

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between the

**COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF NATIONAL CITY**

and

MARINA GATEWAY DEVELOPMENT COMPANY, LLC

And

SYCUAN TRIBAL DEVELOPMENT CORPORATION

ORIGINAL

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of May __, 2004, by and between the **COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF NATIONAL CITY**, a public body, corporate and politic (the "CDC"), on the one hand, and **MARINA GATEWAY DEVELOPMENT COMPANY, LLC**, a California limited liability company (the "Developer") and **SYCUAN TRIBAL DEVELOPMENT CORPORATION**, a Tribally chartered corporation ("STDC") on the other.

RECITALS

The following recitals are a substantive part of this Agreement:

1. In furtherance of the objectives of the California Community Redevelopment Law, the CDC desires to redevelop a certain approximately 6.32 acre portion of the National City Redevelopment Project (the "Redevelopment Project") located at the southeast corner of Bay Marina Drive and Harrison Avenue (APNs 559-160-03, 09, 11 and 21, 559-117-14 and 15) (the "Site", more fully described below) in the City of National City (the "City"). The CDC currently owns the Site, which was previously developed with urban uses.

2. The CDC and Developer/STDC desire by this Agreement for the Developer/STDC to purchase the Site from the CDC, and for the Developer/STDC to construct an approximately one hundred fifty (150) room three star hotel with a restaurant and 8,000 square feet of conference facilities; another structure with an approximately 4,000 square foot restaurant and approximately 10,000 square feet of office/commercial/tourist space; a 1,000 square foot public vista point; and all with associated parking and on-site improvements (the "Improvements").

3. The Parties have determined that some Hazardous Materials, as defined below, are present under the Site.

4. As of the Date of the Agreement, the CDC has submitted a Property Mitigation Plan ("PMP") for the Site to the regulatory agencies asserting jurisdiction over the Site. The PMP is intended to mitigate the Site to a condition such that the Site can receive approval from the DEH (as defined below) for the development and occupancy of the planned Improvements and in a manner that is intended to qualify for immunity under the Polanco Act (set forth at California Health and Safety Code §33459 et seq.). The Parties understand that the current PMP will need to be amended (or an additional Property Mitigation Plan prepared) (the "New PMP") in light of current plans for the Improvements for the Site.

5. The Parties believe that neither the CDC, nor the Developer/STDC, caused the environmental contamination on the Site. However, completion of the Remedial Work is in the best interests of the CDC and the City and the health, safety and welfare of the residents and taxpayers of the Redevelopment Project and the City, and is in accord with the public purposes and provisions of applicable state and local laws. The CDC desires to see the Remedial Work completed under the Polanco Act to effectuate reuse of the Site in accordance with the

Redevelopment Plan as well as to provide the CDC, Developer/STDC and any subsequent purchasers of all or a portion of the Site with immunity pursuant to Health and Safety Code §33459.3.

6. The CDC's acquisition of the Site and disposition of the Site to the Developer/STDC, and the Developer's/STDC's acquisition of the Site and construction and completion of the Improvements pursuant to the terms of this Agreement, are in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the redevelopment of the Redevelopment Project has been undertaken.

7. STDC, as a Tribally chartered corporation, enjoys sovereign immunity derived from its being chartered by the Sycuan Band of the Kumeyaay Nation ("Tribe"), and as a condition of entering this Agreement and conveying title under this Agreement, CDC requires an express limited waiver of STDC's sovereign immunity to insure the enforceability of this Agreement.

NOW, THEREFORE, the CDC and the Developer and STDC hereby agree as follows:

100. DEFINITIONS

"Actual Knowledge" means the current conscious awareness of facts without the duty to conduct any studies, inquiries or investigations.

"Additional Remedial Work" means all actions necessary, if any, to complete the New PMP over and above the Remedial Work to complete the PMP.

"Agreement" means this Disposition and Development Agreement between the CDC and the Developer and STDC.

"Attachments" to this Agreement are integral parts of the Agreement and are as enforceable as if set forth in the body of the Agreement.

"Basic Concept Drawings" means the plans and drawings that have been submitted by the Developer and approved by the CDC.

"CC&Rs" means the Agreement Establishing Protective Covenants, Conditions and Restrictions and Liens and Encumbrances Running With The Land in the form of Attachment No. 8 hereto which is incorporated herein by reference.

"CDC" means the Community Development Commission of The City of National City, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, Health and Safety Code, Section 33000, et seq., and any assignee of or successor to its rights, powers and responsibilities.

"CDC's Conditions Precedent" means the conditions precedent to the Closing to the benefit of the CDC, as set forth in Section 205.1 hereof.

“CDC Environmental Reports” means the environmental reports which have been submitted by the CDC to the Developer, as set forth in Section 208.1 hereof.

“City” means the City of National City, a California municipal corporation.

“Closing” means the close of Escrow for the Conveyance of the Site from the CDC to the Developer and STDC, as set forth in Section 202 hereof.

“Closing Date” means the date of the Closing, as set forth in Section 202.4 hereof.

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

“Construction Drawings” means the detailed construction drawings and plans to be prepared with respect to the Improvements, as set forth in Section 302.3 hereof.

“Conveyance” means the conveyance of the Site by the CDC to the Developer and STDC on the Closing Date.

“Date of Agreement” means the date 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.

“DEH” means the County of San Diego, Department of Environmental Health.

“Developer” means Marina Gateway Development Company, LLC, a California limited liability company whose members are STDC, MRW Group, Inc., and S D Latino Development Corp., and its successors and assigns.

“Developer’s Conditions Precedent” means the conditions precedent to the Closing to the benefit of the Developer and STDC, as set forth in Section 205.2.

“Developer’s Environmental Consultant” means the environmental consultant that may be employed by the Developer/STDC pursuant to Section 208.2 hereof, if any.

“Developer’s Environmental Report” means the environmental investigation of the Site, which may be conducted for the Developer and STDC by Developer’s Environmental Consultant, as set forth in Section 208.2 hereof, if any.

“Eligible Persons” means any individual, partnership, corporation or association which qualifies as a “displaced person” pursuant to the definition provided in Government Code Section 7260(c) of the California Relocation Assistance Act of 1970, as amended, and any other applicable federal, state, or local regulations or laws.

“Environmental Laws” means shall mean any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations, or any other requirements of governmental authorities presently relating to the

release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health.

“Environmental Laws” include, without limitation, (i) the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), (ii) the Hazardous Materials Transportation Act (94 U.S.C. § 1801 et seq.), (iii) the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), (iv) the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), (v) the Clean Air Act (42 U.S.C. § 7401 et seq.), (vi) the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), (vii) the Oil Pollution Act (33 U.S.C. § 2701 et seq.), (viii) the Emergency Planning and Community Right-To-Know Act (U.S.C. § 11001 et seq.), (ix) the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13020 et seq.), (x) the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25300 et seq.), (xi) the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), (xii) the Carpenter-Presley-Tanner Hazardous Substance Account Act (Cal. Health and Safety Code § 25316 et seq.), (xiii) the Hazardous Materials Release Response Plans and Inventory (Cal. Health & Safety Code § 25501 et seq.), (xiv) Cal. Health and Safety Code § 25281 (Underground Storage of Hazardous Substances), (xv) Article 9 or Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, and other applicable provisions of the California Health and Safety Code, Water Code, and Government Code as amended or supplemented and any analogous present federal, state or local statutes, ordinances or laws, and any regulations promulgated pursuant to any of the foregoing.

“**Environmental Reports**” means the collective environmental investigations of the Site as reported in the Developer’s Environmental Report, if any, and any investigations conducted by or for the CDC performed pursuant to Section 208 hereof.

“**Escrow**” is defined in Section 202 hereof.

“**Escrow Agent**” is defined in Section 202 hereof.

“**Escrow Costs**” are defined in Section 202.1 hereof.

“**Exceptions**” are defined in Section 203 hereof.

“**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, CDC or instrumentality exercising jurisdiction over the CDC, the Developer or the Site.

“**Grading Plan**” means the grading plan as approved by the City for grading work to be performed on the Site by the State of California Integrated Waste Management Board (“CIWMB”) or on its behalf. The grading shall primarily be concerned with the “old burn ash dump area” of the Site and its remediation, but may include other incidental grading onsite and/or offsite.

“**Grant Deed**” means the grant deeds for the conveyance of the Site from the CDC to the Developer and STDC, in the form of Attachment No. 3 hereto which is incorporated herein by reference.

“Hazardous Materials” means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous substance,” “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Environmental Laws, (ii) petroleum, (iii) friable asbestos, (iv) polychlorinated biphenyls, (v) methyl tertiary butyl ether, or (vi) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to human health or the environment.

“Improvements” means the new improvements to be constructed by the Developer upon the Site, all more particularly described in Section 301.1 hereof and in the Scope of Development.

“Mortgage” is defined in Section 310.1 hereof.

“No Further Action Letter” means the issuance by the DEH or other applicable governmental agency of a letter, certificate or other official writing in a form reasonably acceptable to Developer which provides that the PMP has been completed and that no further investigation, remediation, response or removal with respect to Hazardous Materials (subject to any “Post-Closure Conditions”) is necessary considering the development, occupancy and operation of the Project and confirming, that the immunity available under Health and Safety Code Section 33459.3 applies.

“Notice” shall mean a notice in the form prescribed by Section 601 hereof.

“Outside Date” shall mean the last date the Closing shall occur, as set forth in Section 202.4 hereof.

“Parcelization” is defined in Section 201.2 hereof.

“Parking Lot Maintenance” shall mean the maintenance and repair of the parking lot portions of the Site being graded pursuant to the Grading Plan in such a condition that the integrity of the asphalt is sufficient to prevent surface water infiltration in compliance with the Post-Closure Conditions.

“Phase 1 Report” and **“Phase 2 Report”** are defined in Section 208.2 hereof.

“PMP” means the process for mitigation of the Site through the use of a Property Mitigation Plan.

“Polanco Act” shall be defined as California Health and Safety Code §33459, *et seq.*

“Post-Closure Conditions” means those conditions that the DEH may require, including, but not limited to, Parking Lot Maintenance, restrictions upon residential uses of the Site, ongoing monitoring and/or operational and maintenance activities after the substantial completion of the Remedial Work and the issuance of the No Further Action Letter.

“Purchase Price” means the price to be paid by the Developer/STDC to the CDC in consideration for the Conveyance of fee title to the Site, as set forth in Section 201 hereof.

“Redevelopment Plan” means the Redevelopment Plan for the Redevelopment Project, adopted by Ordinance No. 95 - 2095 of the City Council of the City of National City, and incorporated herein by reference.

“Redevelopment Project” means the National City Redevelopment Project, adopted by the City pursuant to the Redevelopment Plan.

“Release of Construction Covenants” means the document, which evidences the Developer’s satisfactory completion of the Improvements, as set forth in Section 310 hereof, in the form of Attachment No. 6 hereto which is incorporated herein.

“Remedial Work” means all actions necessary to complete the PMP.

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

“Schedule of Performance” means the Schedule of Performance in Attachment No. 4, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Developer and the CDC’s Director. Unless otherwise specified herein, the CDC’s Director is authorized to make such revisions, as he or she deems reasonably necessary.

“Scope of Development” means the Scope of Development in Attachment No. 5, that describes the scope, amount and quality of development of the Improvements to be constructed by the Developer/STDC pursuant to the terms and conditions of this Agreement.

“Site” means the approximately 6.32 acre portion of the Redevelopment Project located at the southeast corner of Bay Marina Drive and Harrison Avenue in the City, which is legally described in the Site Legal Description and depicted on the Site Map.

“Site Legal Description” means the description of the Site in Attachment No. 2.

“Site Map” means the map of the Site in Attachment No. 1.

“Site Plan Drawings” means the plans and drawings that have been submitted by the Developer and approved by the CDC, as set forth in Section 302.2 hereof.

“Three Star Flag” is defined in Section 205.1(k).

“Title Company” is defined in Section 203 hereof.

“Title Policy” is defined in Section 204 hereof.

“Transfer” is defined in Section 603 hereof.

“Tribe” means the Sycuan Band of the Kumeyaay Nation, formerly known as the Sycuan Band of Mission Indians, a federally recognized Indian tribe.

200. CONVEYANCE OF THE SITE

201. Disposition of Site

201.1 The CDC agrees to sell the Site to the Developer and STDC, in accordance with and subject to all of the terms of this Agreement, for the all-inclusive purchase price of \$10 per gross square foot, for approximately 6.32 acres (the “Purchase Price”).

201.2 Title to the Site shall be split and deeded to the Developer and STDC. STDC shall receive from the CDC, and take the title to, the portion of the site for the hotel and its immediate, attendant facilities containing approximately 3 acres. The Developer shall take title to the remainder of the Site, containing approximately 3.32 acres, not deeded to STDC. The portions of the Site to be conveyed to STDC and Developer will be created by a new parcel map for the Site, acceptable to the Developer, STDC, MRW Group, Inc. and SD Latino Development Corp., and the CDC (the “Parcelization”). CDC shall reasonably cooperate with the Developer/STDC in connection with the Parcelization.

202. Escrow. Within ten (10) days after the execution of this Agreement by the CDC, the parties shall open escrow (“Escrow”) with Chicago Title Company in its downtown San Diego office, through Chris Ghio, Commercial Title Representative, or another escrow company mutually satisfactory to both parties (the “Escrow Agent”).

202.1 Costs of Escrow. CDC shall pay the premium for a standard coverage Title Policy as set forth in Section 204 hereof and the documentary transfer taxes, if any, due with respect to the conveyance of the Site. The Developer/STDC and CDC shall each pay one-half of all other usual fees, charges, and costs that arise from Escrow (the “Escrow Costs”).

202.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of Developer and STDC and CDC, 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 this Escrow in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and CDC will cancel its own policies after the Closing. All funds received in the Escrow 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 of California. All disbursements shall be made by check from such account. However, if Escrow does not close within one (1) business day from deposit of the Purchase Price, the funds shall be deposited into an interest bearing account with such interest accruing to the benefit of the Developer.

If in the opinion of any of the parties or the Escrow Agent it is necessary or convenient in order to accomplish the Closing of this transaction, such party may require that the parties sign supplemental escrow instructions within fifteen (15) days of notice thereof; 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. The Closing shall take place within sixty (60) days after the date when both the CDC's Conditions Precedent and the Developer's/STDC's Conditions Precedent as set forth in Section 205 have been satisfied or waived by the respective parties. Escrow Agent is instructed to release the CDC's escrow closing statement and the Developer's/STDC's escrow closing statement to the respective parties.

202.3 Authority of Escrow Agent. Escrow Agent is authorized to, and shall:

(a) Pay and charge Developer/STDC and CDC for their respective shares of the Escrow Costs payable under Section 202.1 of this Agreement, any endorsements to the premium of the Title Policies 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/STDC and CDC for their respective shares of any escrow fees, charges, and costs.

(c) Disburse funds and deliver and record the Grant Deeds when both the Developer's Conditions Precedent and the CDC's Conditions Precedent have been fulfilled or waived by Developer and CDC.

(d) Do such other actions as necessary, including obtaining the Title Policies, to fulfill its obligations under this Agreement.

(e) Within the discretion of Escrow Agent, direct CDC and Developer/STDC to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated hereunder. CDC agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by Escrow Agent, on the form to be supplied by Escrow Agent.

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

202.4 Closing. This transaction shall close ("Closing") within sixty (60) days of the parties' satisfaction of all of CDC's and Developer's Conditions Precedent to Closing as set forth in Section 205 hereof, but in no event later than June 30, 2005 (the "Outside Date"). The Outside Date shall be extended on a day-for-day basis for every day CDC's required acts for Closing are delayed due to the fault of the CDC beyond the deadlines set forth herein and in the Schedule of Performance, and the Closing is thereby delayed. The Closing shall occur at a location within San Diego County at a time and place reasonably agreed on by the parties. The "Closing" shall mean the time and day the Grant Deeds are filed for record with the San Diego County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

202.5 Termination. If Escrow is not in condition to close by the Outside Date, then any party that has fully performed under this Agreement may, in writing, demand the return of money or property and terminate the Escrow. If any party makes a written demand for return of documents or properties, the Escrow shall not terminate until five (5) days after Escrow Agent shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Developer, however, shall have the sole option to terminate escrow and withdraw any money deposited by it with respect to the Closing less Developer's share of costs of Escrow, if any. Termination of the Escrow shall not prejudice any legal rights either party may have against the other arising from this Agreement. If no demands to terminate Escrow are made, the Escrow Agent shall proceed with the Closing as soon as possible.

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

(a) Record the Grant Deeds and the CC&Rs with instructions for the Recorder of San Diego County, California to deliver the Grant Deeds to Developer and STDC and the CC&Rs to CDC's attorney;

(b) Instruct the Title Company to deliver the Title Policies to Developer and STDC;

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

(d) Deliver the FIRPTA Certificate, if any, to Developer and STDC;
and

(e) Forward to both Developer/STDC and CDC 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.

203. Review of Title. The CDC shall cause Chicago Title Company, or another title company mutually agreeable to both parties (the "Title Company"), to deliver to Developer/STDC a standard preliminary consolidated title report (the "Report") with respect to the title to the Site, together with best available copies of the documents (the "Documents") underlying the exceptions ("Exceptions") set forth in the Report, within sixty (60) days from the date of this Agreement. The Developer/STDC shall have the right to approve or disapprove the Exceptions in its sole and absolute discretion; provided, however, that the Developer/STDC hereby approves the following Exceptions:

(a) The Redevelopment Plan and CC&Rs.

(b) The lien of any non-delinquent property taxes and assessments (to be prorated at close of Escrow).

Developer/STDC shall have sixty (60) days from the date of its latest receipt of the Report, the Documents and the Survey to give written notice to CDC and Escrow Holder of Developer's/STDC's approval or disapproval of any of such Exceptions. If Developer/STDC notifies CDC of its disapproval of any Exceptions in the Report, CDC shall have the right, but not the obligation, to remove any disapproved Exceptions within thirty (30) days after receiving written notice of Developer's/STDC's disapproval or provide assurances satisfactory to Developer/STDC in Developer's/STDC's sole and absolute discretion that such Exception(s) will be removed on or before the Closing. If CDC cannot or does not elect to remove any of the disapproved Exceptions within that period, Developer/STDC shall have thirty (30) days after the expiration of such thirty (30) day period to either give the CDC written notice that Developer/STDC elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give the CDC written notice that the Developer/STDC elects to terminate this Agreement. The Exceptions to title approved by Developer/STDC as provided herein shall hereinafter be referred to as the "Condition of Title." Developer/STDC shall have the right to approve or disapprove in its sole and absolute discretion any further Exceptions reported by the Title Company after Developer/STDC has approved the Condition of Title for the Site (which are not created by Developer/STDC). CDC shall not voluntarily create any new exceptions to title following the date of this Agreement, without Developer's/STDC's consent, said consent not to be unreasonably withheld.

204. Title Insurance. Concurrently with recordation of the Grant Deeds conveying title to the Site, there shall be issued to Developer and STDC ALTA policies of title insurance (the "Title Policies"), together with such endorsements as are reasonably requested by the Developer and/or STDC, issued by the Title Company insuring that the title to the Site is vested in Developer and STDC in the condition required by Section 203 of this Agreement. The Title Company shall provide the CDC with a copy of the Title Policies. The Title Policies shall be for the combined amount of the Purchase Price. The CDC agrees to remove on or before the Closing any deeds of trust or other monetary liens against the Site. The shared Escrow Costs shall include the cost of any surveys necessary to issue ALTA Extended Coverage Title Insurance Policies and that portion of the premium for the Title Policies equal to the added cost of ALTA Extended Coverage above the cost of ALTA Standard Coverage Owner's Policies of Title Insurance in the amount of the Purchase Price.

205. Conditions of Closing. The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below:

205.1 CDC's Conditions of Closing. CDC's obligation to proceed with the Closing of the sale of the Site is subject to the fulfillment or waiver by CDC of each and all of the conditions precedent (a) through (m), inclusive, described below ("CDC's Conditions Precedent"), which are solely for the benefit of CDC, and which shall be fulfilled or waived by the time periods provided for herein:

- (a) **Parcelization.** The Parcelization shall have been accomplished.
- (b) **No Default.** Prior to the Close of Escrow, Developer/STDC shall not be in default in any of its obligations under the terms of this Agreement and all

representations and warranties of Developer/STDC contained herein shall be true and correct in all material respects.

(c) **Execution of Documents.** The Developer/STDC shall have executed any documents required hereunder and delivered such documents into Escrow, including the CC&Rs.

(d) **Payment of Funds.** Prior to the Close of Escrow, Developer/STDC shall have paid the Purchase Price and all required costs of Closing into Escrow in accordance with Section 201 and 202 hereof.

(e) **Design Approvals.** The Developer/STDC shall have obtained approval by the City of the Site Plan Drawings and Site Plan application, as set forth in Section 302 hereof.

(f) **Land Use Approvals.** The Developer/STDC and the CDC shall have received all land use approvals required pursuant to Section 303 hereof.

(g) **Building Plans and Grading Permits.** All permits required for the excavation for and construction of the Improvements shall be available for issuance upon the payment of applicable fees, posting of required security, and similar items, and all plans necessary for the issuance of building permits for the Improvements shall have been submitted to the City and accepted as complete.

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

(i) **Financing.** The CDC shall have approved construction and acquisition financing as provided in Section 310.1 hereof, and such financing shall have closed and funded or be ready to close and fund upon the Closing.

(j) **General Contractor Contract.** Developer/STDC shall have provided to CDC a copy of a valid and binding contract between the Developer/STDC and a duly licensed general contractor reasonably acceptable to the CDC for the construction of the Improvements, certified by the Developer/STDC to be a true and correct copy thereof.

(k) **Hotel Developer/Operator.** CDC has approved STDC as the operator of the hotel. STDC shall have provided to CDC a copy of a valid and binding contract between STDC and no less than a three star hotel chain (the "Three Star Flag") reasonably acceptable to the CDC for the development/operation of the hotel portion of the Improvements pursuant to the Three Star Flag, certified by the Developer/STDC to be a true and correct copy thereof.

(l) **New PMP.** CDC shall have approved in its sole discretion the New PMP and secured adequate (in its reasonable discretion) funding for the cost of the Additional Remedial Work, if any.

(m) **Due Authorization; Limited Waiver of Sovereign Immunity.** CDC shall have received evidence satisfactory to CDC and its attorneys that: (1) STDC and those acting on its behalf are authorized and empowered to enter into this Agreement, including the provisions of this Agreement that constitute a limited waiver of STDC's sovereign immunity; and (2) all approvals necessary to bind STDC have been supplied, including any approvals of limited waiver of sovereign immunity necessary from the Tribe as signatory to Attachment 8.

(n) **CC&Rs.** The CC&Rs shall have been executed by all parties thereto and shall be ready for recording and the CDC and its attorneys shall have received satisfactory evidence that (i) STDC and the Tribe were authorized and empowered to enter into the CC&Rs and that appropriate general/tribal council approvals, if necessary or appropriate, were received, and (ii) adequate limited waivers of sovereign immunity shall have been given such that STDC and the Tribe shall be bound by California law and subject to the jurisdiction of California courts in connection with the CC&Rs.

205.2 Developer's Conditions of Closing. Developer's/STDC's obligation to proceed with the purchase of the Site is subject to the fulfillment or waiver by Developer/STDC of each and all of the conditions precedent (a) through (l), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer/STDC, and which shall be fulfilled or waived by the time periods provided for herein:

(a) **No Default.** Prior to the Close of Escrow, CDC shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of CDC contained herein shall be true and correct in all material respects.

(b) **Execution of Documents.** The CDC shall have executed the Grant Deeds and CC&Rs and any other documents required hereunder, and delivered such documents into Escrow.

(c) **Review and Approval of Title.** Developer and STDC shall have reviewed and approved the condition of title of the Site, as provided in Section 203 hereof.

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

(e) **Environmental.** The Developer shall have approved (i) the environmental condition of the Site after the completion of the Remediation Work (and Additional Remedial Work, if applicable) and receipt of the No Further Action Letter, and (ii) the Post-Closure Conditions.

(f) **Parcelization.** The Parcelization shall have been accomplished.

(g) **Design Approvals.** The Developer/STDC shall have obtained approval by the City of the Site Plan Drawings, Site Plan application, and Construction Drawings as set forth in Section 302 hereof.

(h) **Land Use Approvals.** The Developer/STDC and the CDC shall have received all land use approvals required pursuant to Section 303 hereof.

(i) **Building and Grading Permits.** All permits required for the excavation for and construction of the Improvements shall be available for issuance upon the payment of applicable fees, posting of required security, and similar items, and all plans necessary for the issuance of building permits for the Improvements shall have been submitted to the City and accepted as complete.

(j) **Demolition of the Existing Improvements.** All existing improvements shall have been demolished and all debris cleared from the Site prior to transfer to the Developer/STDC.

(k) **Quitclaim of Rail Lines.** Quitclaim deeds shall have been obtained for all property rights associated with the inactive rail line on the Site, as provided for in Section 303.

(l) **Grading.** The grading set forth in the Grading Plan has been completed.

206. Representations and Warranties.

206.1 CDC Representations. CDC represents and warrants to Developer/STDC as follows:

(a) **Authority.** CDC is a public body, corporate and politic, existing pursuant to the California Community Redevelopment Law (California Health and Safety Code Section 33000), which has been authorized to transact business pursuant to action of the City.

(b) **FIRPTA.** CDC 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 CDC has complied and will comply with all the requirements under FIRPTA or any similar state statute.

(c) **No Conflict.** To the best of CDC’s knowledge, CDC’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 CDC is a party or by which it is bound.

(d) **Litigation.** There are no claims, causes of action or other litigation or proceedings pending or, to the Actual Knowledge of the CDC, threatened with respect to the ownership, operation or environmental condition of the Site or any part thereof (including disputes with mortgagees, governmental authorities, utility companies, contractors, adjoining landowners or suppliers of goods and services).

(e) **Violation.** To the Actual Knowledge of the CDC, there are no violations of any health, safety, pollution, zoning or other laws, ordinances, rules or regulations with respect to the Site, which have not heretofore been entirely corrected or will not be corrected upon completion of the Remedial Work (and Additional Remedial Work, if

applicable). In the event CDC has Actual Knowledge of any such violations, CDC shall (i) immediately provide Developer with copies of all documents evidencing such violation, and (ii) cure such violation prior to Closing.

(f) **No CDC Bankruptcy.** CDC is not the subject of a bankruptcy proceeding.

(g) **Grading Plan.** CDC shall cooperate with the Developer and CIWMB and/or its representatives in connection with finalizing specifications for the Grading Plan to the extent reasonably possible, including specifications for utilities and storm drains. CDC makes no representations or warranties that the Site will be graded to a geotechnical condition suitable for the Improvements, however, and the Developer/STDC assumes all responsibility for the compaction of the Site and any future settling or subsidence, if any, and for the performance of all Parking Lot Maintenance.

(h) **Hazardous Materials.** To the Actual Knowledge of the CDC there are no Hazardous Materials on the Site other than as disclosed in the Environmental Reports and/or PMP.

Until the Closing, CDC shall, upon the change of any fact or condition which would cause any of the warranties and representations in this Section 206.1 not to be materially true as of Closing, immediately give written notice of such changed fact or condition to Developer/STDC. Such exception(s) to a representation shall not be deemed a breach by CDC hereunder, but shall constitute an exception which Developer/STDC shall have a right to approve or disapprove within thirty (30) days after receipt of Notice from the CDC if such exception would have a material effect on the value and/or operation of the Site. The Developer's/STDC's failure to either approve or disapprove any such exception(s) within said thirty (30) day period shall be deemed to constitute Developer's/STDC's approval of such exception(s). If Developer/STDC elects to close Escrow following disclosure of such information, CDC's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, Developer/STDC elects to not close Escrow, then this Agreement and the Escrow shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 206.1 shall survive the Closing.

206.2 Developer and STDC Representations. Developer and STDC represent and warrant to CDC as follows:

(a) **Authority.** Developer is a limited liability company formed in and in good standing under the laws of the State of California, and is qualified to do business within the State of California. Upon reasonable notice, STDC will make available to CDC copies of its organizational documents for review. Developer and STDC have 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 and STDC has been fully authorized by all requisite actions on the part of the Developer and STDC and any necessary third parties.

(b) **No Conflict.** To the best of Developer's and STDC's knowledge, Developer's execution, delivery and performance of their obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer or STDC is a party or by which either is bound.

(c) **No Bankruptcy.** Neither Developer nor STDC is the subject of a bankruptcy proceeding.

(d) **No Gaming Intent.** Neither Developer nor STDC has any intent to pursue or operate gaming activities on the Site. The preceding sentence shall not preclude gaming activity in the future on the Site, however, if either (i) gaming activity becomes generally lawful within the City limits of the City, or (ii) pursuant to a vote at a regularly scheduled municipal election of the general electorate of the City, gaming is approved specifically for the Site. In the event gaming becomes a permitted use pursuant to the preceding sentence it shall be conditioned upon (a) all necessary or appropriate permits for such activity first being received, and (b) the primary business activity on the Site continuing to be the operation of a three star hotel, restaurant and related office/tourist/commercial uses.

Until the Closing, Developer and STDC shall, upon the change of any fact or condition which would cause any of the warranties and representations in this Section 206.2 not to be true as of Closing, immediately give written notice of such changed fact or condition to CDC. Such exception(s) to a representation shall not be deemed a breach by Developer or STDC hereunder, but shall constitute an exception which CDC shall have a right to approve or disapprove within thirty (30) days after receipt of Notice from the Developer or STDC if such exception would have an effect on the value and/or operation of the Site. The CDC's failure to either approve or disapprove and such exceptions within said thirty (30) day period shall be deemed to constitute CDC's approval of such exception(s). If CDC elects to close Escrow following disclosure of such information, Developer's/STDC's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, CDC elects to not close Escrow, then this Agreement and the Escrow shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 206.2 shall survive the Closing.

207. Studies and Reports. Prior to the Closing, representatives of Developer/STDC shall have the right of access to all portions of the Site for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement, including the investigation of the environmental condition of the Site pursuant to Section 208 hereof. Any preliminary work undertaken on the Site by Developer/STDC prior to the Closing shall be done at the sole expense of the Developer/STDC, and the Developer's/STDC's execution of a right of entry agreement to be provided by the CDC. Any preliminary work shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

208. Condition of the Site.

208.1 Disclosure. Prior to the execution of this Agreement, CDC also has caused certain investigations of the environmental condition of the Site, and the land adjacent to

or near the Site, if applicable, as specifically identified in Attachment No. 7 (the “CDC Environmental Reports”). Developer/STDC acknowledges that Developer/STDC has been provided copies of each of the CDC Environmental Reports. In addition to this investigation of site conditions, CDC has applied for and received a Resolution of the Cal-EPA that appointed the County of San Diego, Department of Environmental Health (“DEH”), as “administering agency” for the Site, as that term is used in the Uniform Agency Review Law (Health and Safety Code §§ 25260, *et seq.*) As such, the DEH will have authority to determine whether investigations are adequate and whether they comply with state and local laws, ordinances, regulations and standards. Pursuant to this appointment, the CDC has provided a Master Work Plan to the DEH that encompasses the Site, and which outlines a process for its mitigation through the use of a Property Mitigation Plan (“PMP”) that will be developed in coordination with Site Improvement proposals.

208.2 Investigation of Site. In Developer’s/STDC’s sole discretion, Developer/STDC shall have the right, at its sole cost and expense, to engage its own environmental consultant (“Developer’s Environmental Consultant”) to conduct an environmental assessment and make such investigations as Developer/STDC deems necessary, including any “Phase I” and/or “Phase II” investigations of the Site (including soil, vapor, and groundwater sampling and monitoring), and shall promptly provide CDC a copy of all final reports and test results (not including drafts), if any, provided by Developer’s Environmental Consultant (“Developer’s Environmental Reports”). Developer shall provide proposed plans for the Improvements at the Site, including its requested specifications in connection with the Grading Plan, indicating where construction excavation is planned, and showing all final grades, paving and other site hardscape, in order for the CDC to process the New PMP, in order to make the PMP (and New PMP) satisfactory to the DEH for the proposed end use of the Site and the protection of the health of construction workers during the development phase. CDC and Developer will cooperate regarding the suitability of the PMP and New PMP for the proposed development.

208.3 CDC’s Performance of Remedial Work The Developer, shall be at no cost or expense in completing the Remedial Work in compliance with the PMP. CDC shall bear the cost of preparing the New PMP. CDC shall be obligated to perform or arrange for the performance of the Additional Remedial Work, provided, after good faith commercially reasonable efforts, the CDC secures adequate (in its reasonable discretion) funding for same. Developer and Developer’s Environmental Consultant shall have the right to be present and oversee the Remedial Work (and Additional Remedial Work, if any) at their sole cost and expense. Provided the Remedial Work (and Additional Remedial Work if applicable) are completed, CDC shall submit all necessary documentation to the governmental agency with oversight authority to obtain the No Further Action Letter. Developer/STDC shall be responsible for all costs and expenses of the Parking Lot Maintenance. CDC shall be responsible for providing and/or arranging for the payment of all other costs and expenses of complying with any Post-Closure Conditions other than the Parking Lot Maintenance.

208.4 CDC Responsibilities for Hazardous Materials and Remedial Work. CDC shall use good faith commercially reasonable efforts, at no cost or expense to Developer, to secure regulatory approval for the PMP (and New PMP) for the Site, and, to the extent provided by law, will endeavor to secure a determination from the DEH so that Polanco Act immunities can attach, to the benefit of all legally allowed parties, including the Developer/STDC.

However, Developer/STDC accepts that not all contamination may be removed from the Site following completion of activities described in the PMP (and New PMP if applicable), even after the issuance of the No Further Action Letter. Assuming that the Remedial Work (and Additional Remedial Work, if applicable) are completed, Developer/STDC understands that although the Site will be prepared to a condition in which impacts have been mitigated to a level where the Site meets human health risk criteria, and construction-related nuisance impacts have been abated (or will be abated simultaneously with construction activities), that some substances may remain at the Site, at or below concentrations consistent with regulatory guidelines for hotel/commercial development, and that compliance with the Post-Closing Conditions may be required. As a result of the Polanco Act, the Developer/STDC, its lender, successors and assigns should have certain immunities from liability for future remediation of these substances by operation of state law. However, should Developer/STDC, its successors or assigns determine or desire to undertake future construction or additional remediation activities at the Site, any increased costs related to the redevelopment by reason of residual impacts shall be borne by Developer/STDC, its successor and assigns, and the CDC will have no responsibility therefor. In addition, Developer/STDC, and its successors and assigns, accept that the immunities described in the Polanco Act do not shield or protect against liability as a result of new releases of Hazardous Materials that may occur during or after the redevelopment process. CDC shall have no responsibility for any such new releases, and Developer/STDC waives and abandons any such claims for liability against the CDC for such new releases.

208.5 Warranties As To Site. To the extent authorized by contract or law, the CDC shall assign to the Developer/STDC all warranties and guaranties with respect to the environmental condition of the Site, if any, that the CDC may have received from prior owners of the Site.

208.6 Mutual Representations The Parties recognize that redevelopment of the Site is dependent upon many factors, one of which is receipt of the immunities upon completion of the Remedial Work (and Additional Remedial Work, if applicable) as provided in the Polanco Act. To that end, the Parties hereto agree that each have and will continue to exercise best efforts to fulfill the obligations and duties required under the Polanco Act, including without limitation, providing notices as required, completing the Remedial Work (and subject to Section 208.3, the Additional Remedial Work, if applicable) in accordance with the approved PMP (and New PMP), and requesting closure and the No Further Action Letter.

208.7 Rail Lines. CDC shall use commercially reasonable efforts to obtain quitclaims for all property rights associated with rail lines located on the Site.

209. "As Is" Sale. DEVELOPER ACKNOWLEDGES THAT, SUBJECT TO THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF CDC UNDER THIS AGREEMENT, DEVELOPER IS PURCHASING THE SITE "AS IS" IN RELIANCE SOLELY ON: (A) DEVELOPER'S OWN INSPECTIONS OF THE SITE; (B) DEVELOPER'S INDEPENDENT VERIFICATION OF THE TRUTH OF ANY DOCUMENTS MADE AVAILABLE TO DEVELOPER; AND (C) THE OPINIONS AND ADVICE CONCERNING THE SITE OF CONSULTANTS ENGAGED BY DEVELOPER. DEVELOPER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS, WARRANTIES AND COVENANTS OF CDC EXPRESSLY SET FORTH IN THIS

AGREEMENT, CDC IS NOT MAKING ANY OTHER WARRANTIES OR REPRESENTATIONS EXPRESS OR IMPLIED OF ANY KIND OR CHARACTER WITH RESPECT TO THE SITE, INCLUDING WITHOUT LIMITATION: (i) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE SITE, (ii) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND ANY GROUNDWATER RELATING TO THE SITE, (iii) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE SITE, (iv) THE SITE'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE SITE FOR ANY PARTICULAR PURPOSE, (v) THE COMPLIANCE OF THE SITE WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (vi) THE PRESENCE OF ANY HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE SITE OR THE ADJOINING OR NEIGHBORING SITE, (vii) THE CONDITION OF TITLE TO THE SITE, AND (viii) THE ECONOMICS OF THE OPERATION OF THE SITE AS A HOTEL OR ANY OTHER USE. DEVELOPER WARRANTS AND REPRESENTS THAT IT HAS NOT RELIED AND WILL NOT RELY ON, EITHER DIRECTLY OR INDIRECTLY, ANY WARRANTY OR REPRESENTATION OF CDC OR ITS AGENTS NOT EXPLICITLY SET FORTH IN THIS AGREEMENT.

300. DEVELOPMENT OF THE SITE

301. Scope of Development.

301.1 Developer's Obligation to Construct Improvements. The Developer/STDC shall develop or cause the development of the Improvements in either one or two phases in accordance with the Scope of Development, the City Municipal Code, and the plans, drawings and documents submitted by the Developer/STDC and approved by the CDC and City as set forth herein. In any event, the Developer/STDC shall complete at least 100 rooms of the hotel and fifty percent of the commercial/ restaurant/retail portion of the Improvements within two (2) years of the Closing Date and all of the Improvements within five (5) years of the Closing Date.

301.2 Offsite Improvements. The CDC and/or City shall construct improvements to the neighboring streets and public utilities as set forth in Attachment No. 5.

302. Design Review.

302.1 Basic Concept Drawings. The Developer has submitted conceptual drawings for the Improvements, including color boards of two elevations of the Improvements, preliminary landscape plans, and the traffic and circulation plans including the uses stated in Recital 2, above (collectively, the "Basic Concept Drawings") which the CDC has approved, notwithstanding §303, below.

302.2 Site Plan Drawings. Within the time set forth in the Schedule of Performance, the Developer/STDC and CDC shall submit to the City plans and drawings with respect to the Improvements (the "Site Plan Drawings"), which must include all documents,

plans and drawings, including any application materials required by the City Planning Services Division, which are necessary to obtain all City approvals for the construction of the Improvements.

302.3 Consultation and Coordination. During the preparation of additional Site Plan Drawings, if any, and Construction Drawings, and other documents by Developer/STDC, staff of the CDC and the Developer/STDC shall hold regular progress meetings to coordinate the preparation of, submission to, and review of the Site Plan Drawings and Construction Drawings, parcel map for Parcelization and such other documents by the CDC. The staff of the CDC and the Developer/STDC shall communicate and consult as frequently as is necessary to ensure that the formal submittal of any documents to the CDC can receive prompt and thorough consideration. The CDC shall designate a CDC employee/consultant to serve as the project manager who is responsible for the coordination of the CDC's activities under this Agreement and for expediting the land use approval and permitting process. If requested by the CIWMB, Developer shall reasonably coordinate with the CIWMB such that all utility trenching in the area of the Site to be capped pursuant to the Grading Plan is accomplished at the same time as the capping.

302.4 Revisions. If the Developer/STDC desires to propose any material revisions to the CDC-approved Basic Concept Drawings, Site Plan Drawings or Construction Drawings, it shall submit such proposed changes to the CDC, and shall also proceed in accordance with any and all State and local laws and regulations regarding such revisions, within the time frame set forth in the Schedule of Performance. At the sole discretion of the CDC, if any material change in the basic uses of the Site is proposed in the Basic Concept Drawings, Site Plan Drawings or Construction Drawings from the basic uses of the Site as provided for in this Agreement, then this Agreement is subject to re-negotiation of all terms and conditions, including without limitation, the economic terms of the Agreement. If the Basic Concept Drawings, Site Plan Drawings or Construction Drawings, as modified by the proposed change, generally and substantially conform to the requirements of this Section 302 of this Agreement and the Scope of Development, the CDC Director shall review the proposed change and notify the Developer/STDC in writing within fifteen (15) days after submission to the CDC as to whether the proposed change is approved or disapproved. In the event that the CDC fails to act within the fifteen (15) day time period set forth above, the proposed change or changes shall be deemed approved by the CDC. The CDC's Director is authorized to approve changes to the CDC-approved Basic Concept Drawings, Site Plan Drawings and Construction Drawings provided such changes: 1) do not materially reduce the quality of materials to be used; and 2) do not reduce the imaginative and unique qualities of the project design. 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 Basic Concept Drawings, Site Plan Drawings and Construction Drawings and completed during the construction of the Improvements.

302.5 Defects in Plans. The CDC shall not be responsible either to the Developer/STDC or to third parties in any way for any defects in the Basic Concept Drawings, Grading Plan, the Site Plan Drawings or the Construction Drawings, or other documents prepared by or for the Developer/STDC, nor for any structural or other defects in any work done

according to the approved Basic Concept Drawings, Site Plan Drawings or Construction Drawings or other documents prepared by or for the Developer/STDC, nor for any delays reasonably caused by the review and approval processes established by this Section 302.

303. Land Use Approvals. Before commencement of construction of the Improvements or other works of improvement upon the Site, the Developer/STDC shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required for the Improvements by the City or any other governmental agency affected by such construction or work. The Developer/STDC and CDC (if appropriate) shall jointly apply for a Local Coastal Plan approval for the Improvements. The Developer/STDC shall, without limitation, apply for and secure the following, and pay all costs, charges and fees associated therewith:

- (a) City Site Plan Approval.
- (b) All other permits and fees required by the City, County of San Diego, and other governmental agencies with jurisdiction over the Improvements.
- (c) Any environmental studies and documents required pursuant to the California Environmental Quality Act, if any.

The execution of this Agreement does not, however, constitute the granting of or a commitment to obtain any required land use permits, entitlements or approvals required by the CDC or the City.

304. Schedule of Performance. The Developer/STDC shall submit all Site Plan Drawings and Construction Drawings, commence and complete construction of all of the Improvements, and satisfy all other obligations and conditions of this Agreement, within the times established in the Schedule of Performance.

305. Cost of Construction. Except to the extent otherwise expressly set forth in this Agreement, specifically including CDC's obligation to construct certain public improvements at CDC's expense as set forth in the Scope of Development, all of the cost of planning, designing, developing and constructing all of the Improvements, site preparation and grading shall be borne solely by the Developer/STDC.

306. Insurance Requirements. The Developer/STDC shall take out and maintain or shall cause its general contractor to take out and maintain until the issuance of the Release of Construction Covenants pursuant to Section 310 of this Agreement, a comprehensive general liability policy in the minimum amount of Two Million Dollars (\$2,000,000.00) combined single limit policy, or such other policy limits as the CDC may approve at its discretion, including contractual liability, as shall protect the Developer/STDC, City and CDC from claims for such damages, and which policy shall be issued by a "B+" or higher rated insurance carrier. Such policy or policies shall be written on an occurrence form. The Developer/STDC shall also furnish or cause to be furnished to the CDC evidence satisfactory to the CDC that 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/STDC shall furnish a certificate of insurance countersigned by an authorized agent of

the insurance carrier on a form approved by the CDC setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the City and the CDC and their 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 City and the CDC of any material change, cancellation or termination of the coverage 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/STDC shall be primary insurance and not be contributing with any insurance maintained by the CDC or City, 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 City and the CDC. The Developer/STDC shall furnish the required certificate prior to the Closing as a CDC Condition Precedent to the Closing.

307. Rights of Access. Prior to the issuance of a Release of Construction Covenants (as specified in Section 310 of this Agreement), for purposes of assuring compliance with this Agreement, representatives of the CDC shall have the right of reasonable access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Improvements so long as CDC representatives comply with all safety rules. The CDC (or its representatives) shall, except in emergency situations, notify the Developer/STDC at least forty-eight (48) hours prior to exercising its rights pursuant to this Section 307.

308. Compliance with Laws. The Developer/STDC shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, 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 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 Section 51, et seq.

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

308.2 Prevailing Wages. All work pursuant to this Agreement shall be done in accordance with all applicable federal and state labor standards. Developer/STDC is aware of Sections 33423 – 33426 of the California Health and Safety Code and Sections 1770 – 1780 of the California Labor Code and is aware of the requirements of California Labor Code Sections 1720 et. seq. and 1770 et seq. as well as California Code of Regulations, Title 8, §16000 et. seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. In light of the fact that the Site is being purchased by Developer/STDC for its fair market value without public subsidy, it is the belief and understanding of the CDC and Developer/STDC that this Agreement does **not** involve a “public work” or “maintenance” project, as defined by the Prevailing Wage Laws. Notwithstanding the foregoing, in the event a determination should ever be made that this Agreement does involve a “public work” or “maintenance project” Developer/STDC agrees to fully comply with such Prevailing Wage Laws. Developer/STDC shall defend, indemnify and hold the CDC, its elected officials, officers, employees and agents free and harmless from any and all claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws in connection with this Agreement. If the CDC or any of the indemnified parties are named as a party in any dispute described in this Section 308.2, Developer/STDC agrees that the CDC and the other indemnified parties may appoint their own independent counsel who are reasonably acceptable to Developer/STDC, and Developer/STDC agrees to pay all reasonable attorneys’ fees and defense costs of the CDC and the other indemnified parties, in addition to all other damages, fines, penalties and losses incurred by the CDC and the other indemnified parties as a result of the action.

308.3 Taxes and Assessments. Upon and after the Closing, at all times during which the Developer/STDC owns the Site, the Developer/STDC shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site, subject to the Developer’s/STDC’s right to contest in good faith any such taxes. The Developer/STDC agrees that during all times that the CDC is permitted to receive property tax increment from the Redevelopment Project pursuant to Health and Safety Code Section 33670 (as it may be amended or substituted).

308.4 Lien and Stop Notices. Developer/STDC shall not allow to be placed on the Site or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Improvements, Developer/STDC shall, within sixty (60) days of such recording or service or, within five (5) days of CDC’s demand thereafter, whichever last occurs:

- (a) Pay and discharge the same; or
- (b) Effect the release thereof by recording and delivering to CDC a surety bond in sufficient form and amount, or otherwise; or
- (c) Provide CDC with other assurances, which CDC deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of CDC from the effect of such lien or bonded stop notice.

309. Release of Construction Covenants. Promptly after completion of the Improvements in conformity with this Agreement, the CDC shall furnish the Developer/STDC

with a "Release of Construction Covenants," in the form of Attachment No. 6 hereto which is incorporated herein by reference. The CDC shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Improvements and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site 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 Grant Deed.

If the CDC refuses or fails to furnish the Release of Construction Covenants, after written request from the Developer/STDC, the CDC shall, within fifteen (15) days of written request thereof, provide the Developer/STDC with a written statement of the reasons the CDC refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the CDC's opinion of the actions the Developer/STDC 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/STDC to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Improvements, 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.

310. Financing of the Improvements.

310.1 Approval of Financing. Developer/STDC shall submit to CDC reasonable assurances that Developer has sufficient funds on hand or has obtained sufficient commitments for construction financing necessary to undertake the development of the Site and the construction of the Improvements in accordance with this Agreement. The CDC shall approve or disapprove such evidence of financing commitments within fifteen (15) days of receipt of a complete submission. Approval shall not be unreasonably withheld or conditioned. If the CDC disapproves of the evidence of financing, CDC shall do so by Notice to Developer/STDC stating the reasons for such disapproval and Developer/STDC shall promptly obtain and submit to CDC new evidence of financing. CDC shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 310.1 for the approval or disapproval of the evidence of financing as initially submitted to CDC.

310.2 No Encumbrances Except Mortgages and Deeds of Trust. Mortgages and deeds of trust shall be permitted for the purpose of securing loans of funds to be used for financing the construction of the Improvements (including architecture, engineering, legal, and related direct costs as well as indirect costs) on or in connection with the Site, permanent financing, and any other purposes necessary and appropriate in connection with development under this Agreement. The Developer/STDC shall notify the CDC in advance of any mortgage or deed of trust financing, if the Developer/STDC proposes to enter into the same before completion of the construction of the Improvements.

310.3 Holder Not Obligated to Construct Improvements. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or any portion thereof, or to

guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

310.4 Notice of Default to Mortgagee or Deed of Trust Holders; Right to

Cure. With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever the CDC may deliver any notice or demand to Developer/STDC with respect to any breach or default by the Developer/STDC in completion of construction of the Improvements, the CDC shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights granted by the CDC are concerned) have the right, at its option, within one hundred twenty (120) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's/STDC's obligations to the CDC by written agreement reasonably satisfactory to the CDC. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 310 of this Agreement, to a Release of Construction Covenants. It is understood that a holder shall be deemed to have satisfied the one hundred twenty (120) day time limit set forth above for commencing to cure or remedy a Developer/STDC default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such holder has within such one hundred twenty (120) day period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and cures or remedies the default.

310.5 Failure of Holder to Complete Improvements. In any case where, if within one hundred twenty (120) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives a notice from the CDC of a default by the Developer/STDC in completion of construction of any of the Improvements under this Agreement, and such holder has not exercised the option to construct as set forth in Section 310.4, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, the CDC may purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the holder, the CDC, if it so desires, shall be entitled to a conveyance from the holder to the CDC upon payment to the holder of an amount equal to the sum of the following:

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

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

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

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

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by CDC; and,

(f) Any customary prepayment charges imposed by the lender pursuant to its loan documents and agreed to by Developer/STDC.

310.6 Right the CDC to Cure Mortgage or Deed of Trust. In the event of a mortgage or deed of trust default or breach by Developer/STDC prior to the completion of the construction of any of the Improvements or any part thereof, Developer/STDC shall immediately deliver to CDC a copy of any mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, CDC shall have the right but not the obligation to cure the default. In such event, CDC shall be entitled to reimbursement from Developer/STDC of all proper costs and expenses incurred by CDC in curing such default. CDC shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be junior and subordinate to the mortgages or deeds of trust pursuant to Section 310.

400. COVENANTS AND RESTRICTIONS

401. Use in Accordance with Redevelopment Plan. The Developer and STDC covenant and agree for themselves, their successors, assigns, and every successor in interest to the Site or any part thereof, that upon the Closing and during construction and thereafter, the Developer and STDC shall devote the Site to the uses specified in the Redevelopment Plan and this Agreement for the periods of time specified therein. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer and/or STDC pursuant to this Agreement, shall conform to the Redevelopment Plan and all applicable provisions of the City Municipal Code. The foregoing covenants shall run with the land.

402. Use Covenants. For a term commencing upon the Conveyance and ending upon the expiration of the effectiveness of the current Redevelopment Plan, excluding any extensions of the Redevelopment Plan, the Developer and STDC hereby covenant and agree for themselves, their successors, their assigns and all voluntary and involuntary successors in interest to the Site, or any part thereof, that the Site will only be used for an approximately one hundred fifty (150) room three star hotel pursuant to a Three Star Flag with a restaurant and 8,000 square feet of conference facilities, another structure with an approximately 4000 square foot restaurant and approximately 10,000 square feet of office/commercial/tourist space and 1000 square foot public vista point. The preceding sentence shall not preclude gaming activity in the future on the Site, however, if (i) such activity becomes lawful within the City limits of the City, or (ii) pursuant to

a vote of the general electorate of the City, gaming is approved specifically for the Site. In the event gaming becomes a permitted use pursuant to the preceding sentence it shall be conditioned upon (a) all necessary or appropriate permits for such activity first being received, and (b) the primary business activity on the Site continuing to be the operation of a three star hotel, restaurant and related office/tourist/commercial uses.

403. Maintenance Covenants. The Developer and STDC shall maintain the Site and all Improvements thereon, including all landscaping and erosion control, in a commercially reasonable manner. Developer agrees not to further excavate any portion of the Site except as is set forth on the Site Plan Drawings.

404. Nondiscrimination Covenants. The Developer and STDC covenant by and for themselves and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer or STDC themselves or any person claiming under or through them establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

The Developer and STDC shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts, including the CC&Rs, shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

(a) **In deeds:** “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

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

“That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any

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

(c) **In contracts:** “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

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

(a) The covenants pertaining to use of the Site that are set forth in Section 401 and 402 of this Agreement shall remain in effect for the term of the Redevelopment Plan.

(b) The covenants against discrimination, as set forth in Section 404 of this Agreement, shall remain in effect in perpetuity.

500. DEFAULTS AND REMEDIES

501. Default Remedies. Subject to the extensions of time set forth in Section 602 of this Agreement, failure by either party 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. 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 immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

502. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, 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 available at law or in equity. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, or in the District of the United States District Court in which such county is located.

503. Termination by the Developer Prior to the Conveyance. In the event that prior to the Conveyance the Developer/STDC is not in default under this Agreement and (a) the CDC does not tender title to the Site pursuant to the Grant Deeds in the manner and condition and by the date provided in this Agreement, or (b) 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 due to a default by the Developer, or (c) any default of the CDC prior to the Closing is not cured within the time set forth in Section 501 hereof, after written demand by the Developer, or (d) the Developer timely disapproves the environmental condition of the Site pursuant to Section 208 hereof, then this Agreement may, at the option of the Developer, be terminated by written Notice thereof to the CDC (the "Notice of Termination"). From the date of the written Notice of Termination of this Agreement by the Developer to the CDC and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties with respect to the Site by virtue of or with respect to this Agreement.

504. Termination by the CDC Prior to the Conveyance. In the event that prior to the Conveyance the CDC is not in Default under this Agreement and (a) the Developer or STDC (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of this Agreement; or (b) one or more of the CDC'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 due to a default by the CDC or City; or (c) the Developer or STDC is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 501 hereof; then this Agreement and any rights of the Developer and STDC or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of the CDC, be terminated by the CDC by written Notice thereof to the Developer/STDC. From the date of the written Notice of Termination of this Agreement by the CDC to the Developer/STDC and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties.

505. Reentry and Revesting of Title in the CDC After the Closing and Prior to Completion of Construction. The CDC has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in the CDC the estate conveyed to the Developer/STDC if after the Closing and prior to the issuance of the Release of Construction Covenants, the Developer or STDC (or their successors in interest) shall:

(a) Unless due to an Enforced Delay as described in Section 602 hereof, fail to start the construction of the Improvements as required by this Agreement for a period of one hundred twenty (120) days after written notice thereof from the CDC; or

(b) Abandon or substantially suspend construction of the Improvements required by this Agreement for a period of one hundred twenty (120) days after written notice thereof from the CDC; or

(c) Contrary to the provisions of Section 603 Transfer or suffer any involuntary Transfer in violation of this Agreement, and such transfer has not been approved by the CDC or rescinded within sixty (60) days of notice thereof from CDC to Developer/STDC.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

(a) Any mortgage or deed of trust permitted by this Agreement;

(b) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust; or

(c) Any rights or interests held by a lessee in and to the property.

The Grant Deed shall contain appropriate reference and provision to give effect to the CDC's right as set forth in this Section 505, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of the Site, with all improvements thereon, and to terminate and revest in the CDC the estate conveyed to the Developer or STDC. Upon the revesting in the CDC of title to the Site as provided in this Section 505, the CDC shall, pursuant to its responsibilities under State law, use its reasonable efforts to resell the Site as soon and in such manner as the CDC shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the CDC) who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to the CDC and in accordance with the uses specified for such Site or part thereof in the Redevelopment Plan. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

- (i) First, to reimburse the CDC, on its own behalf or on behalf of the City, all costs and expenses incurred by the CDC, excluding City and CDC staff costs, but specifically, including, but not limited to, any expenditures by the CDC or the City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the CDC from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which the Developer/STDC has not paid (or, in the event that Site is exempt from taxation or assessment of such charges during the period of ownership thereof by the CDC, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not

so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time or revesting of title thereto in the CDC, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer or STDC, their successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing the CDC, and in the event additional proceeds are thereafter available, then

- (ii) Second, to reimburse the Developer or STDC, their successor or transferee, up to the amount equal to the sum of the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession.

Any balance remaining after such reimbursements shall be retained by the CDC as its property. The rights established in this Section 505 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the CDC will have conveyed the Site to the Developer and STDC for redevelopment purposes and not for speculation in undeveloped land.

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

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

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

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

510. Non-Liability of Officials and Employees of the CDC. No member, official or employee of the CDC or the City shall be personally liable to the Developer or STDC, or any successor in interest, in the event of any Default or breach by the CDC (or the City) or for any amount which may become due to the Developer or STDC or their successors, or on any obligations under the terms of this Agreement.

511. 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. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To CDC: COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF NATIONAL CITY
140 E. 12th Street, Suite B
National City, CA 91950-3312
Attention: Executive Director

Copy to: Richard L. Moskitis, Esq.
FOLEY & LARDNER LLP, LLP
401 West Broadway, 23rd Floor
San Diego, CA 92101-3542

To Developer: MRW GROUP, INC.
43502 Calle Carabana
Temecula, CA 92592
Attn: Michael R. Weber
Telephone: (909) 302-6802
Facsimile: (909) 374-2772

Copies to: SD LATINO DEVELOPMENT CORPORATION
5143 Cholas Parkway
San Diego, CA 92105
Attn: Jose Mireles

SYCUAN TRIBAL DEVELOPMENT CORPORATION
5485 Casino Way
El Cajon, California 92019
Attn: John Tang

IVAR LEETMA, ESQ.
2010 Jimmy Durante Blvd., Suite 230
Del Mar, CA 92014
Telephone: (858) 793-5253
Facsimile: (858) 225-0196

Any written notice, demand or communication shall be deemed received immediately if delivered by hand 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 reasonable control or without the fault of the party claiming an extension of time to perform, which may include the following: war; acts of international and domestic terrorism, 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; litigation; severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the CDC which shall not excuse performance by the CDC). 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 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 CDC and Developer/STDC. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Improvements shall not constitute grounds of enforced delay pursuant to this Section 602.

603. Transfers of Interest in Site or Agreement. The qualifications and identity of the Developer as the developer of high quality hotel, restaurant and office/tourist/commercial development are of particular concern to the CDC. Furthermore, the parties acknowledge that the CDC has negotiated the terms of this Agreement in contemplation of the development of the Improvements as described in the Scope of Development of this Agreement. Accordingly, for the period commencing upon the date of this Agreement and until the CDC's issuance of the Release of Construction Covenants as set forth in Section 310 hereof, (a) no voluntary or

involuntary successor in interest of the Developer/STDC shall acquire any rights or powers under this Agreement, and (b) nor shall the Developer/STDC make any total or partial sale, transfer, conveyance, assignment, subdivision, of the whole or any part of the Site without the prior written approval of the CDC, except as expressly set forth herein.

603.1 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, CDC approval of a transfer of the Site or a portion of the Site shall not be required in connection with any of the following:

- (a) The transfer set forth in Section 201.2 above.
- (b) Any transfer to a limited liability company, partnership, corporation, or other entity or entities in which Developer or one of its members retains a portion of the ownership or beneficial interest and retains management and control of the transferee entity or entities.
- (c) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements.
- (d) Any requested assignment for financing purposes (subject to such financing being considered and approved by the CDC pursuant to Section 311 herein), including the grant of a deed of trust to secure the funds necessary for construction of the Improvements.
- (e) Any lease of commercial space within the Site to tenants in the ordinary course of business.

In the event of a transfer by Developer/STDC under subparagraph (a) above not requiring the CDC's prior approval, Developer/STDC nevertheless agrees that at least thirty (30) days before such transfer it shall give written notice to CDC 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 release the assigning Developer/STDC from any obligations to the CDC hereunder.

In the event of any transfer of a portion of the Site, reciprocal easements for ingress and egress parking and similar reciprocal access shall be entered into among all Owners subject to the reasonable approval of the CDC.

603.2 CDC Consideration of Requested Transfer. The CDC 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/STDC delivers written notice to the CDC requesting such approval. Such notice shall 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 CDC to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 603 and as reasonably determined by the CDC. The CDC may, in considering any such request, take into consideration such factors as (i) the quality of any new and/or replacement operator, (ii) the transferee's past performance as an developer of residential developments, (iii) the current financial condition of

the transferee, and similar factors. The CDC 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 satisfactory to the CDC's legal counsel shall also be required for all proposed Transfers. Within thirty (30) days after the receipt of the Developer's/STDC's written notice requesting CDC approval of a Transfer pursuant to this Section 603, the CDC shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the CDC reasonably requires in order to complete the request and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the CDC such further information as may be reasonably requested. CDC may condition its approval of any transfer to any entity that enjoys or may claim sovereign immunity, by virtue of its status as an organization of American Indians which has a government to government relationship with the United States, on that transferee's written consent to be bound by the waiver of sovereign immunity provisions in this Agreement and its Attachment 8, and by CDC's satisfaction (consistent with Section 205.1(m)) that the transferee has the authority to enter and be bound by the waiver of sovereign immunity provisions in this Agreement and its Attachment 8.

603.3 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer/STDC and their 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.

603.4 Assignment by CDC. The CDC may assign or transfer any of its rights or obligations under this Agreement without the approval of the Developer/STDC.

604. Relationship Between CDC and Developer. It is hereby acknowledged that the relationship between the CDC and the Developer/STDC is not that of a partnership or joint venture and that the CDC and the Developer/STDC 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 CDC shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Improvements.

605. CDC Approvals and Actions. The CDC shall maintain authority of this Agreement and the authority to implement this Agreement through the CDC Executive (or acting) Director (or his duly authorized representative). The CDC Executive (or acting) Director shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the CDC 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 CDC 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 CDC Board.

606. Limited Waiver of Sovereign Immunity. STDC hereby expressly makes a limited waiver of its sovereign immunity by consenting to the exercise of personal jurisdiction

over STDC by the courts of the State of California, and by appropriate United States District Courts, including the District Court for the District in which the City is located, with respect to any suit that may arise out of this Agreement.

606.1 Enforcement, levy and execution of judgment. STDC agrees that this limited waiver of sovereign immunity allows levy and execution of any judgment against STDC (including without limitation awards of damages and injunctions) against any asset of STDC, including without limitation money, interests in land and any other property and rights, in like manner as the court with subject matter jurisdiction over the case or proceeding may levy and execute against any other entity or corporation.

606.2 Tribal court. STDC hereby waives any right it might have, under law of the Tribe or the Kumeyaay Nation now or hereafter in effect, to invoke the jurisdiction of any Tribal or Nation's court with respect to any matter or suit that may arise out of this Agreement.

606.3 Survival of waiver. STDC agrees this limited waiver of sovereign immunity shall survive and continue notwithstanding any request the Tribe may make to the United States to take title to all or any portion of the Site in trust, and notwithstanding the acceptance of title in trust by the United States to all or any portion of the Site. STDC agrees that this limited waiver of its sovereign immunity shall survive and continue notwithstanding the termination of this Agreement, for purposes of seeking redress for any breaches of this Agreement which may occur prior to the termination of this Agreement.

607. 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.

608. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter 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 7, which are incorporated herein.

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

610. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its

terms. Reference to section numbers is to sections in this Agreement, unless expressly stated otherwise.

611. 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. STDC agrees that all rules of interpretation of contracts or documents affecting Indians, to the effect that the contracts or documents should be construed and ambiguity resolved in favor of the Indian party, shall have no application to this Agreement, as STDC contracts here without disadvantage or disability of any kind.

612. 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.

613. 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.

614. 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.

615. 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.

616. 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.

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

618. 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.

619. Conflicts of Interest. No member, official or employee of the CDC 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.

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

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

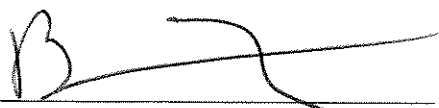
CDC:

**COMMUNITY DEVELOPMENT
COMMISSION OF THE OF THE CITY OF
NATIONAL CITY,** a public body, corporate and politic

By: _____

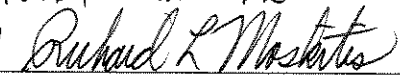

Nick Inzunza, Chairman

ATTEST:


_____, CDC Secretary

APPROVED AS TO FORM:

FOLEY & LARDNER LLP

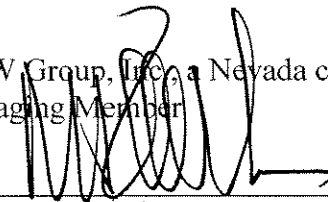
By 

CDC Counsel

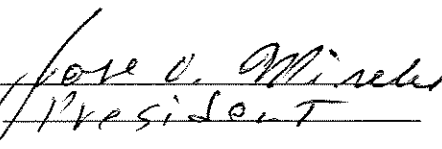
DEVELOPER:

MARINA GATEWAY DEVELOPMENT COMPANY, LLC, a California limited liability company

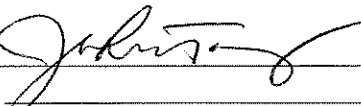
By: MRW Group, Inc., a Nevada corporation,
Managing Member

By: 
Its: PRESIDENT

By: S D LATINO DEVELOPMENT CORP., a California corporation, Member

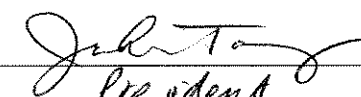
By: 
Its: PRESIDENT

By: SYCUAN TRIBAL DEVELOPMENT CORPORATION, a Tribally chartered corporation, Member

By: 
Its: _____

STDC:

SYCUAN TRIBAL DEVELOPMENT CORPORATION, a Tribally chartered corporation

By: 
Its: President