

RESOLUTION NO. 18-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LA HABRA RECOMMENDING THAT THE CITY COUNCIL ADOPT A RESOLUTION APPROVING DEVELOPMENT AGREEMENT 18-01 WITH GREG S. JONES REVOCABLE TRUST AND SUNNY INVESTMENTS, LLC FOR THE DEVELOPMENT OF THE IMPERIAL HIGHWAY COMMERCIAL CENTER AT 701 THROUGH 751 EAST IMPERIAL HIGHWAY AS PER ATTACHMENT "A".

WHEREAS, California Government Code Section 65865 provides that any city may enter into a Development Agreement with any person having a legal authority or equitable interest in real property for the development of such property; and

WHEREAS, the proposed project meets the objectives of the project proponent as listed in the Mitigated Negative Declaration and assures that certain improvements are implemented that promote the public health, safety and welfare of the community, and assures the developer of certainty in the development of the property; and

WHEREAS, the Planning Commission of the City of La Habra has heretofore held a duly noticed public hearing, as required by law, on Development Agreement 18-01 for the properties constituting the sites located at 701-751 East Imperial Highway.

WHEREAS, a Mitigated Negative Declaration was considered by the Planning Commission with a recommendation that the City Council certify the document for construction of a 91-room hotel, two restaurants with drive through, and a fourth to-be-determined commercial use on the proposed site subject to Development Agreement 18-01; and

NOW, THEREFORE, BE IT RESOLVED, that the City of La Habra Planning Commission does hereby recommend to the City Council approval of an Ordinance adopting Development Agreement 18-01 with Greg S. Jones Revocable Trust and Sunny Investments, LLC, attached hereto as Attachment "A".

APPROVED AND ADOPTED THIS 24th day of September, 2018

Approved: _____
Jerry Powell, Chairman

I, Carmen Henderson, Secretary to the Planning Commission of the City of La Habra, do hereby certify that the foregoing Resolution was duly adopted at a regular meeting of the Planning Commission of the City of La Habra held on the 24th day of September, 2018, by the following vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

Dated: September 24, 2018

Attest: _____
Carmen G. Henderson, Secretary

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of La Habra
City Clerk
110 East La Habra Blvd.
La Habra, California 90631

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF LA HABRA
a California municipal corporation

and

Greg S. Jones Revocable Trust and Sunny Investments, LLC

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EXHIBITS

A.	Legal Description of Property
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C.	Conditions of Approval
D.	Mitigation Monitoring and Reporting Program
E.	Assignment and Assumption Agreement
F.	Estoppel Certificate

DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**") is entered into this ___ day of _____, 2018, by and between the City of La Habra, a California municipal corporation ("**City**") and Sunny Investments, LLC and Greg S. Jones Revocable Trust ("**Owner**") pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code and Article XI of the California Constitution. City and Owner shall be referred to within this Agreement as the "**Parties**".

Recitals

Owner and City enter into this Agreement on the basis of the following facts, understandings and intentions, and the following recitals are a substantive part of this Agreement:

A. California Government Code Sections 65864-65869.5 authorize a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries. Among the purposes of a development agreement are providing certainty in the approval of development projects, and maximizing the efficient utilization of resources at the least cost to the public.

B. This Agreement pertains to the parcel of land identified as 701 East Imperial Highway, in the City of La Habra, California (the "**Property**"), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference. The Property consists of one parcel (APNs 019-111-84) to be subdivided into four (4) separate tax parcels totaling approximately 4.24 acres of land. The Agreement also pertains to the Imperial Highway Commercial Center Planned Unit Development and related documents, buildings, access and parking facilities, landscaping, and infrastructure improvements, all

more particularly shown on the development plans dated _____, submitted by Dennis C. Farnsworth (civil engineer), Kevin J. Richer (civil engineer), John Lee (architect), Paul W. Deppe (architect), Daniel J. Marks (architect) (collectively, the “**Plan Documents**”), which are incorporated herein by this reference after final approval by the City. The tentative parcel map for the Project is attached hereto as Exhibit B (the “**Parcel Map**”) and incorporated herein by this reference.

C. City desires to ensure that the implementation of the Project will have a net positive fiscal impact for the City and that mitigation measures required by the California Environmental Quality Act (“**CEQA**”) and the City are incorporated into the Plan Documents for the Property.

D. The Owner has proposed to develop the Property with a hotel, two restaurants with drive-through access, and a fourth yet-to-be determined use that will be consistent with the Project Approvals and any Subsequent Project Approvals, as those terms are defined herein (the “**Project**”). As part of the Project, Owner agrees to convey to the City a ten-foot wide easement along the easterly boundary of the Property to be used for public access (“**Dedicated Property**”). As set forth in more detail in Sections 4.2 and 4.4 herein, prior to the issuance of any certificates of occupancy, the Owner shall cause (1) the construction of a bicycle path at no cost to the City, which bicycle path must meet all reasonable requirements of the City; and (2) the conveyance of the Dedicated Property to the City. The proposed hotel will be at least an “upper-mid scale” hotel, such as the La Quinta Inn and Suites, with up to 91 guest rooms, a pool, a meeting room, and a breakfast/snack area, with a total floor area of 50,784 square feet (“**Hotel**”). The two restaurants with drive-through access will have total floor areas of 2,730 square feet and

2,106 square feet, respectively. The northeast portion of the Property, a 0.47 acre parcel often referred to as Parcel Four, is permitted for development of 4,800 square feet of use(s) permitted by the Property's PC-I zoning designation, as it exists as of the Effective Date of this Agreement, as well as the Existing Development Approvals and any Subsequent Project Approvals, as those terms are defined herein.

E. The City finds and determines that entering into this Agreement is in the best interest of its citizens and furthers the public health, safety, and welfare of the community.

F. The City has conducted noticed public hearings before the City of La Habra Planning Commission (the "**Planning Commission**") and La Habra City Council ("**City Council**") as required by Government Code Section 65867 concerning the Project and this Agreement.

G. The Planning Commission and City Council reviewed the Mitigated Negative Declaration ("**MND**") analyzing the Project's impacts on the environment, using their own independent judgment, and determined that it complies with all of the requirements of the CEQA, and that the Project will not result in any significant impacts.

H. In conjunction with the approval of this Agreement, which approval was effective as of _____ (the "**Approval Date**"), the City Council approved the following actions: (i) certification of the MND; (ii) approval of this Agreement pursuant to Ordinance No. ____; (iii) approval of the Ordinance adopting the Imperial Highway Commercial Center Planned Unit Development ("**PUD**"); (iv) approval of the Parcel Map (a tentative parcel map subdividing the existing parcel into four parcels); (v) approval of a conditional use permit ("**CUP**") for a hotel use and alcoholic beverage sales at the hotel; (vi) approval of CUPs for each of the restaurants to allow a drive-through; (vii) a CUP for a free-

standing pylon sign; and (viii) approval of the Plan Documents detailing the design of the Project (collectively, the “**Project Approvals**”).

I. The Project Approvals, along with City's general plan (“**General Plan**”), zoning ordinances, and other development approvals for the Property existing on the Approval Date shall be referred to within this Agreement as the “**Existing Development Approvals**”.

J. Development of the Property in accordance with the Existing Development Approvals and this Agreement will provide substantial benefits to the Owner and to the City by providing important public benefits and furthering important policies and goals of City and have been found to be fair, just and reasonable, as well as providing certainty to the Owner regarding the permitted development of the Property. Public benefits resulting from this Agreement include increasing commercial opportunities within the City, developing a vacant and underutilized property, implementing the General Plan goals of placing complimentary uses next to existing service and retail uses, and increasing the City's tax base, resulting in additional revenue to the City.

Agreement

NOW, THEREFORE, pursuant to the authority contained in Section 65864 of the California Government Code, and in consideration of Owner's agreement to provide to the City the extraordinary and significant public benefits described in this agreement and in addition the mutual representations, covenants and promises above, the Parties hereto agree as follows:

1. Term.

1.1 Effective Date. The term (“**Term**”) of this Agreement shall commence on

the effective date of Ordinance No. _____ approving this Agreement and the balance of the Project Approvals (the “**Effective Date**”), and shall continue until the earlier to occur of (i) six (6) years after the Effective Date, or (ii) the completion of the Project and satisfaction of the obligations of Owner provided for hereunder, in each case unless sooner terminated or extended as hereinafter provided. Notwithstanding any other provision of this Agreement to the contrary, for all periods in which a hotel is operated on the Property, the requirements of Section 4.5 (Deferred Compensation) shall apply.

1.2 Expiration. This agreement is to be recorded on the Deed of Trust. Upon completion of the development or portions thereof in accordance with the requirements of this Agreement, the expiration of this Agreement shall not constitute termination of any land use entitlements.

2. Development of the Property.

2.1 Property. The Property that is the subject of this Agreement is that certain real property described in Exhibit A attached hereto.

2.2 Binding Covenants; Assignment.

(a) It is intended and agreed that the provisions of this Agreement shall constitute covenants that shall run with the Property, and the benefits and burdens hereof shall bind and inure to all successors in interest to the Parties hereto, including any occupants or lessees of the Property. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to be a covenant to develop or construct the Project or any portion of the Property. City agrees that Owner may, at any time, assign, convey, lease, sell or otherwise transfer the rights under

this Agreement corresponding to any portion of the Property and/or any approvals related thereto (“**Assignable Rights**”) to a third party, or an Affiliate (each an “**Assignment**”), provided that any Assignment shall be subject to execution of the assignment agreement substantially in the form attached hereto as Exhibit E which includes the requirement that the assignee assume all obligations contained in this Agreement. In the case of an Assignment to a third party as opposed to an Affiliate of Owner, such Assignment shall be subject to the prior approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. City shall have the right to base its consent to any assignment hereunder upon such factors and considerations as City reasonably deems relevant or material to the proposed assignment and the development of the Project, including, without limitation (i) the proposed assignee’s financial condition and ability to properly and successfully meet the obligations of Owner hereunder; and (ii) the proposed assignee’s reputation and experience in the development and management of projects similar to the Project. Upon any such Assignment, Owner shall be released and discharged of any further obligations under this Agreement and the Assignee shall thereafter be subject to the Owner’s obligations under this Agreement. In the case of a partial Assignment, the Owner shall be released and discharged of any further obligations under this Agreement as to the portion of the Property assigned (i.e., one or more of the four parcels that make up the Property), and the Assignee shall thereafter be subject to the Owner’s obligations under this Agreement for that portion of the Property. The City shall respond to any request for approval of an assignment within sixty (60) days after delivery of written request therefor by

Owner. In the event City fails to respond within said 60-day period, Owner shall send a second notice to City. If City fails to respond within ten (10) days after the delivery of the second notice, City shall be deemed to have approved such request for assignment. “**Affiliate**” shall mean any entity that, directly or indirectly, through one or more intermediaries, has control of, is controlled by, or is under common control with, Owner. For these purposes, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management of any entity, whether through the ownership of voting securities, by contract or otherwise.

(b) Notwithstanding the foregoing, the City hereby approves Owner’s assignment of its interest in the approximately 2.1 acre hotel parcel (APN 019-111-84; the “**Hotel Parcel**”) to Jay Sun Hospitality, LLC (the “**Hotel Owner**”). Upon the closing of the sale of the Hotel Parcel to the Hotel Owner, the Agreement shall be deemed to be assigned the Hotel Owner with respect to Hotel Parcel, provided that the Hotel Owner has confirmed in a form of writing reasonably acceptable to the City that the Hotel Owner agrees to be bound by all requirements of this Agreement, including complying with Section 4.5 of this Agreement. Upon the assignment, the Owner shall be released and discharged of any further obligations under this Agreement pertaining to the Hotel Parcel, which shall be the sole responsibility of the Hotel Owner. As of the Effective Date, the Owner warrants that Hotel Owner intends to develop and operate the Hotel as a La Quinta Inn and Suites, has executed a franchise agreement with La Quinta Hotels for the Hotel Parcel, and has paid the franchise fee in full. Any change to the Hotel franchise

shall be subject to the City's review and approval in the manner set forth in Section 8.1 of this Agreement.

2.3 Life of Project Approvals. Pursuant to Government Code Section 66452.6(a), notwithstanding any expiration of the Project Approvals under other provisions of California (the "**State**") law or the La Habra Municipal Code ("**Municipal Code**"), the duration of all Project Approvals shall automatically be extended to and until the end of the Term of this Agreement or any extension thereof, including any automatic extensions under the Subdivision Map Act; provided that the Vested Elements (as defined below) secured by Owner under this Agreement shall have a life no greater than the Term of this Agreement, and any extension thereof. Notwithstanding the foregoing, if building permits have been issued on the Project, and there is substantial reliance on the building permits issued, the Owner shall be deemed to have a vested right in the Vested Elements even after the expiration of this Agreement.

2.4 Vested Elements. The permitted uses of the Property, the maximum density and intensity of use, the maximum heights, locations, numbers and gross square footage of the proposed buildings, the provisions for vehicular access and parking, reservation or dedication of land for public purposes, provisions of Owner's contributions to the City's efforts to provide additional park land within the City, if any, and the items set forth below, all as may be limited, supplemented or amended by this Agreement and the Project Approvals, shall each be vested and are referred to herein as the "**Vested Elements**". In addition to the foregoing, other terms and conditions of development applicable to the Project are set forth in the

following documents as they exist as of the Effective Date (or as of the date issued, if a subsequent approval under (f) below), and shall be considered part of the Vested Elements:

(a) The General Plan, current as of the Effective Date, the terms and conditions of which are incorporated herein by this reference;

(b) The Municipal Code, current as of the Effective Date;

(c) The Imperial Highway Commercial Center PUD by adoption of City Ordinance No. _____ on _____, 2018;

(d) The Plan Documents, Parcel Map, other Project Approvals, and the Conditions of Approval set forth in Exhibit C ("**Conditions of Approval**") imposed thereon;

(e) All other applicable City plans, policies, programs, regulations, ordinances, and resolutions of the City in effect as of the Effective Date, which regulate development of the Property and implementation of the Project, and which are not inconsistent with the terms of this Agreement ("**Other Regulations**");

(f) Any permits and/or subsequent approvals issued after the Effective Date which are needed for the implementation and development of the Project or may be required under the Project Approvals, including but not limited to additional subdivision maps or lot line adjustments, if any, final maps, site and architectural review, demolition permits, building permits, grading permits, and infrastructure improvement plans, processed in accordance with the terms of this Agreement. Upon approval, such subsequent approvals shall be automatically incorporated into this Agreement and vested hereby; except that subsequent approvals shall be

subject to the terms of such permits or approvals as then-issued and shall be subject to the then-applicable timeframes as to their validity.

2.5 Permitted Uses. The permitted uses for the Property are those allowed by the Project, which include a hotel, two drive-through restaurants and 4,800 square feet of a yet-to-be determined use permitted in the PC-1 zoning designation as it exists as of the Effective Date of this Agreement. The Project is further described in the MND prepared by Blodgett Baylosis Environmental Planning and dated June 4, 2018, attached hereto as Exhibit D approved by the City of La Habra; and public and private infrastructure; all of which must be implemented in accordance with the applicable Plan Documents and the Conditions of Approval.

2.6 Present Right to Develop. Subject to Owner's fulfillment of the provisions of this Agreement, the Plan Documents, the Project Approvals and the Conditions of Approval, the City hereby grants to Owner the present vested right to develop the Project and construct on the Property all the improvements authorized by, and in accordance with, this Agreement and the Vested Elements, including, without limitation, the terms of the Plan Documents and the Project Approvals. To the extent permitted by law, no future modification (including by later-adopted initiative and/or referendum) of the General Plan, Municipal Code, Other Regulations, ordinances, policies or regulations that purport to (i) limit the rate or timing of development, size of buildings or other improvements (including developable square footage), or amount of development of the portions of the Project to be built; or (ii) impose any additional conditions upon development, occupancy or use of the Property, other than as provided in the Plan Documents or Conditions of

Approval or other Approval or pursuant to Sections 2.8, 3.2 or 4.1 of this Agreement, shall apply to the Property; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting any fees or land use regulations or amendments thereto, expressly permitted in Section 3.2 of this Agreement, and all construction shall comply with the California Building Standards Code requirements (including any amendments thereto) that would otherwise apply if there were no development agreement in effect.

2.7 Timing of Improvements. Owner may implement the Plan Documents, if at all, in phases in Owner's sole and absolute discretion. Since the California Supreme Court held in *Pardee Construction Co v. City of Camarillo* (1984) 37 Cal.3d 465, that an initiative restricting the timing of a development adopted after entry into a statutory development agreement prevailed over the development agreement, because the parties to the development agreement failed to provide in the agreement for the timing of development, it is the Parties' specific intent that this Agreement shall prevail over any later-adopted, general initiative or moratorium that might otherwise have the effect of restricting or limiting the timing of development of the Project, and that Owner shall have the right to develop the Project at such time as Owner deems appropriate within the exercise of its subjective business judgment; and no annual (or other) later-adopted or approved limit, moratoria, or other limitation upon the number of, or phasing or pacing of, buildings which may be constructed, or building permits which may be obtained, or the like shall apply to the Project within the Term of this Agreement.

2.8 Agreement and Comprehensive Plan Documents. The Parties

acknowledge that, except as specifically set forth herein, this Agreement, the Plan Documents, the Mitigation Monitoring and Reporting Program, as set forth and contained within the MND in Exhibit D attached hereto (the “**Mitigation and Monitoring Reporting Program**”) and the Conditions of Approval and the other Project Approvals set forth a comprehensive schedule of all development terms and conditions, development mitigation measures and exactions, required in the public interest to be contributed, paid or constructed due to development of the Property as defined in the Plan Documents or elsewhere in the Project Approvals.

2.9 Design of On-Site and Off-Site Improvements. The design review approvals described in the Plan Documents provide the final architectural and design review approval by the City. The Plan Documents, Mitigation and Monitoring and Reporting Program, Conditions of Approval, Project Approvals and all improvement plans prepared in accordance thereof, shall govern the design and scope of all on-site and off-site improvements benefiting or to be constructed on the Property, including all street widths and dedications. In no event shall final architectural and design approval by City be conditioned on or require any change in the approved Plan Documents, Mitigation Monitoring and Reporting Program or Conditions of Approval or other Project Approvals, without Owner’s consent.

2.10 Development of the Site. In consideration for the City entering into this Agreement, upon Owner’s election to commence development of the Project, if at all, Owner agrees to perform all of its obligations contained in this Agreement in the time and manner set out in this Agreement and the Plan Documents, Mitigation Monitoring and Reporting Program, Project Approvals and Conditions of Approval.

2.11 Building Standards. Owner hereby agrees that the Project will be built to the Standards set forth in the building codes in effect at the time of submission of Owner's construction documents. Should building permits be allowed to expire, the Owner shall submit plans to the City that comply with the Building Code in effect at the time of resubmittal for the reissuance of building permits.

3. Effect of Agreement.

3.1 Subsequent State or Federal Laws or Regulations. As provided in California Government Code Section 65869.5, this Agreement shall not preclude the application to the Project of changes in State or federal laws or regulations ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more material provisions of this Agreement, Owner may request that such material provisions be modified or suspended, or performance delayed as may be necessary to comply with Changes in the Law, and City may take such action as it reasonably deems necessary to be consistent with the intent of this Agreement.

3.2 Changes to Existing Regulations. Changes to the Vested Elements, including such changes adopted by the electorate through the powers of initiative or otherwise, shall not apply to the development, occupancy and use of the Property, except as follows:

(a) Subject to Section 4 herein, City regulations, ordinances, policies, programs, resolutions or fees adopted after the Effective Date that are (i) not in conflict with the Project Approvals, Vested Elements and the terms and conditions for development of the Property established by this Agreement, or otherwise

applicable regulations existing as of the Effective Date; and (ii) applicable to all similarly situated projects within the City. Changes to the General Plan, Municipal Code or Other Regulations shall be deemed to conflict with the Project Approvals and this Agreement (a “**Conflicting City Law**”) and shall not apply to the Project or any part thereof if such changes (i) prevent, restrict, condition or delay the development, occupancy or use of the Property in accordance with the Project Approvals; (ii) require changes in the development of the Property from what is contemplated by the Project Approvals; (iii) delay, ration or impose a moratorium on development, occupancy or use of the Property; or (iv) require the issuance of discretionary or nondiscretionary permits or approvals by the City other than those required as of the Effective Date.

(b) Any law, regulation or policy which would otherwise be Conflicting City Law, but through this Agreement or by later separate document, application to the Property has been consented to in writing by the Owner.

3.3 Further Reviews. Owner acknowledges that existing land use regulations, the Vested Elements and this Agreement contemplate the possibility of further reviews of elements of portions of the Project by the City. Nothing in this Agreement shall be deemed to limit the legal authority of City with respect to these reviews as provided by, and otherwise consistent with, this Agreement. In no event shall such further review by City revisit the Plan Documents, Conditions of Approval or the other Project Approvals, or be conditioned on or require any change in the Project except as necessary as a result of the requested use.

3.4 Subsequent Project Approvals. The term “**Subsequent Project**

Approvals” shall mean any and all permits, licenses, consents, rights and privileges, and other actions approved or issued by City in connection with development of the Property after the Effective Date of this Agreement, including all associated environmental documentation and mitigation measures pursuant to the California Environmental Quality Act. City shall accept for processing and promptly take action on all applications for Subsequent Project Approvals, provided they are in proper form for required processing. City shall, in a reasonably expeditious manner, review such applications and, upon request and payment by Owner of any costs and/or extra fees associated with that review, shall assign to that review the staff needed to ensure timely processing and completion of the Project. The City further agrees that, unless otherwise requested by Owner, the City shall not amend or rescind any Subsequent Project Approvals respecting the Property after such approvals have been granted by the City, and after any Subsequent Project Approval has been granted, its will automatically become vested Project Approval under this Agreement.

3.5 Local Rules. Future development on the Property shall be subject to all the official rules, regulations and policies of the City which govern uses, architectural design, landscaping, public improvements and construction standards, and which are contained in the Plan Documents or are in effect as of the Effective Date (collectively, “**Local Rules**”), with the exception that revisions or amendments to the Local Rules necessary to address a change in condition occurring after the Effective Date which threatens the public health or fire and life-safety of the residents of the Project and/or the immediate community, shall apply as though

the rules were in effect as of the Effective Date. Notwithstanding any other provision of this Agreement, and without limitation as to any other exceptions contained in this Agreement, City shall retain the authority to take the following actions, so long as such action is applied on a City-wide basis as to similarly situated projects:

(a) Adopt and apply property transfer taxes and/or excise taxes;

(b) Adopt and apply utility charges;

(c) Adopt updates to building and/or fire codes;

(d) Maintain the right of voters to act by initiative or referendum, but only to the extent that the initiative or referendum does not affect or interfere with any Vested Elements acquired by the Owner in this Agreement, except as referendum is provided for in California Government Code Section 65867.5 (a); and

(e) Take other actions not inconsistent with the Vested Elements or expressly prohibited by the terms or provisions of this Agreement.

3.6 Future Exercise of Discretion by City. This Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or, except as provided herein, to limit discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances or laws which require the exercise of discretion by City or any of its officers or officials. Except as provided herein, this Agreement shall not prevent City from applying new rules, regulations and policies, or from conditioning future Project development approval applications on new rules, regulations and policies that do not conflict with the terms of the Project Approvals, the Vested Elements, or this Agreement unless

necessary to allow for the new development.

3.7 Regional Programs. Except as specifically provided in Section 4 below, City shall not require all or any portion of the Project or the Property to participate in any regional program (*i.e.* a program that is not initiated by City or adopted by the City prior to the Effective Date, and that includes properties located in whole or in part outside of the City) nor shall City require all or any portion of the Property or the Project to pay or contribute to any regional development exaction to the extent that such program or development exaction is not in effect as of the Effective Date, including without limitation, any such program or development exaction initiated by the County of Orange, except as may be required by law.

4. Development Fees, Exactions and Dedications.

The fees, assessments, taxes, exactions and dedications (collectively “Fees”) payable due to the development, build out, occupancy and/or use of the Property pursuant to this Agreement shall be the Fees in the amount that exist at the time when they become due pursuant to applicable City ordinance or regulation.

4.1 Processing Fees. Processing fees, including without limitation Building Permit fees (“**Processing Fees**”), may be increased if the increase is applicable Citywide and reflects the reasonable cost to City of performing the administrative processing or other service for which the particular Processing Fee is charged. New Processing Fees may be imposed if the new Processing Fees apply to all similarly situated projects or works within the City and if the application of these Processing Fees to the Property is prospective only. Processing Fees shall be due and payable upon submittal and/or the issuance of the appropriate permits as

customarily charged for such services. Owner shall reimburse City for reasonable staff overtime expenses incurred by City in processing review, approval, inspection and completion of the Project provided that such overtime services are requested by the property owner and the City is able to provide such services.

4.2 Dedications. Prior to the issuance of any certificates of occupancy, Owner shall (1) construct a bike path on the Dedicated Property that meets all of City's reasonable requirements; and (2) offer to dedicate to City, all portions of the Property designated in the Conditions of Approval for public easements, streets, or public areas, including but not limited to, the Dedicated Property, in accordance with Section 4.4 herein.

4.3 Mitigations. Owner agrees, on behalf of itself and any successors or assigns, to contribute to the costs of public facilities and services in the amounts set forth in the Plan Documents, Mitigation Monitoring and Reporting Program and Conditions of Approval, as required to mitigate impacts of the development, occupancy and use of the Property ("**Mitigations**"). City and Owner recognize and agree that but for Owner's contributions to mitigate the impacts arising as a result of the entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement. City's approval of development of the Property is in reliance upon, and in consideration of, Owner's agreement to make contributions toward the cost of public improvements and public services as provided to mitigate the impacts of development of the Property pursuant to this Agreement.

4.4 Contributions to City-Wide Enhancements. As further consideration for the

City entering into this Agreement, and as significant public benefits to the City and its residents, Owner agrees to participate to the extent hereinafter specifically described in the City's efforts to provide additional parks and recreational areas within the City:

(a) Contribution to Open Space, Recreation and Parks. In order to alleviate any effect of the Project upon public parks and recreational areas within the City, Owner agrees to construct within the Property, and as part of the Project, open space and recreational amenities as more particularly described and depicted in the approved Plan Documents and Imperial Highway Commercial Center, and incorporated herein (**"Park Contribution"**). As described above, the Park Contribution includes the dedication to the City of the Dedicated Property. for public access purposes, and the completed construction of a bike path that meets all of City's reasonable requirements upon that Dedicated Property. The City intends that the Dedicated Property will be initially used as a bicycle path that will be open to the public (**Bicycle Path**). Maintenance of the Bicycle Path shall be the responsibility of the City only after the Dedicated Property has been conveyed to the City and the Bicycle Path improvements have been accepted by the City Engineer, except that in no event shall Owner cause or allow the Dedicated Property to be used in any manner that causes the City to incur any maintenance obligations upon the Dedicated Property. The Park Contribution and the Hotel Amenities described herein shall constitute Owner's sole and complete obligation to the City for the Project with respect to alleviating any effect of the occupancy and use of the Project upon public parks and recreational areas within the City.

The Parties acknowledge that Owner's completion of the Park Contribution and the construction of the Hotel Amenities provide significant public benefits to the City and its residents with respect to the use and availability of parks and recreational areas, and is a material inducement to the City in entering into this Agreement. The Parties further acknowledge that the obligation to construct the Bicycle Path may be assigned consistent with the requirements of Section 2.2 of this Agreement.

(b) Hotel Amenities. As also set forth in the approved Plan Documents and Imperial Highway Commercial Center, the Hotel Owner shall construct and maintain a pool, fitness center, dining area and other amenities available to registered guests of the Hotel, as well as a conference room available for booking by any member(s) of the public.

4.5 Deferred Compensation. As consideration to the City for entering into this development agreement, Owner covenants, on behalf of itself and its successors and assigns (including Hotel Owner), to pay the City an amount equal to twelve percent (12%) of the Rent until the effective date of any City ordinance establishing a transient occupancy tax.

(a) For these purposes, "Rent" means the consideration charged by an operator for accommodations on the Hotel Property, including without limitation any (1) unrefunded advance rental deposits or (2) separate charges levied for items or services which are part of such accommodations including, but not limited to, furniture, fixtures, appliances, linens, towels, non-coin-operated safes, and maid service. "Rent" shall not include any charge, billing, or account or portion

thereof which the operator finds to be worthless or uncollectible and charged off for tax purposes. If any such worthless or uncollectible rent is thereafter collected, the amount shall be considered rent in the month collected and the tax collected shall be included in the next payment to the City by the operator.

(b) This deferred compensation shall be payable to the City on a quarterly basis, due on or before January 1, April 1, July 1, October 1 of each calendar year, on the amount collected for the three previous calendar months.

(c) At any time during normal business hours, the Hotel Owner shall provide the City full access to all books, accounting records, and other documents in order for the City to determine compliance with this section. If the City's review of Hotel Owner's financial records indicates more than a 1% underpayment, Hotel Owner shall compensate the City for the cost of a full audit of Hotel Operator's finances.

(d) The Hotel Owner agrees that its failure to comply with any of this section's requirements (including any late payments) will result in a fee in the amount of 15% of all outstanding compensation due to city, or \$500.00, whichever is greater.

(e) In addition to late fees, Hotel Owner shall pay interest at the rate of 8% per annum, compounded daily until City receives payment.

(f) Hotel Owner agrees that, in addition to all other remedies, City may place a lien on the Hotel Property for any failure to make full payment.

5. Standard of Review of Permits.

All permits ("Permits") required of Owner to develop the Property, including but not limited to (i) encroachment permits, (ii) road construction permits, (iii) infrastructure

permits, (iv) grading permits, (v) building permits, (vi) fire permits, and (vii) Certificates of Occupancy, shall be issued by City after City's review and approval of Owner's development plans, provided that City's review of the applications is limited to determining whether the following conditions are met:

(a) The application is complete; and,

(b) The application demonstrates that Owner has complied with this Agreement, the Plan Documents, the Mitigation Monitoring and Reporting Program, the Conditions of Approval, Project Approvals and the applicable Local Rules.

6. Priority.

In the event of conflict between the General Plan, this Agreement, the Code, Other Regulations and Local Rules, all as they exist on the Effective Date, the Parties agree that the following sequence establishing the relative priority of each item: (1) the General Plan, as existing on the Effective Date; (2) Imperial Highway Commercial Center PUD; (3) zoning code requirements; (4) this Agreement; (5) the Mitigation Monitoring and Reporting Program; (6) the Existing Development Approvals, (7) the Plan Documents; and (8) requirements of the Municipal Code other than zoning code requirements, Other Regulations and Local Rules.

7. Cooperation in Implementation.

Upon Owner's or Owner assignee's satisfactory completion of all required preliminary actions provided in the Plan Documents, and payment of required fees, if any, City shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to

complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the Plan Documents, including the following actions:

(a) Scheduling any required public hearings by the Planning Commission and City Council; and,

(b) Processing and checking all maps, plans, land use and architectural review permits, building plans and specifications and other plans relating to development of the Property filed by Owner as necessary for complete development of the Property. Owner, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and to cause City's planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. It is the Parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance with the Plan Documents and other Approvals and the terms hereof. At Owner's request and sole expense, City shall retain outside building consultants to review plans or otherwise assist City's efforts in order to expedite City processing and approval work. City shall cooperate with Owner, and assist Owner in obtaining any third-party governmental or private party permits, approvals, consents, rights of entry, or encroachment permits, needed for development of the Project or any other on or offsite improvements.

8. Covenants and Restrictions

8.1 Construction and Opening of the Hotel. Owner covenants and agrees for itself, its successors, assigns (including the Hotel Owner), and every successor in interest to the Site, as follows:

(a) The Hotel Owner will construct the Hotel pursuant to the Project Approvals and any future Subsequent Project Approvals.

(b) The Hotel Parcel will be initially developed as a La Quinta Inn and Suites in accordance with this Agreement. Any change to the hotel franchise operated on the Hotel Parcel must be to a hotel that is ranked as a three-star hotel or better as determined by Forbes Travel Guide and requires the City's prior review and approval, which shall not be unreasonably withheld. Regardless of the hotel owner, operator or franchise, the Property and all uses and operations thereon shall at all times be maintained in a manner that is consistent with all applicable laws (including the municipal code), all conditions of approval, all restrictions contained in any permits or other approvals.

(c) The parcels shall be developed and operated such that there is shared access and shared parking between all parcels on the Property.

9. Annual Review of Compliance with Agreement.

9.1 City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code Section 65865.1. Owner or successor shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review.

9.2 During each annual review by City, Owner is required to demonstrate good faith compliance with the terms of the Agreement. Owner shall submit a report describing its compliance with the Agreement in the preceding year and further agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, within thirty (30) days after the City's written request therefor.

9.3 The City Council shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Owner has, for the period under review, complied with the terms of this Agreement. If the City Council finds that the Owner has so complied, the annual review shall be concluded. If the City Council finds, on the basis of substantial evidence, that Owner has not so complied after the expiration of the notice and cure period set forth below, the City Council may terminate the Agreement, or require the Owner to come into compliance with the Agreement as set forth in Section 9 below; provided however that a notice and cure period shall not be required if (i) the failure to comply is material, (ii) was previously noticed to Owner in prior annual reviews, and (iii) (a) after notice in connection with such prior review, Owner did not timely or sufficiently cure such failure to comply, or (b) even if Owner attempted to timely and sufficiently cure such default, the same failure to comply has occurred on two or more prior occasions.

9.4 The failure of the City to conduct annual review of this Agreement shall not constitute a Default, as that term is defined in Section 10 of this Agreement.

10. Default and Remedies

10.1 General Provisions. In the event of any default, breach, or violation of the terms of this Agreement ("**Default**"), the Party alleging a Default shall give the other Party a written Notice of Default, which notice shall specify the nature of the alleged Default. The defaulting party shall have a period of thirty (30) days to cure such Default; provided, however, that such period shall be extended to the extent that such Default cannot reasonably be cured within thirty (30) days so long as the defaulting party commences to cure such default within such 30-day period and thereafter diligently pursues the same to completion (the "**Cure Period**"). During the Cure Period, the Party charged shall not be subject to the exercise of remedies under this Agreement, and if the alleged Default is cured within the Cure Period, then no remedies shall be available with respect to such Default, except as set forth in 9.1.2. If the Default is not cured within the Cure Period specified in the Notice of Default, then the non-defaulting party may exercise the remedies set forth in the balance of this Section 10 below or in 9.1.2, if applicable.

10.2 Termination of Agreement for Default. The validity of any termination may be judicially challenged by Owner. Any such judicial challenge must be brought within sixty (60) days of service on Owner, by first class mail, postage prepaid, of written notice of termination by City.

10.3 Other Remedies for Default. If a Default is not cured within the Cure Period, the non-defaulting Party may immediately terminate this Agreement or institute legal proceedings to enforce the provisions thereof. The non-defaulting Party shall be entitled to seek any and all remedies at law or in equity, as limited herein, in the event of an uncured Default under this Agreement or Default if cure is not required.

10.4 Waiver. Failure or delay in giving Notice of Default shall not waive a Party's right to give future Notice of the same or any other Default.

10.5 Monetary Damages. The parties agree that monetary damages shall not be an available remedy for either party. Enforcing the payment of money agreed to be paid herein, or claims for reimbursement of amounts overpaid or otherwise paid under protest, shall not constitute "monetary damages" for purposes of this Agreement.

10.6 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary equitable relief are a particularly appropriate remedy for the enforcement of this Agreement and therefore shall be available to the parties to this Agreement, and to their successors and assigns. The foregoing shall not be construed as a covenant by Owner to build all or any portion of the Project.

11. Third Party Litigation

11.1 Third Party Litigation Concerning Agreement. Owner shall defend, with an attorney of City's choosing, at Owner's expense, including attorneys' fees and costs, indemnify, and hold harmless City, its agents, officers and employees from any claim, action or proceeding against City, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement, or to challenge the City's compliance with the provisions of CEQA. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense of such claim. If City fails to promptly notify Owner of such claim, action or proceeding, or

if City fails to reasonably cooperate in the defense, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless City. To the extent any provision of Section 11 of this Agreement requires the Owner to reimburse the City for its attorneys' fees, the Owner shall be charged at the same hourly rate the City Attorney's office would otherwise charge the City, without the involvement of the Owner.

The Parties shall reasonably cooperate with each other in defending any such litigation. Owner shall pay any attorneys' fees awarded against the City or Owner, or both, resulting from that cause of action. Owner shall be entitled to any award of attorneys' fees arising out of such action.

Notwithstanding the foregoing, Owner shall not be required to indemnify the City against any claims arising out of the gross negligence or willful misconduct of the City or any of its agents or employees.

11.2 Environmental Indemnity. Owner shall defend, indemnify and hold City, its officers, agents, employees, and independent contractors free and harmless from any claims or liability based upon or arising from the presence of any Hazardous Substance on any of the Property located in the Project in violation of Environmental Laws. As used herein, "**Hazardous Substance**" shall mean any substances or materials which are regulated as hazardous or toxic under Environmental Laws. As used herein, "Environmental Laws" shall mean any and all federal, state, municipal and local laws, statutes, ordinances, rules, and regulations which are in effect as of the date of this Agreement, or any and all federal, or state laws, statutes, rules and regulations which may hereafter be

enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment or removal of any hazardous or toxic substances, including without limitation, the Comprehensive Environmental Response Compensation Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., ("**RCRA**"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and California Health and Safety Code Section 25100, et seq. To the extent that Owner is or may be entitled to defense or indemnification from any predecessor in interest in connection with the presence of any such Hazardous Substances on the Property, as part of its Purchase Agreement or otherwise, Owner shall also assert any such defenses or indemnification rights on behalf of City, its officers, agents, employees, and independent contractors. Owner's obligation to defend, indemnify and hold harmless City and its officers, employees, agents or independent contractors from any claims or liability in connection with or arising from the presence of any Hazardous Substance on the Property or any portion thereof shall be limited to claims resulting from the actions of Owner or otherwise occurring during Owner's ownership of the Property, and Owner's obligation hereunder shall survive the termination of this Development Agreement.

11.3 Challenge to Entitlements. By accepting the benefits of this Agreement, Owner, on behalf of itself and its successors in interest, hereby expressly agrees and covenants not to sue or otherwise challenge the Project Approvals or any City

ordinance or resolution affecting the Property existing as of the date of this Agreement.

12. Mortgage Protection

12.1 This Agreement shall not prevent or limit Owner, in any manner, at Owner's reasonable discretion, and with City's consent, from encumbering all or part of the Property or its improvements by any mortgage, deed of trust, or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications, and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Owner shall inform City of any involuntary liens which are placed on the property as when they occur. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

12.1.1 Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

12.1.2 The Mortgagee of any mortgage or deed of trust encumbering all or any part of the Property who has submitted a written request to the City in

the manner specified below for giving notices, shall be entitled to receive written notification from City of any Default by Owner.

12.1.3 If City receives a timely request from a Mortgagee requesting a copy of any notice of default given to Owner, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

12.1.4. Any Mortgagee who comes into possession of all or part of the Property, through foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take possession subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform or guarantee performance of any of Owner's obligations under this Agreement; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof by such Mortgagee shall continue to be a condition precedent to City's performance hereunder.

13. Miscellaneous Provisions

13.1 Recordation of Agreement. This Agreement and any amendment of this Agreement shall be recorded by the Property Owner or his/her successors in interest or assigns, with a copy to be provided to the City Clerk, in the official

records of Orange County, California within the period required by Section 65868.5 of the Government Code. The Parties agree that the signing and recording of this Agreement by City is a ministerial act.

13.2 Entire Agreement. This Agreement contains the entire agreement of the Parties. There are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to within this Agreement. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

13.3 Severability. If any term, provision, covenant, or condition of this Agreement is determined invalid, void, or unenforceable by a court of law, the remainder of this Agreement shall remain in effect provided that the remaining provisions allow the original purpose of this Agreement to be implemented. Notwithstanding the foregoing, the payment of the Fees are essential elements of this Agreement and City would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever unless Owner actually pays such fees notwithstanding the determination that such fees are invalid, void or unenforceable.

13.4 Interpretation and Governing Law. The parties agree that this Agreement is entered into in the County of Orange, State of California and is to be performed in the County of Orange, State of California. Any dispute regarding this Agreement

shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. This Agreement is the mutual drafting product of the Parties, and neither Party shall be deemed the drafting party for purposes of resolving such ambiguities.

13.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

13.6 Singular and Plural. The singular of any word includes the plural.

13.7 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

13.8 Waiver. Failure by a Party to require the strict performance of any of the provisions of this Agreement, or the failure by a Party to exercise its rights upon the default of the other Party, shall not waive that Party's right to require subsequent strict compliance with this Agreement.

13.9 Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

13.10 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquake, other Acts of God, fires, wars, riots or similar hostilities,

strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events occur, the Term and the time for performance of obligations under this Agreement shall be extended for a time equal to the duration of the delaying event, provided that the Term shall not be extended under any circumstances for more than five (5) years. Any Party learning of such an event shall, as soon as reasonably practicable, notify the other Party in writing of the date on which the event ended.

13.11 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefitted thereby of the covenants to be performed hereunder by such benefitted party.

13.12 Successors in Interest. The burdens of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. During the term of this Agreement only, all provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. During the term of this Agreement, each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each party, each of Owner's assignees and successors in interest, during their respective ownership of the Property or any portion thereof.

13.13 Counterparts. This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

13.14 Jurisdiction and Venue. Any action or proceeding regarding this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California. The Parties waive all provisions of law providing for the filing, removal or change of venue to any other court.

13.15 Project as a Private Undertaking. The Project is a private development that is not subject the prevailing wage requirements set forth in the California Labor Code. Neither party is acting as the agent of the other in any respect. Each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. No partnership, joint venture, or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

13.16 Further Actions and Instruments. The Parties shall, upon reasonable request, cooperate with and provide reasonable assistance to each other in implementing the provisions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

13.17 Attorneys' Fees and Costs. In any action brought regarding this Agreement, to enforce a provision of this Agreement, because of a breach of this Agreement, or arising out of or connected with this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs.

13.18 Processing. City shall accept for processing and promptly take action on all applications for Subsequent Development Approvals, provided they are in proper form for required processing. City shall, in a reasonably expeditious manner, review such applications and, upon request and payment by Owner of any costs and/or extra fees associated with that review, shall assign to that review the staff needed to ensure timely processing and completion of the Project.

13.19 Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notice required to be given to City shall be addressed as follows:

City: City Clerk
City of La Habra
110 East La Habra Blvd.
La Habra, CA 90631

With copy to: Director of Community & Economic Development
City of La Habra
110 East La Habra Blvd.
La Habra, CA 90631

and

Richard D. Jones.
City Attorney
Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92632

Owner: Sunny Investments, LLC
Attn: Greg S. Jones, Greg S. Jones Revocable Trust

440 West Whittier Blvd.
La Habra, CA 90631

With copy to: Randall Babbush
Rutan & Tucker, LLP
611 Anton Blvd.
Costa Mesa, CA 92626

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

13.20 Estoppel Certificates. Either Party, including any partial assignee, may at any time deliver written Notice to the other Party requesting an estoppel certificate (the "**Estoppel Certificate**") stating:

13.20.1 The Agreement is in full force and effect and is a binding obligation of the Parties.

13.20.2 The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.

13.20.3 No Default in the performance of the requesting Party's obligations under the Agreement exist or, if a default does exist, the nature and amount to cure any Default. A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Community Development Director may sign Estoppel Certificates on behalf of the City. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as Exhibit F.

13.21 Agent for Service of Process. In the event Owner is a foreign corporation, then Owner shall file with the Secretary of State, upon execution of this Agreement,

a designation of a natural person residing in the State of California, giving its name, residence, business addresses, and its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon such party. If for any reason service of such process upon such agent is not feasible, then in such event such party may be personally served with such process out of this County and such service shall constitute valid service upon such party. Owner hereby concedes that it, and any assignee or transferee, is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto.

13.22 Authority to Execute. The person executing this Agreement on behalf of each Party warrants and represents that he/she has the authority to do so.

The parties have executed this Agreement on the date set forth next to their signatures below. IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

(Signature Attached)
CITY OF LA HABRA, CALIFORNIA
a California municipal corporation

City

Approved as to Form:

City Attorney

City Manager

Attest:

110 East La Habra Blvd.
La Habra, CA 90631
Telephone: (562) 383-4030
Facsimile: (562) 383-4474

City Clerk

Owner

Greg Jones Revocable Trust and Sunny Investments, LLC
440 West Whittier Blvd.
La Habra, CA 90631

By: Greg S. Jones Revocable Trust

By: _____
Name: _____
Title: _____

By: Sunny Investments, LLC

By: _____
Name: _____
Title: _____

Telephone: _____
Facsimile: _____

Hotel Owner:

Jay Sun Hospitality, LLC

By: _____
Kam Patel, Managing Member

EXHIBIT A
LEGAL PROPERTY DESCRIPTION

**EXHIBIT B
PARCEL MAP**

(See Attached)

**EXHIBIT C
CONDITIONS OF APPROVAL**

(See Attached)

**EXHIBIT D
MITIGATED NEGATIVE DECLARATION
MITIGATION MONITORING AND REPORTING PROGRAM**

(See Attached)

EXHIBIT E

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Greg Jones Trust and Sunny Investments, LLC
440 West Whittier Blvd.
La Habra, CA 90631

AND

City of La Habra
City Clerk
110 East La Habra Blvd.
La Habra, CA 90631

(Space Above For Recorder's Use)

PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT
TOGETHER WITH CONFIRMATION AND CONSENT

THIS PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT TOGETHER WITH CONFIRMATION AND CONSENT ("**Agreement**") is entered into and made effective as of _____, 2018, by and among THE CITY OF LA HABRA, a California municipal corporation ("**City**"), Sunny Investments, LLC and Greg S. Jones Revocable (collectively, "**Assignor**") _____, a _____ ("**Assignee**"). City, Assignor and Assignee are each herein referred to as a "**Party**" and, collectively, as the "**Parties.**"

RECITALS

- A. Assignor is the current or previous owner of certain real property consisting of approximately 4.24 acres of land located at 701 East Imperial Highway, in the City of La Habra, California (APN 019-111-84) and more particularly described on Exhibit "A" attached hereto ("**Property**").
- B. The Property is subject to that certain Development Agreement dated as of _____ 2018, by and between City and Assignor (the "**DA**"). Terms defined in the DA shall have the same meaning when used in this Agreement.
- C. Assignor and Assignee have entered into that certain Purchase Agreement and Escrow Instructions dated as of _____, 20__ (the "**Purchase Agreement**") pursuant to which Assignor has agreed to purchase that portion of the Property described in Exhibit "B" attached hereto (the

“**Development Parcel**”) upon the terms and conditions contained in the Purchase Agreement.

- D. The closing under the Purchase Agreement is scheduled to occur upon the satisfaction of certain conditions set forth in the Purchase Agreement, including, if applicable, the condition that a final subdivision map (the “**Final Map**”) be recorded in the Official Records of Orange County showing the Development Parcel as a separate legal lot or parcel.
- E. The Parties have entered into this Agreement in order to, among other things: (i) evidence the assignment by Assignor to Assignee of certain rights under the DA and the assumption by Assignee of certain obligations of Assignor under the DA relating to the Development Parcel, (ii) evidence the City’s consent to (a) the Transfer of the Development Parcel by Assignor to Assignee, and (b) the granting of a lien on the Development Parcel by Assignee to a lender who will make a development loan to Assignee to finance the development of the Development Parcel by Assignee (the “**Development Lender**”), and (iii) confirm the completion of certain obligations under the DA and confirm certain facts relative to the development of the Development Parcel; and (iv) confirm that certain remaining obligations relative to the development of the Development Parcel are appropriately allocated among Assignor and Assignee (and their respective successors and assigns) as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Effective Date of Agreement. This Agreement shall be effective as to all of the Parties at such time as (i) the City has confirmed in writing to Assignee that the statements in Section 4 are accurate and (ii) fee title to the Development Parcel has been properly vested in Assignee (the “**Effective Date**”). This Agreement shall be void and of no force and effect in the event (a) the Purchase Agreement is terminated for any reason whatsoever prior to such conveyance or (b) the Effective Date has not occurred on or prior to _____, 20__.

2. Assignment and Assumption. Subject to the terms and conditions set forth in this Agreement, as of the Effective Date, Assignor assigns, transfers, conveys and sets over unto Assignee all of the rights set forth in the DA which inure to the benefit of or pertain to the Development Parcel, and Assignee assumes all of the obligations of Assignor under the DA respecting the Development Parcel to the extent provided in this Agreement.

3. City Consent to Transfers.

3.1 City Consent. Pursuant to Section 2.2 of the DA, the City’s prior written consent is required in connection with certain Transfers. Notwithstanding anything contained in the DA to the contrary, City hereby acknowledges and agrees to the following Transfers:

(a) Transfer of Development Parcel by Assignor to Assignee. City hereby approves and consents to the Transfer of the Development Parcel by Assignor to Assignee pursuant to the terms and provisions of the Purchase Agreement.

(b) Grant of Lien on Development Parcel by Assignee to Development Lender. City hereby approves and consents to the transfer of the Development Parcel by Assignee to the Development Lender to secure a promissory note executed by Assignee to Development Lender in the face amount not to exceed _____ Dollars (\$_____).

Assignor and Assignee have provided the City with copies of the form of the conveyancing documents evidencing the Transfers referenced above, and the City hereby approves such conveyancing documents and all the terms and conditions of such Transfers.

3.2 (Intentionally Deleted.)

4. Confirmation of Certain Facts Relative to Development Parcel.

4.1 Status of Performance. Certain obligations set forth in the DA relating to the development of the Project have been completed. The Parties acknowledge and agree that the following are true, complete, and accurate statements regarding the status of the DA insofar as it pertains to the Development Parcel:.

(Insert Conditions of Approval and other performances under the DA that have been completed relative to the Development Parcel if any).

4.2 No Defaults; No Termination. The DA is in full force and effect and has not been modified, supplemented or amended in any way except as provided in this Agreement. There are no uncured defaults under the DA, and no event has occurred which with notice or the passage of time, or both, would constitute such a default. Neither Assignor nor City has exercised any right to terminate the DA. Nothing in this Agreement shall prohibit Assignor and the City from further amending, modifying or supplementing the DA without the consent of Assignee so long as such amendment, modification or supplement does not impose any obligations on the Development Parcel.

5. Allocation of Continuing Obligations.

5.1 In General. The Parties agree that the DA shall continue to be binding upon the Development Parcel. Assignor (and not Assignee) shall be responsible for all obligations of the Owner under the DA with respect to all portions of the Property still owned by Assignor and Assignee (and not Assignor), shall be responsible for all obligations of the Owner under the DA with respect to the Development Parcel.

5.2 Conditions of Approval. After the Effective Date, Assignee shall observe and/or perform those restrictions and obligations listed in Conditions of Approval ##_____ within the boundaries of the

Development Parcel.

5.3 Obligations under DA. After the Effective Date, Assignee shall assume the obligations of the Owner under the following Sections of the DA with respect to the Development Parcel:

6. Indemnity/Release.

6.1 Indemnity. As of the Effective Date, Assignor indemnifies and holds harmless Assignee and Assignee's trustees, officers, directors, employees, agents, subsidiaries, and affiliates and its and their respective successors and assigns (the "**Assignee Parties**") from and against any and all claims, demands, causes of action, losses, liabilities, liens, encumbrances, costs, and expenses (collectively, "**Claims**") relating to or arising out of the default by Assignor of any of its obligations of any nature whatsoever set forth in the DA occurring prior to the Effective Date.

6.2 Release. As of the Effective Date, Assignee forever releases and discharges City, Assignor and each of City's and Assignor's trustees, officers, directors, employees, agents, subsidiaries, and affiliates and its and their respective successors and assigns (the "**City Parties**" and the "**Assignor Parties**") from and against any and all claims, demands, causes of action, losses, liabilities, liens, encumbrances, costs, and expenses (collectively, "**Claims**") relating to the failure of any obligation of any nature whatsoever set forth in the DA to be satisfied or fulfilled, irrespective of how, why, or by reason of what facts, whether heretofore, now existing, or hereafter existing, or which could, might, or be claimed to exist, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated; provided, however, the foregoing release shall not apply to any Claim made against the City Parties or Assignor Parties for any default under the terms of the Purchase Agreement, this Agreement or with respect to any matter for which the Assignee Parties are indemnified pursuant to the preceding paragraph.

Furthermore, as of the Effective Date, City hereby releases and discharges Assignor from and against any and all Claims relating to the failure of any obligation of any nature whatsoever set forth in the DA to be satisfied or fulfilled, irrespective of how, why, or by reason of what facts, whether heretofore, now existing, or hereafter existing, or which could, might, or be claimed to exist, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated.

7. No Cross-Default. Notwithstanding anything contained in the DA to the contrary, the Parties hereby agree that (i) in no event shall a default by Assignor under the DA affect or be deemed to constitute a default by Assignee under this Agreement, or otherwise affect the ownership and development of the Development Parcel and (ii) in no event shall a default after the Effective Date by Assignee under this Agreement affect or be deemed to constitute a default by Assignor under the DA or otherwise affect the

ownership, lease, development, or use of the remaining Property.

9. Further Amendments. The Parties hereby agree that the City, on the one hand, and any other Party, on the other hand, shall have the right to enter into such further agreements which may affect the rights and/or obligations of the City and such party under the terms of the DA and/or this Agreement provided that any such agreement shall not impose any further obligation or liability on any other Party without such other Party's written consent.

10. Notices. Section 12.16 of the DA is hereby amended to include the following: Unless otherwise expressly provided herein, all notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by facsimile, telecopier, registered mail, messenger service, or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the date of receipt thereof at the address set forth below. Notices of change of address shall be given by written notice as described in this Paragraph 10:

If to Assignee:

Attn: _____
Fax: _____
Phone: _____

With a copy to:

Attn: _____
Fax: _____
Phone: _____

If to Assignor:

Sunny Investments, LLC
Attn: Greg S. Jones
440 West Whittier Blvd.
La Habra, CA 90631

With copy to:

Randall Babbush
Rutan & Tucker, LLP
611 Anton Blvd.
Costa Mesa, CA 92626

If to City:

City Clerk
City of La Habra
110 East La Habra Blvd.
La Habra, CA 90631

With copy to:

Director of Community & Economic Development
City of La Habra
110 East La Habra Blvd.
La Habra, CA 90631

and

Richard D. Jones
City Attorney
Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92632

10. Effect of This Agreement. Except as amended and/or modified by this Agreement, the DA is hereby ratified and confirmed and all other terms of the DA shall remain full force and effect, unaltered and unchanged by this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of the DA, the provisions of this Agreement shall prevail. Whether or not specifically amended by the provisions of this Agreement, all of the terms and provisions of the DA are hereby amended to the extent necessary to give effect to the purpose and intent of this Agreement.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together will constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other Parties to this Agreement attached thereto.

(Signatures continued on next page)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

“City”

THE CITY OF LA HABRA

By: _____
Name: _____
Title: _____

“Assignee”

a _____
By: _____
Name: _____
Title: _____

“Assignor”

Greg Jones Revocable Trust and Sunny Investments,
LLC
440 West Whittier Blvd.
La Habra, CA 90631

By: Greg S. Jones Revocable Trust

By: _____
Name: _____
Title: _____

By: Sunny Investments, LLC

By: _____
Name: _____
Title: _____

STATE OF)
) ss.
COUNTY OF)

On _____, before me, _____, Notary Public
(here insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(seal)

STATE OF)
) ss.
COUNTY OF)

On _____, before me, _____, Notary Public
(here insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(seal)

STATE OF)
) ss.
COUNTY OF)

On _____, before me, _____, Notary Public
(here insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(seal)

EXHIBIT F
ESTOPPEL CERTIFICATE

