concurrently with the Conveyance, the Commission will enter into the Acquisition of Covenants Agreement with the Developer pursuant to which the Commission will deposit in the Commission Funds Account the Covenant Acquisition Consideration in accordance with the terms of the Acquisition of Covenants Agreement.

(3) Immediately following Conveyance, the Developer will commence and complete construction of the Hotel Project in accordance with this Agreement, the Schedule of Performance and Scope of Development.

(4) The Covenant Acquisition Consideration will be released by the Commission and deposited in the Construction Escrow Account in two (2) stages pursuant to the Acquisition of Covenants Agreement for distribution in accordance with Section 202.7 of this Agreement, the Covenant Acquisition Agreement and the Construction Loan Agreement.

D. The construction, development, completion, and operation of the Hotel Project on the Site as set forth in and pursuant to the terms of this Agreement, are in the vital and best interest of the City of Escondido and the health, safety, morale and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws. Without limiting the foregoing, development and operation of the Hotel Project will result in substantial benefits to the City and Commission, which includes (i) elimination of blight, (ii) job creation and enhanced revenues to the City resulting from construction and operation of the Hotel Project, including property taxes, sales taxes, and transient occupancy taxes, and (iii) enhanced marketability of the City that is likely to extend out-of-town leisure and convention visitors' lengths of stay in the City.

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

100. DEFINITIONS

"Acquisition of Covenants Agreement" means that certain agreement between the Developer and Commission attached hereto as Attachment No. 10 and incorporated herein by reference.

"Actual Knowledge" shall mean the actual knowledge of the persons associated with the respective parties who have negotiated this Agreement on behalf of each party and shall not impose a duty of investigation.

"Agreement" means this Disposition and Development Agreement between the Commission and the Developer.

"Budget" is attached hereto as Attachment No. 11 and incorporated herein by this reference.

"Cash Portion" means the all cash sum of Three Million Dollars (\$3,000,000) which represents the cash portion of the Equity Requirement.

"CCAЕ" is the California Center for the Arts a 1,535 seat concert hall, 408 seat theater and 9,000 square foot museum including four (4) art studio classrooms.

"CCAЕ, Escondido" is the entity that is responsible for the operation of CCAЕ on behalf of the City.

"CCAЕ Operating Agreement" means that certain agreement to be entered into between Developer and CCAЕ, Escondido, as a Condition Precedent to Closing, relating to the rights and obligations of the Developer and CCAЕ, Escondido with respect to the Conference Center.

"City" means the City of Escondido, a California municipal corporation.

"Clark" means C. W. Clark, Inc., a California corporation.

"Commission Indemnitees" means the City and the Commission and their respective officers, elected officials, employees, consultants, attorneys, representatives and agents.

“Commission’s Condition(s) Precedent” means the condition(s) precedent to the Conveyance for the benefit of the Commission, as set forth in Section 205.1 hereof.

“Closing Date” means the date on which the Closing occurs.

“Closing(s)” or Close” means the close of escrow for the Conveyance as provided in Section 202.4.

“Commencement of Construction” means physical construction of the Hotel Project on the Site pursuant to validly issued Construction and Building Permits following the Conveyance; provided that “Commencement of Construction” shall not include demolition, remodeling of the existing chiller building and utility relocation work which will be conducted by the Developer on the Site immediately following the approval of the Precise Plan with appropriate phased Construction and Building Permits for such work, prior to the Conveyance, as provided in the Schedule of Performance..

“Commence(s) Operations” or “Commencement of Operations” means the date on which the Hotel Project opens for business to the general public

“Commission” means the Escondido Community Development Commission.

“Commission Funds Account” means the sum of Ten Million, Seven Hundred Eighteen Thousand Dollars (\$10,718,000) deposited at Bank of the West over which Commission shall have complete and absolute control until the Commission distributes the Covenant Acquisition Consideration there from pursuant to the Acquisition of Covenants Agreement.

“Completion of Construction” means the completion of construction, operational readiness, and Commencement of Operations of the Hotel Project to a point where the Developer is entitled to a Release of Construction Covenants in accordance with the Scope of Development as evidenced by (i) a determination of the City of Escondido Building Official and (ii) written certification of completion, under penalty of perjury, by the Project Architect.

“Computation Process” means the submittal by the Developer to the Commission, upon Completion of Construction of the Hotel Project, of a final accounting prepared by an accounting firm or construction management firm which has been jointly selected by the Commission and the Developer and the cost of which will be paid for by the Developer of the Developer’s Costs for the Hotel Project.

“Condition of Title” is defined in Section 203 hereof.

“Condition(s) Precedent” means, collectively the Commission’s Condition(s) Precedent and the Developer’s Condition(s) Precedent.

“Conference Center” means the 25,000 square foot Conference Center located on the Site which will be refurbished hereunder.

“Consent of Spouse” means the Consent of Spouse attached hereto as Attachment No. 13 and incorporated herein by reference to be executed by Jan Bahen, wife of Robert Bahen.

“Construction and Building Permits” is defined in Section 302.1.

“Construction Contract” means the contract between Developer and General Contractor pursuant to which the General Contractor has agreed to construct the Hotel Project for an amount not to exceed Forty-Six Million, Nine Hundred Forty-Eight, Seven Hundred Eighty-One Dollars (\$46,948,781), or as modified by Change Order mutually approved by the Developer and Contractor, and pursuant to which the General Contractor has provided a Performance Bond and Labor and Material Payment Bond for the completion of the Hotel Project.

“Construction Loan” means that certain loan in the principal amount of Fifty-Five Million, Eighty-One Thousand, Two Hundred Fifty Dollars (\$55,081,250) between Developer and Lender as evidenced by the Loan Agreement and Promissory Note.

“Construction Loan Agreement” means that certain Construction Loan Agreement dated for reference purposes as of August 1, 2010 attached hereto as Attachment No. 15 and incorporated herein by reference between the Developer and the pursuant to which the Lender has agreed to provide construction financing for the Hotel Project in the amount of Fifty-Five Million, Eighty-One Thousand, Two Hundred Fifty Dollars (\$55,081,250).

“Conveyance” is defined in Recital C (1).

“County” means the County of San Diego.

“Covenant Acquisition Consideration” is the sum of Ten Million, Seven Hundred Thousand Dollars (\$10,718,000) as described in Section 402.3 and in the Acquisition of Covenants Agreement.

“Date of Agreement” means the date on which this Agreement is approved by the City Council which date is set forth in the first Paragraph hereof.

“Default” means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following Notice and opportunity to cure, as set forth in Section 501 hereof.

“Developer” means Escondido Development, LLC, a Delaware limited company, of which Transcan is one co-managing member and Clark is the other co-managing member. The term “Developer” includes permitted successors and assigns.

“Developer’s Condition(s) Precedent” means the condition(s) precedent to the Conveyance for the benefit of the Developer, as set forth in Section 205.2.

“Developer’s Costs for the Hotel Project” means the Hard Costs incurred and paid by Developer, as determined pursuant to the Computation Process, for the construction of the Hotel Project in accordance with the plans and specifications approved by the Commission as provided in this Agreement from and after the Date of this Agreement to the Completion of Construction of the Hotel Project.

“Developer’s Environmental Consultant” means the qualified environmental consultant which may be employed by the Developer pursuant to Section 207.2 hereof.

“Developer’s Environmental Report” means the environmental report regarding the Site which may be prepared for the Developer by Developer’s Environmental Consultant following an environmental investigation, as set forth in Section 207.2 hereof.

“Development Element(s)” means the Subterranean Parking, the Hotel, the Conference Center and the Surface Parking as described in the Scope of Development.

“Escrow” is defined in Section 202 hereof.

“Escrow Construction Account” means escrow account #9300 15355-K55 at Chicago Title in its San Bernardino office which account will be used by Developer, Lender and Commission to disburse funds as provided in Section 202.7 hereof.

“Escrow Agent” is defined in Section 202 hereof.

“Equity Requirement” means the amount of not less than Four Million Dollars (\$4,000,000) of which the Cash Portion is required to be deposited in the Escrow Construction Account by Developer prior to the Conveyance.

“Exceptions” is defined in Section 203 hereof.

“Executive Director” means the Executive Director of the Commission as designated by the Commission.

“Existing Land Use Approvals and Permits” is defined in Recital A and are listed in Attachment No. 14.

“FIRPTA” means the Foreign Investment in Real Property Transfer Act.

“Franchise Agreement” means an agreement between the Developer and the Franchisor which describes, in detail, the standards of construction and standards of operation for the Hotel, as amended or replaced from time to time.

“Franchisor” means Marriott International, Inc., a Delaware corporation, or such other hotel franchise as requested by Developer and approved by the Commission acting in its sole and absolute discretion.

“General Contractor” means Jaynes Corporation of California, the general contractor retained by the Developer to construct the Hotel Project.

“Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Commission, the Developer or the Site, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City’s Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Sections 51, *et seq.* Developer and its contractors and subcontractors shall pay comply with all governmental requirements applicable to public works, including without limitation the payment of prevailing wages in compliance with Labor Code Section 1770, *et seq.*, keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory

requirements pertaining thereto. Such requirements are set forth in greater detail in the Prevailing Wage and Public Works Requirements.

“Ground Lease” means the ground lease in substantially the form of Attachment No. 4 attached hereto and incorporated herein by this reference implementing the Conveyance.

“Guaranty” is defined in Section 301.

“Guaranty Agreement” is attached hereto as Attachment No. 12 and incorporated herein by this reference.

“Guarantors” means Bahen Enterprises, LLC, a California limited liability company, and Robert H. Bahen, a married man.

“Hard Costs” means the actual and direct third party construction costs incurred and paid by Developer from and after the Date of this Agreement to the date upon which Completion of Construction occurs for the Hotel Project, including grading and site preparation, required onsite and offsite improvements, building construction, permit and inspection fees charged by any public agency, performance or completion bond premiums, title insurance premiums and title insurance endorsements, surveys, hazardous materials remediation, construction loan fees, points and interest, and all ad valorem property taxes and assessments.

“Hazardous Materials” means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7 or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (x) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, *et seq.* (42 U.S.C. §6903) or (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, *et seq.*

“Holder” means the holder of any mortgage or deed of trust permitted by this Agreement.

“Hotel” means the hotel building (excluding the Subterranean Parking and Conference Center and Surface Parking) as described in the Scope of Development.

“Hotel Project” means the Subterranean Parking, the Hotel, and the Conference Center, and the Surface Parking, as described in the Scope of Development.

“Indemnify” means indemnify, defend and hold harmless.

“Jaynes Loan” means the sum of Six Million, One Hundred Thousand Dollars (\$6,100,000) to be loaned to the Developer by the General Contractor.

“JPA” means the Escondido Joint Powers Financing Authority.

“Labor and Material Payment Bond” means that certain Labor and Material Payment Bond attached hereto as Attachment No. 16 and incorporated herein by reference including the Rider which includes the City and the Commission as additional beneficiaries thereunder.

“Land Use Approvals and Permits” is defined in Section 302.

“Legal Description” means the legal description of the Site which is attached hereto as Attachment No. 1 and incorporated herein by this reference.

“Lender” means J&H Capital Investments, Inc., a Texas corporation.

“Liabilities” means liabilities, obligations, losses, damages, deficiencies, fines, penalties, costs and other expenses, including reasonable attorney’s fees and court costs.

“Memorandum of Lease” means that certain memorandum of ground lease attached to the Ground Lease as Exhibit D and incorporated herein by this reference.

“Minimum Project Value” is defined in Section 402.

“Operating Reserve” means the sum of not less than Three Million, Five Hundred Thousand Dollars (\$3,500,000) to be set aside, and replaced from time to time, by the Developer to fund operating deficits for the Operating Period.

“Operator” means Dow Escondido, LLC, a Washington limited liability company or such other hotel operator approved by the Commission acting in its sole and absolute discretion.

“Operator Agreement” means an agreement between the Developer and the Operator pursuant to which the Operator will operate and manage the Hotel Project.

“Outside Date” shall mean the latest date that the Closing of the Conveyance shall occur, as set forth in Section 202.4 hereof.

“Performance Bond” means that certain Performance Bond attached hereto as Attachment No. 17 and incorporated herein by reference including the Rider which includes the City and the Commission as additional beneficiaries thereunder..

“Prevailing Wage and Public Works Requirements” shall mean those requirements attached hereto as Attachment No. 9 and incorporated herein by this reference.

“Project Architect(s)” means Lee & Sakahara, 16842 Von Karman, Irvine, California 92606-4927 designated by the Developer as the “Project Architect” with responsibility for design and construction supervision with respect to the Hotel Project.

“Project Area” means the geographical boundaries of the Redevelopment Plan.

“Promissory Note” means that certain promissory note dated for reference purposes as of August 1, 2010 between Developer and Lender evidencing Developer’s obligation to repay the Construction Loan.

“Redevelopment Plan” means the Project Area and Redevelopment Plan adopted by Ordinance No. 84-85 of the City Council of the City on July 11, 1984, as amended on June 1, 2005, by Ordinance Nos. 2005-12, 2005-13, and on August 15, 2007, by Ordinance No. 2007-18.

“Release” is defined in Section 207.5.

“Release of Construction Covenants” means the document which evidences the Developer’s satisfactory completion of the Hotel Project, as set forth in Section 309 hereof, in the form of Attachment No. 8 hereto which is incorporated herein by this reference.

“Report” means the preliminary title report for the Site, as described in Section 203 hereof.

“Right of Entry Agreement” is defined in Section 206.

“Schedule of Performance” means the Schedule of Performance attached hereto as Attachment No. 6 and incorporated herein by this reference, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished.

“Scope of Development” means the Scope of Development attached hereto as Attachment No. 7 and incorporated herein by this reference, which describes the scope, amount and quality of development of the Hotel Project to be constructed by the Developer pursuant to the terms and conditions of this Agreement.

“Site” means as to Parcel 1 the approximately two and thirty-six one hundredths (2.38) acres which contains the Conference Center, approximately eleven (11) public parking spaces located on the north side of West Valley Parkway, and the public parking lot located adjacent to the CCAE and City Hall, as described in the Legal Description and shown on the Site Map.

“Site Condition” means the condition of the Site with respect to soil, geology, the presence of known or unknown faults, or the presence of known or unknown Hazardous Materials or toxic substances.

“Site Map” means the map of the Site, which is attached hereto as Attachment No. 2 and incorporated herein by this reference.

“Soft Costs” means the following actual third party costs incurred and paid by Developer from and after the Date of this Agreement until the date upon which Completion of Construction of the Hotel Project occurs: planning, architectural, engineering and other predevelopment consulting and professional fees, a developer fee of not to exceed five percent (5%) of Hard Costs, a general

contractor fee not to exceed five percent (5%) of Hard Costs, testing and inspection costs, legal, accounting and insurance (excluding title insurance), licenses and franchise fees.

"State" means the State of California.

"Structural Shell" is defined in the Scope of Development.

"Subterranean Parking" means those approximately 209 parking spaces to be constructed by the Developer under the Hotel in accordance with the Scope of Development, which subterranean parking will serve the Hotel Project and will be included in the Ground Lease.

"Surface Parking" is described in the Scope of Development.

"Title Company" means Chicago Title or such other title company as may be approved by the parties.

"Title Policy" is defined in Section 204.

"Transcan" means Transcan Escondido Hotel Owners, LLC, a Delaware limited liability company.

"Transfer" is defined in Section 603.1 hereof.

"Violation" is defined in Section 207.5.

200. DISPOSITION OF THE SITE

201. Conveyance. Upon fulfillment or waiver of the Commission's Conditions Precedent and the Developer's Conditions Precedent, the Commission agrees to convey the Site to the Developer pursuant to the Ground Lease and Developer agrees to accept such Conveyance, in accordance with and subject to all of the terms, covenants, conditions of this Agreement. The consideration for the Conveyance will be (i) the Base Rent and Additional Rent under the Ground Lease and (ii) the Completion of Construction and Commencement of Operations of the Hotel Project.

202. Escrow. Within five (5) days after the Date of this Agreement, the parties shall open escrow ("Escrow") with Chicago Title in its San Diego office, or another escrow company mutually satisfactory to both parties (the "Escrow Agent") for the Conveyance.

202.1 Costs of Escrow. Commission and Developer shall pay their respective portions of the premium for the Title Policy as set forth in Section 204 hereof, and Developer and Commission each agree to pay one-half the documentary transfer for tax for the Conveyance and one-half of all other usual fees, charges, and costs which arise from Escrow in accordance with customary escrow practices within the County.

202.2 Escrow Instructions for Conveyance. This Agreement constitutes the joint escrow instructions of Developer and Commission, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close Escrow on the Conveyance in the shortest possible time. Insurance policies for fire or casualty are not to be transferred and Commission will cancel its own

policies after the Conveyance. All funds received in the Escrow for the Conveyance shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any state or national bank doing business in the State. All disbursements shall be made by check or wire transfer from such account.

If in the reasonable opinion of either party it is necessary or convenient in order to accomplish the Closing, such party may require that the parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. After the Closing, Escrow Agent is instructed to release Commission's escrow closing statement and Developer's escrow closing statement to the respective parties.

202.3 Authority of Escrow Agent with Respect to the Conveyance. Escrow Agent is authorized to, and shall:

(a) Pay and charge the Developer and the Commission for their respective shares of the premium of the Title Policy and any endorsements thereto as set forth in Section 204 and any amount necessary to place title in the condition necessary to satisfy Section 203 of this Agreement.

(b) Pay and charge Developer and Commission for their respective shares of any escrow fees, charges, and costs payable under Section 202.1 of this Agreement.

(c) Disburse funds and deliver and record documents, as set forth in Section 202.6.

(d) Do such other actions as necessary, including, without limitation, obtaining the Title Policy, to fulfill its obligations under this Agreement.

202.4 Closing. The Conveyance shall Close on or before the time established in the Schedule of Performance but, notwithstanding the provisions of Section 602, in no event shall the Conveyance Close later than December 30, 2010, unless extended by mutual agreement of the parties each acting in its sole and absolute discretion (the "Outside Date"). The Closing shall occur at a location within the County at a time and place reasonably agreed on by the parties. "Closing" shall mean the time and day the Memorandum of Lease is filed for recordation with the County Recorder.

202.5 Termination. If (except for deposit of money by the parties, which shall be made by the parties no later than one (1) business day prior to the scheduled Closing Date) Escrow for the Conveyance is not in condition to close by the Outside Date, then either party which has fully performed under this Agreement may, in writing, terminate this Agreement and the Escrow. If either party makes a written demand for termination of this Agreement and the Escrow, the Agreement shall terminate immediately if such termination is in accordance with this Agreement but the Escrow shall not terminate until five (5) business days after Escrow Agent shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. Notwithstanding the termination of the rights and obligations of the parties under this Agreement, if any objections are raised within said five (5) business day period, Escrow Agent is authorized to hold all funds, papers and documents until instructed by a court of competent jurisdiction or by mutual

written instructions of the parties. If no objections are raised, Escrow Agent shall terminate the Escrow in accordance with such demand. Termination of the Escrow shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

202.6 Closing Procedure. The parties shall provide Escrow Agent with all necessary documents to affect the Conveyance and Escrow Agent shall take such actions as are necessary to record all documents and provide copies of same to the appropriate parties following the Closing. Specifically, Escrow Agent shall close Escrow for the Conveyance as follows:

(a) Deliver copies of the Acquisition of Covenants Agreement to the Commission and the Developer and record the Acquisition of Covenants Agreement with instructions to deliver conformed copies of the Acquisition of Covenants Agreement to the Commission and Developer.

(b) Deliver copies of the Ground Lease to the Commission and Developer and record the Memorandum of Lease with instructions to deliver conformed copies of the Memorandum of Lease to the Commission and Developer;

(c) Deliver and record the documents as requested by the Lender, subject to approval of such direction by the Commission and Developer;

(d) Instruct the Title Company to deliver the Title Policy to the Developer, with a copy to the Commission; and

(e) Forward to both the Developer and the Commission a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

202.7 Escrow Instructions for Construction Funds. The Escrow Construction Account is the account from which all proceeds for construction of the Hotel Project will be disbursed. Initially, the Escrow Construction Account will have the Cash Portion of the Equity Requirement, the principal amount of the Construction Loan and the Jaynes Loan. Later, the Covenants Acquisition Consideration will be added to this account in the two stages as provided in the Acquisition of Covenants Agreement. Disbursements will be made from this account for costs of the Hotel Project, pursuant to the Construction Loan Agreement, and upon receipt of the first installment from the Commission Funds Account the Jaynes Loan shall be repaid.

The Escrow Construction Account will include instruction to the effect that each of the above sources of funding shall be returned to the respective funding source if the Conveyance/Closing does not timely occur.

203. Review of Title. The Commission shall cause the Title Company to deliver to the Developer and Commission a standard CLTA preliminary title report or reports (the "Report(s)") with respect to the title to the Site, together with legible copies of the documents underlying the exceptions ("Exceptions") set forth in the Reports, within fifteen (15) days from the date of this Agreement. The Developer shall have the right to reasonably approve or disapprove the Exceptions; provided, however, that the Developer hereby approves the following Exceptions:

(a) The lien of any non-delinquent property taxes and assessments (to be prorated at Close of Escrow), and

(b) The Memorandum of Lease and the Acquisition of Covenants Agreement each to be recorded against the Site at the Closing.

Developer shall have thirty (30) days from the date of its receipt of the Report and all Exceptions to give written notice to Commission and Escrow Agent of Developer's approval or disapproval of any of such Exceptions set forth in the Report, in its reasonable discretion. Developer's failure to give written disapproval of the Report within such time limit shall be deemed approval of the Report. If Developer notifies Commission of its disapproval of any Exceptions in the Report, Commission shall have the right, but not the obligation, to remove any disapproved Exceptions within thirty (30) days after receiving written notice of Developer's disapproval or provide assurances satisfactory to Developer that such Exception(s) will be removed on or before the Closing for the Conveyance. If Commission cannot or does not elect to remove any of the disapproved Exceptions within that period, Developer shall have fifteen (15) days after the expiration of such thirty (30) day period to either give the Commission written notice that Developer elects to proceed with the lease of the Site subject to the disapproved Exceptions not removed by the Commission or to give the Commission written notice that the Developer elects to terminate this Agreement. The Exceptions to title to the Site approved by Developer as provided herein shall hereinafter be referred to as the "Condition of Title" of the Site. The Developer shall have the right to approve or disapprove any further Exceptions reported by the Title Company after the Developer has approved the Condition of title for the Site (which are not created by Developer). The Commission shall not voluntarily create any new exceptions to title following the date of this Agreement.

204. Title Insurance. Concurrently with the recordation of (i) the Memorandum of Lease, there shall be issued to Developer, a CLTA or ALTA leasehold policy of title insurance, (the "Title Policy"), together with such endorsements as are requested by the Developer (which may include endorsements it needs to make on behalf of Lender, issued by the Title Company insuring that the leasehold interest in the Site is vested in Developer in the Condition of Title approved by Developer pursuant to Section 203 of this Agreement. The Title Company shall provide the Commission with a copy of the Title Policy. The Title Policy shall be for the amount of Fifteen Million, Seven Hundred Eighteen Thousand Dollars (\$15,718,000). The Commission shall pay that portion of the premium for the Title Policy equal to the cost of a CLTA standard coverage Title Policy in the amount set forth above. Any additional costs, including the additional incremental cost of an ALTA policy or any endorsements requested by the Developer, shall be borne by the Developer. Nothing herein shall be deemed to obligate the Commission to pay for any additional premium or other charge necessary for the issuance of the Title Policy.

205. Conditions to Closing. The Closing is conditioned upon satisfaction or waiver of the Conditions Precedent within the times designated in the Schedule of Performance. The failure of any Conditions Precedent to be either satisfied or waived prior to the Outside Date, shall not constitute a Default pursuant to Section 501, but shall be cause for termination of this Agreement by the party for whose benefit such condition has been imposed, unless such failure is a result of one of the Parties not using its good faith efforts to cause satisfaction of such Conditions Precedent in which case the failure or refusal to exercise good faith efforts, following Notice and an opportunity to cure, shall constitute a Default hereunder.

205.1 Commission's Conditions Precedent. Commission's obligation to proceed with the Closing is subject to each and all of the conditions precedent (a) through (u), inclusive, described below ("Commission's Condition(s) Precedent"), which are solely for the benefit of Commission, and which shall be fulfilled, or knowingly waived by the Commission, in writing, within the time periods provided in the Schedule of Performance:

(a) **No Default.** Prior to the Close of Escrow, Developer shall not be in Default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects, subject to Developer's right to modify its representations and warranties and subject to Commission's approval thereof as set forth in the last Paragraph of Section 209 below.

(b) **Execution of Documents.** The Developer shall have executed the Ground Lease and Memorandum of Lease and any other documents required hereunder or under supplemental escrow instructions agreed to by the parties, shall have obtained the Guaranty and delivered all such documents into Escrow.

(c) **Payment of Funds.** Prior to the Close of Escrow, Developer shall have deposited in Escrow all required funds in accordance with Sections 201 and 202 hereof.

(d) **Equity Requirement.** The Developer shall have provided evidence reasonably satisfactory to the Commission that it has fulfilled the Equity Requirement and deposited the Cash Portion in the Escrow Construction Account.

(e) **Construction Loan.** The Lender shall have deposited the sum of Fifty-Five Million, Eighty-One Thousand, Two Hundred Fifty Dollars (\$55,081,250) in the Escrow Construction Account on or before the Outside Date for distribution in accordance with the Construction Loan Agreement.

(f) **Jaynes Loan.** The proceeds of the Jaynes Loan in the amount of Six Million, One Hundred Thousand Dollars (\$6,100,000) shall have been deposited in the Escrow Construction Account.

(g) **Construction Contract.** The Commission shall have reviewed and approved, acting in its reasonable discretion the Construction Contract with the General Contractor for conformance with this Agreement.

(h) **Land Use Approvals and Permits.** The Developer shall have secured all Land Use Approvals and Permits.

(i) **Site Condition.** Developer shall have approved the Site Condition pursuant to Section 207.

(j) **Review and Approval of Title.** Developer shall have reviewed and approved the Condition of Title, as provided in Section 203 hereof.

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

(l) **Franchise Agreement and Hotel Operator.** The Developer shall have provided the Commission with a duly executed Franchise Agreement and Operator Agreement.

(m) **CCAE Operating Agreement.** The Developer and CCAE, Escondido shall have entered into the CCAE Operating Agreement.

(n) **Guaranty Agreement.** The Developer shall have provided Escrow Agent with a duly executed Guaranty Agreement.

(o) **Acquisition of Lien Free Site by Commission.** The JPA has caused the release of the Site from the lien of the Conference Center Bonds and has conveyed the Site, free and clear of any liens or any encumbrances, to the City who, in turn, has conveyed to the Commission.

(p) **Selection of Reviewing Accountant.** The parties have jointly selected the accountant or construction management firm to perform the Computation Process.

(q) **Issuance of Bonds.** The Commission has, acting in its sole and absolute discretion, issued bonds in a sufficient net amount to pay the Covenant Acquisition Consideration.

(r) **Acquisition of Covenant Agreement / Covenant Acquisition Consideration.** The parties have duly executed and acknowledged the Acquisition of Covenants Agreement and the Commission shall have deposited the Covenant Acquisition Consideration in the Commission Funds Account concurrently with the Conveyance for distribution pursuant to the Acquisition of Covenants Agreement.

(s) **Operating Reserve.** The Developer shall have provided evidence reasonably satisfactory to the Commission that the Developer has established the Operating Reserve.

(t) **Performance Bond and Labor and Material Payment Bond.** The Developer has provided evidence reasonably satisfactory to the Commission that the Performance Bond and Labor and Material Payment Bond naming the City and Commission as co-obligees are operative.

(u) **Developer Obligations.** Developer shall have timely performed all of the obligations required by this Agreement to be performed by the Developer.

205.2 Developer's Conditions Precedent. Developer's obligation to proceed with the Conveyance is subject to the fulfillment by Commission or waiver by Developer of each and all of the Conditions Precedent (a) through (m), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer, and which shall be fulfilled or waived, in writing, by the time periods provided for in the Schedule of Performance:

(a) **No Default.** Prior to the Close of Escrow on the Conveyance, Commission shall not be in Default in any of its obligations under the terms of this Agreement and all representations and warranties of Commission contained herein shall be true and correct in all material respects, subject to the Commission's right to modify its representations and warranties and subject to Developer's approval thereof as set forth in the last Paragraph of Section 208 below.

(b) **Execution of Documents.** The Commission shall have executed the Ground Lease, and any other documents required hereunder or under supplemental escrow instructions agreed to by the parties and shall have delivered such documents into Escrow.

(c) **Payment of Funds.** Prior to the Close of Escrow, the Commission shall have deposited in Escrow all required funds in accordance with Sections 201 and 202 hereof.

(d) **Land Use Approvals and Permits.** The Developer shall have secured all Land Use Approvals and Permits.

(e) **Review and Approval of Title.** Developer shall have reviewed and approved the Condition of Title, as provided in Section 203 hereof.

(f) **Title Policy.** The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide to the Developer the Developer Title Policy upon the Close of Escrow of the Conveyance, in accordance with Section 204 hereof.

(g) **Site Condition.** Developer shall have approved the Site Condition pursuant to Section 207.

(h) **Adverse Conditions.** No lawsuit, moratoria or similar judicial or administrative proceeding or government action shall exist which would materially delay or significantly increase the cost of constructing the Hotel Project.

(i) **Commission Obligations.** The Commission shall have timely performed all of the obligations required by the terms of this Agreement to be performed by the Commission.

(j) **CCAE Operating Agreement.** The Developer and CCAE, Escondido shall have entered into the CCAE Operating Agreement.

(k) **Acquisition of Lien Free Site by Commission.** The JPA has caused the release of the Site from the lien of the Conference Center Bonds and has conveyed the Site, free and clear of any liens or any encumbrances, to the City who, in turn, has conveyed title to the Commission.

(l) **Selection of Reviewing Accountant.** The parties have jointly selected the accountant or construction management firm to perform the Computation Process.

(m) **Acquisition of Covenant Agreement/Covenant Acquisition Consideration.** The parties have duly executed and acknowledged the Acquisition of Covenants Agreement and the Commission shall have deposited the Covenant Acquisition Consideration in the Commission Funds Account on or before Conveyance for distribution pursuant to the Acquisition of Covenants Agreement.

206. Studies and Reports. Prior to the Closing, representatives of the Developer shall have the right of access to the Site for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement, including the investigation of the Site Condition. Any preliminary work undertaken on the Site by Developer prior to the Closing shall be done at the sole expense of the Developer, and only following the Developer's execution of a right of entry

agreement to be provided by the Commission (the "Right of Entry Agreement"). Any preliminary work shall be undertaken in accordance with Governmental Requirements and only after securing any necessary permits from the appropriate governmental agencies.

207. Environmental Condition of the Site.

207.1 As-Is Environmental Condition. The Commission represents that, to its Actual Knowledge, it has not, within the last ten (10) years, conducted any tests or studies with respect to the Site Condition. Notwithstanding any provisions of this Agreement to the contrary, the Site shall be conveyed to the Developer in an "as is" condition, with no warranty, express or implied by the Commission, as to the Site Condition, and the Developer agrees to and hereby shall Indemnify the Commission Indemnitees from and against all Liabilities arising from, related in any respect to, or as a result of the Site Condition except (i) as to the Commission's failure to disclose any information regarding the Site Condition about which the Commission had Actual Knowledge or (ii) the breach of any other representation or warranty by the Commission to the extent applicable to the Site Condition. It shall be the sole responsibility of the Developer at its expense to investigate and determine the Site Condition. If the Site Condition is not in all respects entirely suitable for the use or uses to which the Site will be put, then, if Developer elects to close Escrow, it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the Site in a condition entirely suitable for its development.

207.2 Environmental Investigation of Site. Following the Developer's execution of the Right of Entry Agreement, the Developer shall have the right, at its sole cost and expense, to engage its own environmental consultant (the "Developer's Environmental Consultant") to conduct such investigations as Developer deems necessary, including any phase 1 and phase 2 environmental assessments of the Site. The Developer shall provide a copy of all reports and test results regarding the Site Condition, produced by the Developer's Environmental Consultant (the "Developer's Environmental Report") to the Commission promptly upon receipt thereof by the Developer. The Developer shall, in its sole discretion, approve or disapprove of the Site Condition within the time set forth in the Schedule of Performance. The Developer's approval of the Site Condition shall be a Developer's Condition Precedent and Commission's Condition Precedent to the Closing of the Conveyance, as set forth in Section 205 hereof. If the Developer, based upon the above investigations and environmental reports, disapproves the Site Condition, then the Developer may terminate this Agreement by written Notice to the Commission pursuant to Section 503 hereof.

207.3 Release of Commission. The Developer hereby waives, releases and discharges forever the Commission, and its employees, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all Liabilities, arising out of or in any way connected with the Site Condition, whether discovered before or after the Closing of the Conveyance, and whether existing or created on the Site before or after the Conveyance, except that arising out of (i) the Commission's failure to disclose any information regarding the Site Condition about which the Commission had Actual Knowledge, or (ii) the breach of any representation or warranty by the Commission relating to the Site Condition.

The Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

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

release, which if known by him must have materially affected his settlement with the debtor.”

As such relates to this Section 207.3, the Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

207.4 Developer Precautions After Closing. Upon the Closing, the Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, the Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

207.5 Developer Indemnity. Upon the Closing of the Conveyance, Developer agrees to Indemnify the Commission Indemnitees from and against any Liabilities resulting from, arising out of, related to, or based upon (i) the presence, release, use, generation, discharge, storage or disposal (“Release”) of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from the Site, whether such condition occurred before or after the Closing of the Conveyance, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the Release or transportation of Hazardous Materials on, under, in or about, to or from the Site (“Violation”), except if and to the extent that such Release or Violation was directly and proximately caused by the Commission’s failure to disclose information regarding the Site Condition about which the Commission had Actual Knowledge. This indemnity shall include, without limitation, any Liabilities arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. At the request of the Developer, the Commission shall cooperate with and assist the Developer in its defense with respect to any such Liabilities; provided that the Commission shall not be obligated to incur any expense in connection with such cooperation or assistance.

208. Commission Representations. As a material and continuing part of the consideration provided hereunder, Commission represents and warrants to Developer as follows:

208.1 Authority. Commission is a municipal corporation existing pursuant to the laws of the State of California. The execution, performance and delivery of this Agreement by Commission have been fully authorized by all requisite actions on the part of the Commission.

208.2 FIRPTA. The Commission is not a “foreign person” within the parameters of FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute, or that the Commission has complied and will comply with all the requirements under FIRPTA or any similar state statute.

208.3 No Conflict. To the Actual Knowledge of Commission, Commission’s execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Commission is a party or by which it is bound.

208.4 Proceedings. To the Actual Knowledge of Commission, there are no actions, suits, proceedings or governmental investigations pending or threatened against or affecting the Site that would materially adversely affect the Commission's ability to convey the Site or Developer's ability to construct and/or operate the Hotel Project.

208.5 Compliance With Laws. Commission has received no notice and has no Actual Knowledge of any violation of applicable law, ordinance, rule, regulation or requirement of any governmental agency, body or subdivision affecting or relating to the Site that would materially, adversely affect the Commission's ability to convey the Site or Developer's ability to construct and/or operate the Hotel Project.

208.6 Condemnation. Commission has no Actual Knowledge of any pending or threatened proceedings in eminent domain or otherwise, with respect to the Site that would materially, adversely affect the Commission's ability to convey the Site or Developer's ability to construct and/or operate the Hotel Project, or any portion thereof.

208.7 Material Information. Commission shall notify Developer of any material information concerning the Site that would materially, adversely affect the Commission's ability to convey the Site or Developer's ability to construct and/or operate the Hotel Project about which Commission learns during the course of the Escrow for the Conveyance promptly upon the Commission obtaining Actual Knowledge of same.

208.8 Documents. All documents delivered to Developer by Commission pursuant to this Agreement are or will be true and correct copies of originals and any and all information supplied to Developer pursuant to this Agreement is true and accurate to the Actual Knowledge of Commission.

Until the Closing of the Conveyance, the Commission shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 208 not to be true as of the Closing of the Conveyance immediately give written notice of such fact or condition to the Developer. Such exception(s) to a representation shall not be deemed a breach by the Commission hereunder, but shall constitute an exception which the Developer shall have a right to approve or disapprove in Developer's reasonable discretion. If the Developer elects to close Escrow for the Conveyance following disclosure of such information, Commission's representations and warranties contained herein shall be deemed to have been made as of the Closing of the Conveyance subject to such exception(s). If, following the disclosure of such information, the Developer elects to not close Escrow with respect to the Conveyance, then this Agreement and the Escrow shall automatically terminate, and, if the termination occurs prior to the Closing of the Conveyance, neither party shall have any further rights, obligations or liabilities hereunder, provided such representation or warranty was true and correct as of the date of this Agreement. Developer reserves all rights and remedies in the event of any breach by Commission of its representations and warranties as of the date of this Agreement. The representations and warranties set forth in this Section 208 shall survive the Closing of the Conveyance.

209. Developer's Representations. As a material and continuing part of the consideration provided hereunder, the Developer represents and warrants to Commission as follows:

209.1 Authority. Developer is a duly organized limited liability company, organized within and in good standing under the laws of the State of Delaware and is authorized to

do business in the State of California. The copies of the documents evidencing the organization of the Developer and authorization to do business in California which have been delivered to the Commission are true and complete copies of the originals, as amended to the date of this Agreement. The Developer has full right, power and lawful authority to purchase and accept the conveyance of the Site and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of the Developer.

209.2 No Conflict. To the Actual Knowledge of Developer, Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer is a party or by which it is bound.

209.3 No Developer Bankruptcy. The Developer is not the subject of a bankruptcy proceeding.

209.4 Documents. All documents delivered to Commission by Developer pursuant to this Agreement are or will be true and correct copies of originals in any and all information supplied to Commission pursuant to this Agreement is true and accurate.

209.5 Proceedings. To the Actual Knowledge of Developer, there are no actions, suits, proceedings or governmental investigations pending or threatened against or affecting the Site that would materially adversely affect the Commission's ability to convey the Site or Developer's ability to construct and/or operate the Hotel Project.

209.6 Compliance With Laws. Developer has received no notice and has no Actual Knowledge of any violation of applicable law, ordinance, rule, regulation or requirement of any governmental agency, body or subdivision affecting or relating to the Site that would materially, adversely affect the Commission's ability to convey the Site or Developer's ability to construct and/or operate the Hotel Project.

209.7 Material Information. Developer shall notify Commission of any material information concerning the Site that would materially, adversely affect the Commission's ability to convey the Site or Developer's ability to construct and/or operate the Hotel Project about which Developer learns during the course of the Escrow for the Conveyance promptly upon the Commission obtaining Actual Knowledge of same.

Until the Closing of the Conveyance, the Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 209 not to be true as of the Closing of the Conveyance immediately give written notice of such fact or condition to the Commission. Such exception(s) to a representation shall not be deemed a breach by the Developer hereunder, but shall constitute an exception which the Commission shall have a right to approve or disapprove in Commission's reasonable discretion. If the Commission elects to close Escrow for the Conveyance following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the Closing of the Conveyance subject to such exception(s). If, following the disclosure of such information, the Commission elects to not close Escrow with respect to the Conveyance, then this Agreement and the Escrow shall automatically terminate, and, if such termination occurs prior to the Closing of the Conveyance, neither party shall have any further rights, obligations or liabilities hereunder, provided

such representation or warranty was true and correct as of the date of this Agreement. Commission reserves all rights and remedies in the event of any breach by Developer of its representations and warranties as of the date of this Agreement. The representations and warranties set forth in this Section 209 shall survive the Closing of the Conveyance.

300. DEVELOPMENT OF THE SITE

301. Scope of Development. The Developer shall develop the Hotel Project in accordance with this Agreement, the Land Use Approvals and Permits, the City's Municipal Code and Zoning Code, the Franchise Agreement, the Construction Contract, and Governmental Requirements.

301.1 Guaranty Agreement. Prior to the date scheduled for approval of this Agreement, the Developer shall deliver to Commission a performance guaranty in substantially the form of the Guaranty Agreement duly executed by the Guarantors together with financial information from the Guarantors to permit the Commission to determine whether the Guarantors are capable of performing under the Guaranty, if necessary.

302. Land Use Approvals and Permits. On or before the date set forth in the Schedule of Performance, and as both a Commission Condition Precedent to the Conveyance and a Developer Condition Precedent to the Conveyance, the Developer shall have secured or caused to be secured, except as to the conditional use permit required for the sale of alcohol, any and all discretionary land use entitlements, permits and approvals, including without limitation the Precise Plan, which are required for the development and operation of the Hotel Project by the City or any other governmental entity affected by such construction or work and shall pay all costs, charges and fees associated therewith (the "Land Use Approvals and Permits"). The City shall have all rights to review and approve conditionally approve or disapprove all applications for such Land Use Approvals and Permits which are within the jurisdiction of the City in accordance with the City Municipal Code, City Zoning Code and related City policies, and nothing set forth in this Agreement shall be construed as the Commission's approval of any or all of such Land Use Approvals and Permits. This Agreement is not a Development Agreement pursuant to Government Code Section 65864 *et seq.*

302.1 Construction and Building Permits. On or before the respective date set forth in the Schedule of Performance, the Developer shall have secured or caused to be secured each of the respective construction or building permits referenced in Sections 1.k and 2.e of the Schedule of Performance (the "Construction and Building Permits"). The City shall have all rights to review and approve or disapprove all applications for such Construction and Building Permits in accordance with the City Municipal Code, City Zoning Code and related City policies, and nothing set forth in this Agreement shall be construed as the City's approval of any or all such Construction and Building Permits.

302.2 Revisions. Any and all change orders or revisions required by the City and its inspectors which are required under the Municipal Code and all other applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by the Developer in its Land Use Approvals and Permits and shall be completed during the construction of the Hotel Project.

302.3 Defects in Plans. Neither Commission nor the City shall not be responsible either to the Developer or to third parties in any way for any defects in the Land Use Approvals and Permits, nor for any structural or other defects in any work done according to the approved Land Use Approvals and Permits, nor for any delays reasonably caused by the review and approval processes with respect to the Land Use Approvals and Permits.

303. Schedule of Performance. The Developer shall submit all applications for and secure, or cause to be secured, all Land Use Approvals and Permits and commence and complete all construction of the Hotel Project, and satisfy all other obligations and conditions of this Agreement within the times established therefor in the Schedule of Performance.

304. Cost of Construction. All of the costs of planning, designing, developing and constructing and operating all of the Hotel Project shall be borne by the Developer.

305. Insurance Requirements. The Developer shall take out and maintain or shall cause its contractor to take out and maintain until the issuance of the Release of Construction Covenants for all of the Development Elements, a comprehensive general liability policy in the amount of Five Million Dollars (\$5,000,000) combined single limit policy, or such other policy limits as the Commission may approve at its discretion, including contractual liability, as shall protect the Developer and Commission from claims for such damages, and which policy shall be issued by an "A-/VIII" rated insurance carrier. Such policy or policies shall be written on an occurrence form. The Developer shall also furnish or cause to be furnished to the Commission evidence satisfactory to the Commission that Developer and any contractor with whom it has contracted for the performance of work on the Site or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. The Developer shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by the Commission setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the Commission and its respective officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify Commission of any material change, cancellation or termination of the coverage (including, without limitation, any reduction in coverage or increase in deductible) at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Developer shall be primary insurance and not be contributing with any insurance maintained by the Commission, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the Commission. The required certificate shall be furnished by the Developer as a Commission's Condition Precedent to the Closing.

306. Developer's Indemnity. The Developer shall Indemnify the Commission Indemnitees from all Liabilities of any kind or nature relating to the subject matter of this Agreement or the implementation thereof, including without limitation Section 308 of the DDA, and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any acts or omissions of the Developer under this Agreement including without limitation Section 308 of the DDA, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall not be liable for property damage or bodily injury if and to the extent such property damage or bodily injury is directly and proximately caused by the sole or gross

negligence or willful misconduct of the City and/or Commission or their respective agents or employees or from the Commission's failure to perform its obligations hereunder.

The Developer shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Developer determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Developer shall compromise or settle such action in a way that fully protects Commission from any Liabilities. In this regard, Developer's obligation to defend shall include the right to hire (subject to the reasonable written approval by the Commission) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Developer and/or Commission. If Developer defends any such action, as set forth above, it shall Indemnify the Commission Indemnitees from and against any Liabilities assessed or awarded against any of them by way of judgment, settlement, or stipulation.

307. Rights of Access. Except as to Commission inspectors and Commission staff who shall have access to the Site at any time during construction, prior to the issuance of a Release of Construction Covenants for all of the Development Elements, for purposes of assuring compliance with this Agreement, representatives of the Commission shall have the right of access to the Site, without charges or fees, during normal construction hours upon reasonable notice during the period of construction for the purposes of this Agreement, including but not limited to inspection of the work being performed in constructing the Hotel Project. Commission shall Indemnify Developer with respect to Liabilities that arise out of the Commission exercising its right of access hereunder.

308. Compliance With Governmental Requirements. The Developer shall carry out the design, construction and operation of the Hotel Project in conformity with all Governmental Requirements. Upon the request of the Commission, the Developer shall certify to the Commission that it is in compliance with the requirements of this Section.

308.1 Taxes and Assessments. The Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site accruing after the Closing Date for the Conveyance, subject to the Developer's right to contest in good faith any such taxes. The Developer shall remove or have removed any levy or Attachment made on the Site or any part thereof with respect to real estate taxes and assessments on the Site accruing after the Closing Date for the Conveyance, or assure the satisfaction thereof within a reasonable time. The Developer shall not apply for or receive any exemption from the payment of property taxes or assessments on any interest in or to the Site or the Hotel Project.

309. Release of Construction Covenants. Promptly after Completion of Construction of the Hotel Project in conformity with this Agreement, and upon request by Developer, the Commission shall furnish the Developer with a Release of Construction Covenants for the Hotel Project. The Commission shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory Completion of Construction of the Hotel Project and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Hotel Project shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as described in the

Acquisition of Covenants Agreement, and any other obligations which, by their terms, remain in effect following issuance of the Release of Construction Covenants.

If the Commission refuses or fails to furnish the Release of Construction Covenants, after written request from the Developer, the Commission shall, within fifteen (15) days of written request therefor, provide the Developer with a written statement of the reasons the Commission refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the Commission's opinion of the actions the Developer must take to obtain the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Hotel Project, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code. The Commission hereby delegates to its Executive Director the right to furnish Developer with the Release of Construction Covenants hereunder.

310. Approval of Financing, Construction Loan and Operating Reserve. The Commission has concurrently herewith approved the Lender and Construction Loan. The Developer will provide Commission with evidence reasonably satisfactory to the Commission that (i) Developer has achieved the Equity Requirement and deposited the Cash Portion in the Escrow Construction Account and (ii) has entered into the Construction Contract in accordance with the Schedule of Performance and as a Commission Condition Precedent to Closing. Prior to the Conveyance, the Site shall not serve as security for the Construction Loan and, thereafter, only Developer's leasehold interest in the Site may serve as security for the Construction Loan.

400. COVENANTS AND RESTRICTIONS

401. Construction and Opening of the Hotel. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site, as follows:

- (a) To construct the Hotel Project pursuant to Section 301 of this Agreement.
- (b) To Commence Operations of the Hotel Project as a first quality, full service Marriott Hotels and Resort with the hotel brand of Marriott International in accordance with this Agreement and the Franchise Agreement.

402. Minimum Quality/Investment With Respect to the Hotel.

402.1 Minimum Quality With Respect to the Hotel. The furniture, fixtures and equipment for each guest room shall be at least equivalent in quality to the furniture, fixtures and equipment in the San Diego Marriott Del Mar as such exists as of the date of this Agreement. The actual and direct third party costs in connection with acquisition and installation of the furniture, fixtures and equipment for the pool equipment, lobby, business center, health club and lobby bar and restaurant shall be not less than Eight Hundred Thousand Dollars (\$800,000).

402.2 Minimum Investment With Respect to the Hotel Project. The Developer's Costs for the Hotel Project shall be not less than the amount of Forty-Six Million, Nine Hundred Forty-Eight Thousand, Seven Hundred Eighty-One Dollars (\$46,948,781) unless another amount is mutually agreed to by the Commission and Developer each acting in their sole and absolute discretion.

402.3 Covenant Acquisition Consideration and Acquisition of Covenant Agreement. Concurrently with the Conveyance, the parties shall enter into the Acquisition of Covenants Agreement pursuant to which, and subject to the conditions set forth therein, the Commission will pay to the Developer the sum of Ten Million, Seven Hundred Eighteen Thousand Dollars (\$10,718,000) and the Developer will comply with the Covenants set forth therein all in accordance with the terms thereof. The Acquisition of Covenants Agreement will be recorded concurrently with the Conveyance and its rights and the obligations thereunder shall be in addition to and independent of the obligations set forth in the Ground Lease; provided that a Default under the Ground Lease shall be a Default under the Acquisition of Covenants Acquisition and a Default under the Acquisition of Construction Agreement shall be a Default under the Ground Lease.

500. DEFAULTS AND REMEDIES

501. Defaults. Subject to the extensions of time set forth in Section 602 of this Agreement (except as to the Outside Date), failure by the Developer or Commission to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. The failure by a party to satisfy one or more of the Conditions Precedent as set forth in Section 205 hereof shall not be a "Default" hereunder, but the failure to act in good faith reasonable efforts to satisfy any such Condition Precedent shall constitute a "Default" following Notice and an opportunity to cure. A party claiming a default shall give written notice of default to the other party specifying the default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party and the other party shall not be in default if such party within thirty (30) days from receipt of such notice, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence and within a reasonable period of time considering the nature of the default.

502. Institution of Legal Actions. In addition to any other rights or remedies, including without limitation, the termination rights set forth in Sections 503 and 504, and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of North San Diego County, State of California.

503. Termination by the Developer Prior to the Conveyance. In the event that prior to the Conveyance (a) one or more of the Developer's Conditions Precedent to the Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not caused by the Developer, or (b) any Default of the Commission, including without limitation, the Commission's failure to remove disapproved Exceptions which the Commission has elected to remove pursuant to Section 203 prior to the Closing of the Conveyance within the time set forth in Section 501 hereof, after Notice of Default, then this Agreement and any rights of the Commission arising out of the Agreement may, at the option of the Developer, be terminated by written Notice thereof to the Commission. From the date of the written Notice of termination of this Agreement by the Developer to the Commission and thereafter this Agreement shall be deemed terminated whether or not Escrow is also terminated.

504. Termination by the Commission Prior to the Conveyance. In the event that prior to the Conveyance (a) one or more of the obligations described in the Schedule of Performance or

one or more of the Commission's Conditions Precedent to the Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not caused by the Commission; or (b) the Developer is otherwise in Default of this Agreement; then this Agreement and any rights of the Developer or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of the Commission, be terminated by the Commission by written Notice thereof to the Developer. From the date of the written Notice of termination of this Agreement by the Commission to the Developer and thereafter this Agreement shall be deemed terminated whether or not Escrow is also terminated.

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

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

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

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

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

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

600. GENERAL PROVISIONS

601. Notices, Demands and Communications Between the Parties. All notices, statements, demands, requests, consents, approvals, disapprovals, demands or other notices ("Notice") which either party may desire to give to the other party under this Agreement shall be in writing and shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified or registered mail, return receipt requested, postage

prepaid, and in any such instance addressed (or delivered, as the case may be) at the address of the party as set forth below, or at any other address as that party may later designate by Notice:

To Commission: Escondido Community Development Commission
201 North Broadway
Escondido, California 92025
Attn: Executive Director
cc: Commission Counsel

To Developer: Escondido Development, LLC
c/o Transcan Development, LLC
3189 Danville Boulevard, Suite 425
Alamo, California 94507
Attn: Robert Bahen

And

C. W. Clark, Inc.
4180 La Jolla Village Drive, Suite 405
La Jolla, CA 92037
Attn: Craig W. Clark

With a copy to: Sheppard, Mullin, Richter & Hampton, LLP
501 West Broadway, Suite 1900
San Diego, CA 92101
Attn: Christopher B. Neils, Esq.

Any written notice, demand or communication shall be deemed received immediately if delivered by hand (personally or by document delivery service specified above) and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

602. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to causes beyond the control or without the fault of the party claiming an extension of time to perform, which may include the following: war; insurrection; strikes; lockouts; 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; archeological discoveries; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act of the City or Commission or any other public or governmental agency or entity (other than the acts or failures to act of the City or Commission which shall not excuse performance by the Commission), including without limitation any extended or protracted plan check or permit processing (other than such delay as is attributable to submittal of delayed or incomplete plans by Developer). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause 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 as follows: (a) for any cause other than unusually heavy rainfall, within thirty (30) days of the commencement of the cause; and (b) for

the cause of unusually heavy rainfall, within sixty (60) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Commission and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to commence and/or complete the Hotel Project shall not constitute grounds of enforced delay pursuant to this Section 602.

603. Transfers of Interest in Site or Agreement.

603.1 Prohibition. The qualifications and identity of the Developer are of particular concern to the Commission. It is because of those qualifications and identity that the Commission has entered into this Agreement with the Developer. Accordingly, commencing on the date of this Agreement and continuing until the end of the Operating Period (as defined in the Acquisition of Covenants Agreement), (i) no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, (ii) Developer shall not make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Hotel Project thereon, (collectively referred to herein as a "Transfer"), without the prior written approval of the Commission, except as expressly set forth herein. Notwithstanding anything herein to the contrary, no transfer shall be permitted unless it is with respect to the entirety of the Hotel Project.

603.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, Commission approval of a Transfer shall not be required in connection with any of the following:

(a) A Transfer of the Ground Lease from Developer to Franchisor following the Completion of Construction of the Hotel Project.

(b) The conveyance or dedication of any portion of the Site to the Commission or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Hotel Project.

(c) Any requested assignment for financing purposes (subject to such financing being leasehold financing and considered and approved by the Commission pursuant to Section 310 herein).

In the event of a Transfer by Developer under subparagraphs (a) through (c), inclusive, not requiring the Commission's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to Commission of such assignment and satisfactory evidence that the assignee has assumed in writing through an assignment and assumption agreement of all of the obligations of this Agreement. Such assignment shall not, however, release the assigning Developer from any obligations to the Commission hereunder.

603.3 Commission Consideration of Requested Transfer. The Commission agrees that it will not unreasonably withhold approval of a request for approval of a Transfer made pursuant to this Section 603, provided the Developer delivers written notice to the Commission requesting such approval be accompanied by evidence regarding the proposed transferee's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the Commission to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 603 and as reasonably determined by the

Commission. The Commission may, in considering any such request, take into consideration such factors as (i) the quality of any proposed new and/or replacement developer or operator (ii) the proposed transferee's past performance as developer or operator of similar developments, (iii) the current financial condition of the proposed transferee, and similar factors. The Commission agrees not to unreasonably withhold its approval of any such requested Transfer, taking into consideration the foregoing factors.

An assignment and assumption agreement in form reasonably satisfactory to the Commission Attorney shall also be required for all proposed Transfers. Within thirty (30) days after the receipt of the Developer's written notice requesting Commission approval of a Transfer pursuant to this Section 603, the Commission shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the Commission reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the Commission such further information as may be reasonably requested.

603.4 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

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

605. Commission Approvals and Actions. The Commission shall maintain authority of this Agreement and the authority to implement this Agreement through the Executive Director (or his duly authorized representative). The Executive Director shall have the administrative authority to make approvals, issue interpretations, waive provisions, and/or enter into amendments of this Agreement on behalf of the Commission so long as such actions do not materially or substantially change the uses or development permitted on the Site, or add to the costs incurred or to be incurred by the Commission as specified herein, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Commission.

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

607. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous

negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Attachment Nos. 1 through 14, which are incorporated herein.

608. Real Estate Brokerage. Except as to a finder's fee due to Otay Realty and for which Developer is solely responsible, each of the Commission and the Developer represents to the other party that it has not engaged the services of any finder or other broker and that it is not liable for any other real estate commissions, broker's fees, or finder's fees which may accrue by means of the acquisition and/or conveyance of all or part of the Site, and agrees to indemnify and hold harmless the other party from such further or additional commission or fees as are alleged to be due from the party making such representations.

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

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

611. 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.

612. 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.

613. 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.

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

615. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of

any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

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

617. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

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

619. Time for Acceptance of Agreement by Commission. This Agreement, when executed by the Developer and delivered to the Commission, must be authorized, executed and delivered by the Commission on or before forty-five (45) days after signing and delivery of this Agreement by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

<SIGNATURE PAGE BEGINS ON FOLLOWING PAGE >

IN WITNESS WHEREOF, the Commission and the Developer have executed this Disposition and Development Agreement as of the date set forth above.

COMMISSION:

**ESCONDIDO COMMUNITY DEVELOPMENT
COMMISSION**, a public body, corporate and politic

By: _____
Chairman

ATTEST:

Commission Secretary

APPROVED AS TO FORM:

Commission Legal Counsel

STRADLING YOCCA CARLSON & RAUTH

Special Legal Counsel to Commission

<SIGNATURE PAGE CONTINUES ON FOLLOWING PAGE >

DEVELOPER:

ESCONDIDO DEVELOPMENT, LLC,
a Delaware limited liability company

By: **Transcan Escondido Hotel Owners, LLC,**
a Delaware limited liability company,
co-managing member

By: _____
Robert Bahen,
Managing Member

By: **C. W. Clark, Inc.,** a California corporation,
co-managing member

By: _____
Craig W. Clark, President

APPROVED AS TO FORM:

Developer's Legal Counsel