



AGENDA

City of El Cajon Successor Agency – Oversight Board

8:00 a.m., Wednesday, July 19, 2017

El Cajon City Hall – Fifth Floor Conference Room
200 Civic Center Way, El Cajon, CA 92020

Board Members:

Scott Buxbaum, County Board of Education Rep.
Gloria Chadwick, Grossmont Healthcare District Rep.
Dennis Davies, City of El Cajon
Michelle Nguyen, County Board of Supervisors Rep.
Sue Rearic, Chancellor of the California Community Colleges Rep.
Vacant, (Former RDA/MMPEG Employee) City of El Cajon
Debra Turner-Emerson, County Board of Supervisors Rep.

OB Legal Counsel: **Meyers Nave**

Successor Agency Staff:

Douglas Williford, Exec. Director/City Manager
Clay Schoen, Director of Finance
Anthony Shute, Director of Community Development
Holly Reed-Falk, Financial Operations Manager
Victoria Danganan, Senior Accountant
Ron Luis Valles, Administrative Secretary

General Counsel: **Morgan Foley**

- I. Call to Order and Pledge of Allegiance
- II. Roll Call
- III. Public Comment: (This is the opportunity for a member of the public to address the Oversight Board on any item of business within the jurisdiction of the Board that is not on the agenda. Under State law no action can be taken on items brought forward under Public Comment, except to refer the item to the staff for administrative action or to place it on a future agenda.)

ACTION ITEMS:

- IV. Item No. 1 – Approval of Action Minutes – January 18, 2017, meeting

Item No. 2 – Approval of the Disposition and Development Agreement between the City of El Cajon, as Successor Agency in interest to the El Cajon Redevelopment Agency and Brixton Fletcher LLC for the sale and development of property at 100 Fletcher Parkway.

- V. Other Items for Consideration

Staff Communications:

Resignation of Anthony Shute on Oversight Board

Board Reports/Comments:

- VI. Adjournment

SUMMARY MINUTES

Successor Agency to the El Cajon Redevelopment Agency Oversight Board

**Meeting - Wednesday, January 17, 2017
El Cajon City Hall, Fifth Floor Conference Room
200 Civic Center Way, El Cajon, CA 92020**

BOARD PRESENT: Scott Buxbaum, Gloria Chadwick, Dennis Davies (Vice Chair), Michelle Nguyen, Sue Rearic, Anthony Shute, and Debra Emerson (Chair)

BOARD ABSENT: None

OB LEGAL COUNSEL: Steven Mattas, representing law firm of Meyers Nave

STAFF PRESENT: Assistant City Manager Majed Al-Ghafry, Director of Finance Clay Schoen, Operations Manager Adriana Castañeda, and Administrative Secretary Ron Luis Valles

CALL TO ORDER AND PLEDGE OF ALLEGIANCE:

The meeting was called to order at 8:01 a.m. by EMERSON.

PUBLIC COMMENT: None

ACTION ITEM NO. 1: APPROVAL OF ACTION MINUTES – May 18, 2016

CHADWICK made a motion, seconded by BUXBAUM, to approve the minutes of the May 18, 2016, meeting.

Motion carried 5-0 (DAVIES AND NGUYEN, abstained due to absence).

ITEM NO. 2: APPROVAL OF AMENDED RECOGNIZED OBLIGATION PAYMENT SCHEDULE (“AMENDED ROPS 16-17”) FOR THE PERIOD January 1, 2017, to June 30, 2017.

SCHOEN summarized the staff report.

DAVIES made a motion, seconded by SHUTE, to adopt Resolution OB-06-16 approving the Amended Recognized Obligation Payment Schedule (“Amended ROPS 16-17”) for the period January 1, 2017, to June 30, 2017.

Motion carried 7-0.

STAFF COMMUNICATIONS:

AL-GHAFRY informed there might be a future meeting pertaining to the 100 Fletcher Parkway property. Additionally, he added that at that meeting, staff will bring a presentation on economic development to the board.

BOARD REPORTS / COMMENTS:

There were none.

ADJOURNMENT:

BUXBAUM made a motion, seconded by CHADWICK, to adjourn the regularly-scheduled meeting of the El Cajon Successor Agency Oversight Board at 8:08 a.m. this 21st day of September 2016, to 8:00 a.m., October 19, 2016, in the Fifth Floor Conference Room at City Hall, 200 Civic Center Way, El Cajon, California.

Motion carried 7-0.

APPROVED:

Debra Emerson, Chairperson

ATTEST:

Oversight Board Secretary

**AGENDA REPORT
CITY OF EL CAJON SUCCESSOR AGENCY OVERSIGHTBOARD
July 19, 2017, Meeting**

SUBJECT: APPROVAL OF THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH BRIXTON FLETCHER, LLC FOR THE SALE AND DEVELOPMENT OF THE SUCCESSOR AGENCY PROPERTY AT 100 FLETCHER PARKWAY (SITE#15), APN# 483-071-52-00

RECOMMENDED ACTION: That the Oversight Board adopt the proposed Resolution No. OB-03-17 to:

1. Approve the proposed Disposition and Development Agreement (the "Agreement") between the City of El Cajon, as Successor Agency to the former El Cajon Redevelopment Agency and Brixton Fletcher, LLC (the "Developer") for the sale and development of the Successor Agency-owned property located at of 100 Fletcher Parkway (APN 483-071-52-00), subject to non-substantive changes as approved by the Executive Director; and
2. Authorize the Executive Director or his designee to execute all documents necessary to implement approved terms and conditions and complete the sale upon approval by the Oversight Board and California Department of Finance ("DOF").

BACKGROUND: Enactment of Assembly Bill 1484 on June 27, 2012, required the City of El Cajon, as Successor Agency to the former El Cajon Redevelopment Agency ("Successor Agency") to prepare and submit a Long Range Property Management Plan ("LRPMP") for the disposition of former redevelopment agency properties. The LRPMP was amended ("Amended Plan"), and approved by the Oversight Board on January 15, 2014, by the DOF on February 21, 2014, and by the City Council as Successor Agency, on March 11, 2014.

Included in the Amended Plan as Site #15 is the real property located at 100 Fletcher Parkway (the "Property"). The subject property is approximately a 3.48 acre parcel on a premium location at the intersection of State Route 67 and Interstate 8. In order to market the Property at its optimum value, the City of El Cajon acquired the adjacent property and access rights to Fletcher Parkway from CalTrans, and sought proposals for the development of both parcels.

In accordance with the Amended Plan, the disposal strategy for the Property was to offer the property for sale to persons on interest list or to offer the property for sale in the open market with the Agency's approved broker, Commercial Properties Group and Retail Insite (the "Broker"). The Broker solicited proposals from potential investors for the development of the property that is best suited for the property and will bring the greatest overall economic benefits to the community. In early May 2015, Brixton Capital and Excel

Hotel Group, Inc. (submitted a viable proposal and this development team was selected because they clearly demonstrated their competency in completing project developments coupled with their experience in hotel development and management and solid financial portfolio. On August 19, 2015, the Oversight Board adopted Resolution OB-05-15 approving the Exclusive Negotiation Agreement (“ENA”) between the Brixton Capital and Excel Hotel Group, Inc, and the Successor Agency for the sale and development of the Property. In a letter dated October 2, 2015, the DOF approved Resolution OB-05-15. On May 18, 2016, the Oversight Board and DOF approved Resolution OB-05-16 to extend the ENA to continue the ongoing negotiations for the sale and planned development of the Successor Agency Property.

Following execution of the ENA, the Successor Agency and the Developer negotiated the terms and conditions of the sale and development of the Property which is presented in the attached proposed Disposition and Development Agreement. Although the ENA was with Brixton Capital they formed a related entity in January of 2017, Brixton Fletcher, LLC, for the purposes of acquiring the site and development of the Project (as defined below). The assignment of the rights under the ENA is permitted in Section G of the ENA. The terms and conditions of the sale include:

1. The Successor Agency parcel and the City parcel shall be sold together to the Developer for the development of the properties. The Developer’s purchase price for both parcels is \$4,075,000. Of the purchase price, \$4,000,000 will be attributed to the Successor Agency parcel.
2. The Developer will be purchasing the Property in “AS IS” condition and will be responsible for demolishing the existing vacant building in preparation for the development of a commercial center consisting of: (a) a 96-room, but no less than 85 room, hotel, its amenities, and ancillary services and (b) approximately 17,000 square feet of retail and restaurant uses (the “Project”).

The Project is part of the City’s efforts to revitalize dormant properties along Fletcher Parkway and to maintain a vibrant and expanding group of businesses in the City to promote economic development that will provide significant public benefits in the form of increased revenues and employment opportunities, and prevention or elimination of blight in the community.

3. The Agreement and related documents involving the Successor Agency requires that upon transfer of the property to the Developer, the Disposition and Development Agreement and all related agreements establishing operating covenants to which the Successor Agency is a party, shall be assigned to the City for enforcement of obligations and enjoyment of benefits at the close of escrow, thereby removing the Successor Agency from any responsibility and further participation.

4. The Disposition and Development Agreement requires the Developer and the Successor Agency to close escrow not later than February 1, 2018, and to complete construction of the Project within 18 months following the close of escrow. All costs related to construction will be the responsibility of the Developer.

During its regularly-scheduled meeting held on July 11, 2017, the City Council, acting in its capacity as the Successor Agency approved the Agreement and related documents.

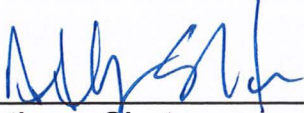
FISCAL IMPACT: Net proceeds from the sale of the Property (\$4,000,000) will be remitted to the County of San Diego Auditor-Controller's Office for distribution to the Affected Taxing Entities. After the close of escrow, the Successor Agency will no longer be responsible for property maintenance and project development costs and other financial obligations associated with the Property

Attachments:

1. Proposed Resolution No. OB-03-17
2. DDA , Operating Covenants
3. Property Profile.
4. DOF letters, Resolution No. OB 05-15 and ENA

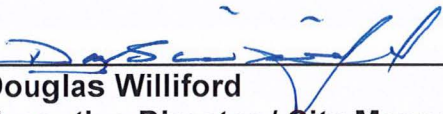
[The remainder of this page intentionally left blank.]

Reviewed by:



Anthony Shute
Director of Community Development

Approved by:



Douglas Williford
Executive Director / City Manager

RESOLUTION NO. OB-03-17

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH BRIXTON FLETCHER, LLC FOR THE SALE AND DEVELOPMENT OF THE SUCCESSOR AGENCY PROPERTY AT 100 FLETCHER PARKWAY (SITE #15) APN# 483-071-52-00

WHEREAS, enactment of Assembly Bill 1484 on June 27, 2012, required the City of El Cajon, as Successor Agency to the former El Cajon Redevelopment Agency (the "Successor Agency") to prepare and submit a Long Range Property Management Plan (the "LRPMP") for the disposition of former redevelopment agency properties; and

WHEREAS, the LRPMP was amended (the "Amended Plan"), and approved by the Oversight Board on January 15, 2014, by the California Department of Finance (the "DOF") on February 21, 2014, and by the City Council as Successor Agency on March 11, 2014; and

WHEREAS, included in the Amended Plan as Site #15 is the real property located at 100 Fletcher Parkway (the "Property"), which is approximately a 3.48 acre parcel on a premium location at the intersection of State Route 67 and Interstate 8; and

WHEREAS, in order to market the Property at its optimum value, the City of El Cajon acquired the adjacent property and access rights to Fletcher Parkway from Caltrans, and sought proposals for the development of both parcels; and

WHEREAS, in accordance with the Amended Plan, the disposal strategy for the Property was to offer the property for sale to persons on an interest list or to offer the property for sale in the open market with the Successor Agency's approved broker, Commercial Properties Group and Retail Insite (the "Broker"); and

WHEREAS, the Broker solicited proposals from potential investors for the development of the property that is best suited for the property and will bring the greatest overall economic benefits to the community; and

WHEREAS, in early May 2015, Brixton Capital and Excel Hotel Group, Inc. (the "Developer") submitted a viable proposal, and this development team was selected because they clearly demonstrated their competency in completing project developments coupled with their experience in hotel development and management and solid financial portfolio; and

WHEREAS, on August 19, 2015, the Oversight Board adopted Resolution OB-05-15 approving the Exclusive Negotiation Agreement (the "ENA") between the Developer, and the Successor Agency for the sale and development of the Property; in a letter dated

October 2, 2015, the DOF approved Resolution OB-05-15; and on May 18, 2016, the Oversight Board and DOF approved Resolution OB-05-16 to extend the ENA to continue the ongoing negotiations for the sale and planned development of the Successor Agency Property; and

WHEREAS, following execution of the ENA, the Successor Agency and the Developer negotiated the terms and conditions of the sale and development of the Property which are presented in the attached proposed Disposition and Development Agreement (the "DDA"); and

WHEREAS, although the ENA was with Brixton Capital, the company formed a related entity in January of 2017, Brixton Fletcher, LLC, for the purposes of acquiring the site and development of the Project (as defined below), and the assignment of the rights under the ENA is permitted in Section G of the ENA. The terms and conditions of the sale include:

1. The Successor Agency parcel and the City parcel shall be sold together to the Developer for the development of the properties. The Developer's purchase price for both parcels is \$4,075,000. Of the purchase price, \$4,000,000 will be attributed to the Successor Agency parcel.
2. The Developer will be purchasing the Property in "AS IS" condition and will be responsible for demolishing the existing vacant building in preparation for the development of a commercial center consisting of: (a) a 96-room, but no less than 85, hotel, its amenities, and ancillary services and (b) approximately 17,000 square feet of retail and restaurant uses (the "Project").

The Project is part of the City's efforts to revitalize dormant properties along Fletcher Parkway and to maintain a vibrant and expanding group of businesses in the City to promote economic development that will provide significant public benefits in the form of increased revenues and employment opportunities, and prevention or elimination of blight in the community.

3. The DDA and related documents involving the Successor Agency requires that upon transfer of the property to the Developer, the Agreement and all related agreements establishing operating covenants to which the Successor Agency is a party, shall be assigned to the City for enforcement of obligations and enjoyment of benefits at the close of escrow, thereby removing the Successor Agency from any responsibility and further participation. The City's resolution approving the sale of the City's parcel to the Developer acknowledges the future assignment of the DDA and related documents by the Successor Agency, after transfer to the Developer, and directs the City Manager to accept the assignment of the Successor Agency's rights and interests in DDA and such other documents related to the Property.
4. The DDA requires the Developer and the Successor Agency to close escrow not later than February 1, 2018, and to complete construction of

the Project within 18 months following the close of escrow. All costs related to construction will be the responsibility of the Developer.

WHEREAS, during its regularly-scheduled meeting held on July 11, 2017, the City Council, acting in its capacity as the Successor Agency, approved the DDA and related documents.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY, AS FOLLOWS:

- A. The Oversight Board finds that:
 - 1. The recitals above are true and correct and have been incorporated herein by reference.
 - 2. The proposed DDA between the Successor Agency and the Developer for the sale and development of the Successor Agency-owned property located at of 100 Fletcher Parkway (APN 483-071-52-00), is hereby approved with such non-substantive changes as approved by the Executive Director, or his designee.
 - 3. The Executive Director, or his designee, is authorized to execute all documents necessary to implement approved terms and conditions and complete the sale upon approval by the Oversight Board.

- B. The Oversight Board hereby APPROVES the proposed DDA between the Successor Agency and the Developer, for the sale and development of the Successor Agency-owned property located at of 100 Fletcher Parkway (APN 483-071-52-00), with such non-substantive changes as approved by the Executive Director, or his designee, and approves execution of said Agreement by the City Manager, or such person designated by the City Manager, acting in the capacity of Chief Executive Officer of the Successor Agency.

PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly-scheduled meeting held this 19th day of July 2017, by the following vote to wit:

AYES :
NOES :
ABSENT :

Debra Emerson, Chairperson

ATTEST:

Oversight Board Secretary

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY

And

**BRIXTON FLETCHER, LLC,
a Delaware limited liability company**

Dated as of _____, 2017

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

THE CITY OF EL CAJON
a charter city and municipal corporation

And

BRIXTON FLETCHER, LLC,
a Delaware limited liability company

Dated as of _____, 2017

TABLE OF CONTENTS

	Page No.
1. The Property.....	2
2. Parties to the Agreement.....	2
2.1 City.....	2
2.2 Developer.....	2
2.3 Prohibition Against Change in Ownership, Management and Control	3
2.4 City Consideration of Proposed Transfer; Release of Transferor Upon Permitted or Approved Transfer	4
2.5 Successors and Assigns.....	4
3. Definitions.....	5
3.1 Defined Terms	5
4. Omitted.	8
5. Project Construction Contract.....	8
6. Acquisition of the Property; Purchase Price	8
6.1 Escrow.....	9
6.2 Deposits Into Escrow.....	9
6.3 Escrow Agent Obligations	9
6.4 Funds in Escrow.....	10
6.5 Failure to Close	10
6.6 Amendments	10
6.7 City’s Conditions to Closing.....	10
6.8 Developer’s Conditions to Closing.....	11
6.9 City Right to Terminate	12
6.10 Developer Right to Terminate	12
6.11 Waiver of Conditions.....	12
6.12 Inspections	13
6.13 “AS-IS”	13
6.14 Developer Right to Terminate Upon Discovery of Hazardous Materials.....	13
6.15 Failure of Conditions Precedent; Termination.....	14
6.16 Condition of Title.....	14
6.17 Taxes and Assessments.....	14
6.18 Conveyance Free of Possession.....	14
6.19 Initiation of Specific Plan	14
7. Development of the Property.....	15
7.1 Scope of Development.....	15
7.2 City Approvals.....	15
7.3 Construction Drawings and Related Documents	15
7.4 Approval of Plans, Drawings, and Related Documents.....	15

7.5	Cost of Construction	16
7.6	City Right to Inspect Developer Records	16
7.7	Schedule of Performance	17
7.8	Bodily Injury and Property Damage Insurance	17
7.9	City and Other Governmental Agency Permits	18
7.10	Rights of Access	18
7.11	Local, State and Federal Laws	18
7.12	Antidiscrimination During Construction	18
7.13	Taxes, Assessments, Encumbrances and Liens	18
7.14	Release of Construction Covenants	18
8.	Use of the Property	19
8.1	Use in Conformance with Plan and Agreement.....	19
8.2	Long Term Maintenance of the Project	19
8.3	Rights of Access	20
8.4	Effect of Violation of the Provisions of this Agreement after Completion of Construction.....	21
8.5	Nondiscrimination.....	21
8.6	Operating Covenant	22
9.	General Provisions	22
9.1	Notices, Demands and Communications Between the Parties	22
9.2	Conflicts of Interest.....	23
9.3	Enforced Delay: Extension of Times of Performance	23
10.	Defaults and Remedies	24
10.1	Defaults – General	24
10.2	Institution of Legal Actions	24
10.3	Applicable Law	24
10.4	Acceptance of Service of Process	24
10.5	Rights and Remedies are Cumulative	24
10.6	Inaction Not a Waiver of Default.....	25
10.7	Attorneys’ Fees	25
10.8	Termination by the Developer	25
10.9	Termination by the City	25
10.10	Term of the Agreement.....	25
11.	Special Provisions.....	25
11.1	Commissions.....	25
11.2	Successors in Interest.....	26
11.3	Entire Agreement	26
11.4	Captions and Construction.....	26
11.5	Severability	26
11.6	Cooperation.....	26
11.7	Further Documents.....	26
11.8	Developer and City Relationship.....	26
11.9	City Approvals and Actions.....	26

11.10	Computation of Time.....	26
12.	Entire Agreement, Waivers.....	27
13.	Time For Acceptance Of Agreement By City	27
14.	Scope and Duration.....	27
15.	Lender Protection.....	27
15.1	Holder Not Obligated to Construct or Operate.....	27
15.2	Notice of Default to Holder; Right to Cure	27
15.3	Failure of Holder to Complete Project.....	28
16.	Specific Plan for Property	29
16.1	Restrictions on Use of Property	29
16.2	Life of Specific Plan	29
16.3	Developer Cooperation and Consent	29
16.4	Binding on Successors	29

ATTACHMENTS

Attachment No. 1	Property Map
Attachment No. 2	Legal Description
Attachment No. 3	Schedule of Performance
Attachment No. 4	Project Budget
Attachment No. 5	Release of Construction Covenants
Attachment No. 6	Scope of Development
Attachment No. 7	Grant Deed
Attachment No. 8	Operating Covenant
Attachment No. 9	Parking Easement

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of _____, 2017 (the “Effective Date”), by and between the **CITY OF EL CAJON**, a charter city and municipal corporation (the “City”), and **BRIXTON FLETCHER, LLC**, a Delaware limited liability company (the “Developer”) (the City and the Developer are collectively reference in this Agreement herein as the “Parties”), with reference to the following:

RECITALS

A. The City owns fee title to certain real property located at 100 Fletcher Parkway in the City of El Cajon, County of San Diego, State of California (“Parcel 1”). Parcel 1 is part of a larger site (the “Property”) comprised of two parcels: Parcel 1, owned by the City, which is the subject of this Agreement, and Parcel 2, which is owned by the Successor Agency to the El Cajon Redevelopment Agency (the “Successor Agency”), which is the subject of a separate agreement between Developer and the Successor Agency (the “Successor Agency Agreement”). The City, the Successor Agency, and Developer contemplate that the entirety of the Property will be conveyed to Developer and developed in accordance with this Agreement and the Successor Agency Agreement.

B. The Parties intend, in this Agreement, to set forth the terms and conditions relating to (i) the City’s sale of the Parcel 1 to Developer and (ii) Developer’s design, construction, and operation, of the Project (as defined in Section 3.1).

C. On or about _____, 2017, the El Cajon Planning Commission adopted Resolution Nos. _____, approving Specific Plan No. _____, for the development and operation of the Project, and found the environmental review of the Project in accordance with the California Environmental Quality Act (CEQA) and Title 14, section 15332 of the California Code of Regulations has been addressed in an Addendum to a previously adopted Final Mitigated Negative Declaration and Mitigation, Monitoring and Reporting Program.

D. On or about _____, 2017, the El Cajon City Council similarly adopted Resolution Nos. _____, approving Specific Plan No. _____, for the development and operation of the Project, and found the environmental review of the Project in accordance with the California Environmental Quality Act (CEQA) and Title 14, section 15332 of the California Code of Regulations has been addressed in an Addendum to a previously adopted Final Mitigated Negative Declaration and Mitigation, Monitoring and Reporting Program.

E. This Agreement and the Developer’s development of the Project 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 goals, objectives and public purposes and provisions of applicable state and local laws and requirements under which the redevelopment of the City’s Fletcher Parkway/Parkway Plaza commercial area, in which the Project is located, has been undertaken.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, City and Developer hereto agree as follows:

1. The Property.

The Property is designated on the "Property Map" which is attached hereto as Attachment No. 1, and described in the "Legal Description," which is attached hereto as Attachment No. 2, both of which are incorporated herein by reference. The Property is located between Fletcher Parkway, Magnolia Avenue and Highway 67, in the City of El Cajon, California.

2. Parties to the Agreement.

2.1 City. The City is the City of El Cajon, its City Council, Planning Commission, departments, elected officials, employees, and any successor to its rights, powers and responsibilities. The principal office of the City is located at 200 Civic Center Way, El Cajon, California 92020.

2.2 Developer. The Developer is Brixton Fletcher, LLC, a Delaware limited liability company, whose principal office and mailing address of the Developer for the purposes of this Agreement is 120 South Sierra Avenue, Solana Beach, California 92075, Attn: Travis King. "Developer" shall mean any transferee of Developer's interest in the Project or Hotel Component made in accordance with Section 2.3 of this Agreement.

The Developer represents and warrants to the City as follows:

(a) The Developer is a duly established Delaware limited liability company and has duly authorized, executed and delivered this Agreement and any and all other agreements and documents required to be executed and delivered by the Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement.

(b) The Developer does not have any material contingent obligations or any material contractual agreements which could materially adversely affect the ability of the Developer to carry out its obligations hereunder.

(c) There are no material pending or, so far as is known to the Developer, threatened, legal proceedings to which the Developer is or may be made a party or to which any of its property is or may become subject, which have not been fully disclosed in the documentation submitted to the City, which could materially adversely affect the ability of the Developer to carry out its obligations hereunder.

(d) There is no action or proceeding pending or, to the Developer's best knowledge, threatened, relating to the dissolution or liquidation of the Developer, and there is no action or proceeding pending or, to the Developer's best knowledge, threatened by or against the Developer, which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of the Developer to carry out its obligations hereunder.

(e) The Developer has performed, and will perform, all of its obligations to be performed at or prior to this date, or subsequent to this date, in accordance with the "Schedule of Performance," which is attached hereto as Attachment No. 3 and incorporated herein, and is not in default hereunder.

Each of the foregoing items (a) to (e), inclusive, shall be deemed to be ongoing representations and warranties; however, provided the Developer gives the notice required by the following sentence, a legal proceeding commenced after the date hereof shall not constitute a breach of item (c) above. The Developer shall advise the City in writing if there is any material change pertaining to any matters set forth or referenced in the foregoing items (a) to (e), inclusive.

2.3 Prohibition Against Change in Ownership, Management and Control. The qualifications and identity of the Developer are of particular interest and concern to the City. It is because of these qualifications and identities that the City has entered into this Agreement with the Developer. Consequently, except as expressly set forth in this Section 2.3, no person, whether a voluntary or involuntary successor in interest of the Developer, shall acquire any rights or powers under this Agreement nor shall the Developer assign or transfer all or any part of this Agreement or any rights hereunder without the prior written approval of the City. Written approval of the City shall also be required prior to any and all changes whatsoever in the identity of the person in control of the Developer, including any change in, or addition of, general partners of the Developer. Any purported transfer, voluntary, involuntary, or by operation of law, except with the prior written consent of the City in accordance with this Section 2.3, shall constitute a default of Developer and shall confer no rights whatsoever upon any purported assignee or transferee.

Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment of this Agreement or conveyance of the Property, the Project, or any part thereof, shall not be required in connection with paragraphs (a) through (d) below and shall not be unreasonably withheld in connection with (e) below:

(a) Any transfer by the Developer to a "Related Person or Entity" (as defined below).

(b) A transfer consisting of the conveyance or dedication of any portion of the Property to the City or other appropriate governmental agency or public utilities, where the granting of such easements permits or facilitates the development of the Property and the Project.

(c) A partial assignment and/or transfer by the Developer of the Hotel Component to Excel Hotel Group, Inc. ("Excel") or an Excel Related Person or Entity.

(d) A transfer by the Developer to an entity that is not a Related Person or Entity, but which is approved by Hilton Franchise Holding, LLC, for continued operation as a Hampton Inn or other Permitted Replacement Hotel.

(e) Any transfer for (i) financing purposes to the holder of a mortgage; (ii) any refinancing or permanent financing of the mortgage; (iii) any transfer to any person or entity pursuant to foreclosure or deed in lieu of foreclosure of any such mortgage referred to in clauses (i) or (ii).

As used in this Agreement, a "Related Person or Entity" shall mean an entity in which Developer or any entity which controls, is controlled by or under with common control by Developer, provided, however, that in the event such transfer or assignment includes the Hotel

Component, such Related Person or Entity shall demonstrate that such person or entity has been approved in writing by Hilton Franchise Holding, LLC, to operate the Hotel Component of the Project.

In the event of any transfer by Developer not requiring the City's prior approval, including a partial assignment or transfer of the Hotel Component to Excel, Developer agrees that at least thirty (30) days prior to such transfer, Developer shall give written notice to the City of such transfer and Developer shall provide satisfactory evidence that the transferee has assumed or upon the effective date of transfer will assume in writing through an assignment and assumption agreement, in a form reasonably acceptable to the City, all of the obligations of the Developer under this Agreement related to the portion of the property and/or Agreement being assigned and/or transferred that remain unperformed as of such transfer or which arise from and after the date of transfer.

Following a transfer of the Hotel Component, (i) the Developer of the Retail Component shall be solely responsible for the development of the Retail Component and shall not be responsible for development of the Hotel Component and (ii) the Developer of the Hotel Component shall be solely responsible for development of the Hotel Component and shall not be responsible for development of the Retail Component. A default by one Developer shall not be considered a Default by the other Developer.

2.4 City Consideration of Proposed Transfer; Release of Transferor Upon Permitted or Approved Transfer. If the Developer desires to cause a transfer of any of its interests in this Agreement or the Property and such transfer requires the City's approval under Section 2.3, Developer shall request in writing to the City that it consent to such transfer, which consent shall not be unreasonably delayed, conditioned, or withheld. A transfer shall be conditioned upon: (i) the proposed assignee expressly assuming, in writing, the unexecuted obligations hereunder of the transferor/assignor, as applicable, as to times following the effective date of the assignment and (ii) the proposed assignee demonstrating to the reasonable satisfaction of the City that such person or entity has adequate financial capacity to complete the development and/or operation of the Project on the Property.

Notwithstanding any other provision set forth in this Agreement to the contrary, upon the effective date of a permitted or approved transfer, and provided that the transferor/assignor shall have delivered to the City an executed assignment and assumption agreement in a form reasonably acceptable to City legal counsel, the transferor/assignor shall be released from all further liabilities and obligations hereunder and the Operating Covenant that have been so transferred and assigned.

2.5 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall run with the Property and be binding upon the Developer and the City and their successors and assigns. Whenever the term "Developer" or "City" is used in this Agreement, such term shall include any other successors and assigns.

3. Definitions.

3.1 Defined Terms. As used in this Agreement, capitalized terms are defined where first used or as set forth in this Section 3.1. Capitalized terms used in an attachment attached hereto and not defined therein shall also have the meanings set forth in this Section 3.1.

“Building Permit” means all permits issued by City and required for commencement of construction of the Project.

“Business Day” means a weekday on which El Cajon City Hall is open to conduct the public’s business.

“City” means the City of El Cajon, California.

“Construction Contract” has the meaning set forth in Section 5(a).

“County” means the County of San Diego, California.

“Developer” has the meaning set forth in the opening paragraph of this Agreement, subject to Section 2.2.

“Developer Title Policy” has the meaning set forth in Section 6.8(c).

“Director” means the Assistant City Manager and Director of the El Cajon Public Works Department, or an individual designated as the Director by the Assistant City Manager and Director of the El Cajon Public Works Department.

“Escrow” means the escrow through which the Property Closing is conducted.

“Escrow Agent” means First American Title Company.

“Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County of San Diego, the City and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer, or the Project.

“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 that is (i) defined as a “hazardous waste,” “acutely hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Sections 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground

Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., (xii) methyl-tertiary butyl ether, (xiii) perchlorate or (xiv) 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 the environment. For purposes hereof, “Hazardous Materials” excludes materials and substances in quantities as are commonly used in the construction and operation of a hotel, provided that such materials and substances are used in accordance with all applicable laws.

“Hotel” means the proposed 85 room or more Hampton Inn (or a Permitted Replacement Hotel) that is the subject of this Project.

“Hotel Component” means that portion of the Project that is exclusively dedicated to the Hotel and its related facilities.

“Indemnitees” means the City, its subdivisions, departments, and its respective elected and appointed officers, officials, members, employees, representatives, agents, volunteers, predecessors, and successors.

“Official Records” means the Official Records of the County.

“Operator” means the Developer of the Hotel Component or its designee.

“Operating Covenant Termination Date” means fifteen (15) years from the date the Release of Construction Covenants is issued or required to be issued.

“Outside Closing Date” means the time frame identified in the Schedule of Performance (Attachment No. 3) for closing escrow on the sale of the Project Site, but in no event more than twelve (12) months from the Effective Date of this DDA.

“Parcel 1” means that portion of the Property owned by the City, designated as Parcel 1 in the depiction in Attachment No. 1.

“Parcel 2” means that portion of the Property owned by the Successor Agency, designated as Parcel 2 in the depiction in Attachment No. 1.

“Permitted Replacement Hotel” means (i) another Hilton brand that meets or exceeds the attributes of a “Hampton Inn” or (ii) another national hotel franchisor’s brand comparable to “Hampton Inn.”

“Project” means the Developer’s acquisition of the Property, and the design and construction of the following two Project components: (i) an approximately 85 room or more, limited service Hampton Inn (or a Permitted Replacement Hotel) (the “Hotel Component”), and the continuous operation of the Hotel, its amenities, and ancillary services, on the Property by Operator for a minimum of fifteen (15) years, on approximately 1.5 acres of land, depicted as Parcel 3 on the Tentative Parcel Map, and (ii) approximately 17,000 rentable square feet of retail and/or restaurant on the remaining 2.5 acres of land, depicted as Parcels 1 and 2 on the Tentative Parcel Map (the “Retail Component”), each in accordance with this Agreement, including, without limitation, in accordance with the Scope of Development and the Final Construction Documents.

“Project Budget” means the preliminary budget materials attached hereto and incorporated herein as Attachment No. 4.

“Project Costs” means all costs of any nature incurred in connection with the planning, design, and development of the Project.

“Property” means that certain real property depicted in Attachment No. 1, which is attached hereto and incorporated herein by this reference.

“Property Closing” means closing of the conveyance, and delivery of possession, of the Property to Developer pursuant thereto.

“Public Improvements” means all on- and off-site improvements that (i) are required to be constructed to serve the Project and (ii) will be dedicated to the City of El Cajon upon Developer’s completion thereof. The Public Improvements are described in the Scope of Development.

“Release of Construction Covenants” means a release document substantially in the form attached hereto and incorporated herein as Attachment No. 5 to be executed by City and recorded in the Official Records upon Developer’s completion of the Project, as described in Section 7.14.

“Retail Component” means that portion of the Project that is exclusively dedicated to the retail improvements (exclusive of the Hotel) and its related facilities.

“Schedule of Performance” means the Schedule of Performance attached hereto and incorporated herein as Attachment No. 3.

“Scope of Development” means the Scope of Development attached hereto and incorporated herein as Attachment No. 6.

“Specific Plan” means a specific plan, as defined in California Government Code sections 65450 *et seq.*, and Chapter 17.70 of the El Cajon Municipal Code, which is applicable to the Property and which is required by Section 16 of this Agreement. The Specific Plan may be supplemental and in addition to, or may be a part of, any existing specific plans applicable to the Property.

“Successor Agency,” or “Agency,” means the City, solely in its capacity as the successor agency to the Redevelopment Agency for the City of El Cajon. The Successor Agency owns Parcel 2.

“Title Company” means First American Title Company, or such other title insurance company as may be agreed to by Developer and Executive Director.

4. Omitted.

5. Project Construction Contract.

(a) The anticipated sources and uses of funds for the development of the Project are set forth in the Project Budget (Attachment No. 4). At or prior to the Property Closing, and as a condition precedent to the City’s obligation to transfer Parcel 1 to Developer, the Developer or Developers if the Hotel Component has been transferred to a second Developer shall submit to the Director a copy of the fee-based construction contract or guaranteed maximum price construction contract between each Developer and its respective general contractor for all of the improvements required to be constructed by such Developer hereunder, certified by such Developer to be a true and correct copy thereof (the “Construction Contract”).

(b) In lieu of a corporate surety bond or bonds or other security instrument, with the Developer’s contractor or contractors as principal, in a penal sum not less than one hundred percent (100%) of the amount of the cost of constructing the Project guaranteeing completion of construction and the payment of wages for services engaged and bills contracted for materials, supplies, and equipment used in the performance of the work, and protecting the Developer from any liability, losses, or damages arising therefrom, the Director shall have the right to inspect, at reasonable times and reasonable places, Developer’s current development financial records to ensure the City that the Project Budget remains appropriate for the development of the Improvements. The Director shall proceed in accordance with Section 7.6, below, and if the Director determines, in his reasonable discretion, that the Project Budget is insufficient to complete the construction of the Improvements, and correction of any deficiencies cannot be completed, Developer shall agree to a requirement that disbursements from the construction loan from its lender shall require the approval of the Director or his assignee, and shall cooperate with the City in establishing this obligation with its lender. The requirements of this subsection (b) shall terminate upon the issuance of a certificate of occupancy by the City’s chief building official or his designee. The Director may accept alternate security in his or her sole and absolute discretion.

6. Acquisition of the Property; Purchase Price.

The Developer shall acquire a fee simple title to Parcel 1 pursuant to the grant deed in the form attached hereto and incorporated herein as Attachment No. 7 (the “Grant Deed”). Developer’s purchase price for the Property (the “Purchase Price”) is FOUR MILLION SEVENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$4,075,000.00) that will be paid through a deposit, into escrow as further described below. Of the Purchase Price \$_____ will be attributed to Parcel 1, and \$_____ will be attributed to Parcel 2, which will be paid to the Successor Agency.

6.1 Escrow. City and Developer agree to open an Escrow with First American Title Company (the "Escrow Agent"), by the time established in the Schedule of Performance. This Agreement constitutes the City's and Developer's escrow instructions for the City's sale and the Developer's purchase of the Parcel 1 and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the Escrow. The Escrow Agent is hereby empowered to act under this Agreement, and the Escrow Agent, upon indicating within five (5) days after the opening of the Escrow its acceptance of the provisions of this Section 6.1, in writing, delivered to the City and the Developer, shall carry out its duties as Escrow Agent hereunder. In the event of any conflict between any additional escrow instructions required by the Escrow Agent and the provisions of this Agreement, the provisions of this Agreement shall supersede and control. Any amendment of the escrow instructions set forth or described herein shall be in writing and signed by both the City and the Developer. All communications from the Escrow Agent to City or Developer shall be in writing and directed to the addresses and in the manner established in Section 9.1 of this Agreement for notices, demands and communications between City and Developer.

6.2 Deposits Into Escrow. City and Developer shall deposit the following documents and pay into the Escrow the following fees, charges, and costs promptly after the Escrow Agent has notified the City and the Developer of the total amount of such fees, charges, and costs, but not earlier than five (5) days prior to the scheduled date for the Property Closing:

- a. Developer shall deposit the Purchase Price;
- b. City and Developer shall each pay one-half of the Escrow Fee;
- c. City shall pay the costs, if any, of drawing the Grant Deed;
- d. City shall pay the recording fees, if any;
- e. City and Developer shall pay their respective notary fees;
- f. City shall pay for any transfer tax and any state, county or city documentary stamps; and
- g. City shall deposit with the Escrow Agent the fully executed Grant Deed, and any other document required by the City or Escrow Agent for execution.

6.3 Escrow Agent Obligations. The Escrow Agent shall notify the City and Developer when all outstanding documents, including the Grant Deed, have been executed and submitted to Escrow by the applicable party.

Upon confirmation by the Escrow Agent that all of the City's Conditions to Closing and all of the Developer's Conditions to Closing have been satisfied, or waived by the appropriate party, the Escrow Agent shall record the following documents in the following order of recordation: Grant Deed and _____.

6.4 Funds in Escrow. All funds received in the Escrow shall be deposited by the Escrow Agent in a general escrow account with any state or national bank doing business in the State of California and reasonably approved by the Director and Developer, and such funds may be combined with other escrow funds of the Escrow Agent. All disbursements shall be made on the basis of a thirty (30) day month.

6.5 Failure to Close. If the Property Closing does not occur on or before the Outside Closing Date, any party who then shall have fully performed the acts to be performed before the conveyance of Parcel 1 may, in writing, demand the return of its money, papers, or documents from the Escrow Agent. No demand for return shall be recognized until fifteen (15) days after the Escrow Agent (or the party making such demand) shall have mailed copies of such demand to the other party. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party within the fifteen (15) day period, in which event the Escrow Agent is authorized to hold all money, papers and documents until instructed by mutual agreement of the parties or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the Escrow Agent shall conduct the Property Closing as soon as possible.

If objections are raised in the manner provided above, the Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both the Director and Developer, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction. If no such objections are made within said fifteen (15) day period, the Escrow Agent shall immediately return the demanded money, papers or documents.

6.6 Amendments. Any amendment to these Escrow instructions shall be in writing and signed by the Director or City legal counsel, and Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as the Escrow Agent under such amendment.

6.7 City's Conditions to Closing. The City's obligations to convey Parcel 1 and the closing of Escrow shall, in addition to any other conditions set forth herein in favor of the City, be conditional and contingent upon the satisfaction, or waiver by the City in its sole and absolute discretion, on or before the Outside Closing Date, of each and all of the following conditions (collectively, "City's Conditions to Closing"):

(a) Developer shall have deposited into Escrow the Purchase Price and all other sums and documents required by the Developer by this Agreement.

(b) Developer shall have deposited into Escrow any other document required by the Escrow Agent for execution.

(c) The Director shall have received a true and complete copy of a Construction Contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Project at a cost consistent with the costs set forth therefor in the Project Budget.

(d) The Developer shall have obtained all required Project entitlements.

(e) The Director shall be reasonably satisfied that construction of the Project will commence not later than six (6) months after the Property Closing and will thereafter be completed in a reasonably diligent and continuous manner.

(f) The Title Company is prepared to issue a CLTA Policy of title insurance naming City as the insured, and showing Developer as holding title to Parcel 1 (“City Title Policy”).

(g) The representations of Developer contained in this Agreement shall be correct in all material respects as of the Property Closing as though made on and as of that date and, if requested by the Director, City shall have received a certificate to that effect signed by Developer.

(h) No Event of Default by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both would constitute an Event of Default by Developer and, if requested by the Director, City shall have received a certificate to that effect signed by Developer.

(i) Developer shall have executed and delivered to Escrow a disposition and development agreement (or executed counterpart thereof) with the Successor Agency, in form and content acceptable to the City, for Developer’s acquisition and subsequent development of Parcel 2.

6.8 Developer’s Conditions to Closing. Developer’s obligations to purchase Parcel 1 from the City and the closing of the Escrow shall, in addition to any other conditions set forth herein in favor of the Developer, be conditional and contingent upon the satisfaction, or waiver by the Developer in its sole and absolute discretion, on or before the Outside Closing Date, of each and all of the following conditions (collectively, the “Developer’s Closing Conditions”):

(a) City has deposited into Escrow the Grant Deed, duly executed and acknowledged by the City, and all other sums and documents required of City by this Agreement.

(b) City shall have delivered to Escrow a disposition and development agreement (or executed counterpart thereof) executed by the Successor Agency, in form and content acceptable to the Developer, for Developer’s acquisition and subsequent development of Parcel 2.

(c) On the Closing Date, the Title Company shall be prepared to issue its ALTA extended coverage form policy of title insurance, with liability in the amount of \$ _____, showing title to Parcel 1 vested in Developer, subject only to such other exceptions as Developer previously approved (the “Developer Title Policy”). The Developer shall further deposit such funds necessary to pay the difference between the premiums for the City Title Policy and the Developer’s Title Policy.

(d) Developer shall have approved of the condition of title to Parcel 1. With respect thereto, City and Developer acknowledge that Developer has obtained from the Title Company a Preliminary Title Report, with copies of all exceptions noted therein, as order

number 846973 (the "Report"). If Developer objects to any exception or exceptions in the Report, City shall notify Developer within ten (10) days whether or not City will cause such exception to be removed by the Property Closing. If City declines to cause any such exception to be removed, Developer shall, within ten (10) days, elect either to waive the exception and/or objection or terminate this Agreement by written notice to City.

(e) No Event of Default by City shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by City.

(f) City shall have Approved all Required Entitlements necessary for development of the Project, including without limitation, the Parcel Map and the Specific Plan. The term "Required Entitlements" shall mean all entitlements, permits, approvals, consents and waivers from any federal, state or local, governmental or quasi-governmental agency, body or authority (each an "Authority") and which may be necessary or desirable for Developer's contemplated development and use of the Property consistent with the Qualifying Development, including, as applicable, without limitation, use permits, including conditional use permits, and/or any required approvals under the California Environmental Quality Act, all of which (A) shall be in such form, on such terms and subject only to such conditions as are acceptable to Developer in its sole discretion, and (B) shall have been "Approved" (as defined below) by all applicable Authorities. The term "Approved" shall mean the date on which the Required Entitlements have been approved and, if applicable, executed by all applicable Authorities, including, without limitation, the City of El Cajon, and the greater of (1) a period of ninety (90) days has passed after the date on which the City has voted in favor of the adoption of and has taken final action on all of the Required Entitlements (the "Final Action Date"), and (2) a period of thirty-five (35) days has passed after the filing and posting of a notice of determination, related to such final action by the City of El Cajon with the County Clerk for the County of San Diego in accordance with Section 21152 of the Public Resource Code or, if no such notice of determination, as applicable, has been filed, a period of one hundred eighty (180) days has passed after the Final Action Date, all without an administrative appeal or judicial challenge to the Required Entitlements having been filed, or, if an administrative appeal or judicial challenge has been filed, such administrative appeal or judicial challenge has been finally resolved in a manner acceptable to Developer in its sole discretion.

6.9 City Right to Terminate. Prior to the Property Closing, City, if it is not then in material default under this Agreement, may terminate this Agreement by giving thirty a (30) days' written notice to Developer if, by the Outside Closing Date, any of the conditions set forth in Section 6.7 have not been satisfied.

6.10 Developer Right to Terminate. Prior to the Property Closing, Developer, if it is not then in material default under this Agreement, may terminate this Agreement by giving thirty (30) days' written notice to City if, by the Outside Closing Date, any of the conditions set forth in Section 6.8 have not been satisfied.

6.11 Waiver of Conditions. The conditions set forth in Section 6.7 are for City's benefit only and the Director may waive all or any part of such rights by written notice to

Developer. The conditions set forth in Section 6.8 are for Developer's benefit only and Developer may waive all or any part of such rights by written notice to City.

6.12 Inspections. The Developer shall conduct the Developer's own investigation of the Property, including but not limited to its physical condition, the soils and toxic conditions of the Property and all other matters which in the Developer's judgment affect or influence the Developer's proposed use of the Property and the Developer's willingness to develop the Property pursuant to this Agreement. The Developer's investigation may include, without limitation, the preparation by a duly licensed soils engineer of a soils report for the Property. If, in the Developer's reasonable judgment, the physical condition of the Property is unsuitable for the use or uses to which the Property will be put to the extent that it is not economically feasible for the Developer to develop the Property pursuant to this Agreement, then the Developer shall have the option either to take any action necessary to place the Property in a condition suitable for development, or terminate this Agreement pursuant to Section 6.10 hereof. If the Developer has not notified the City of its determinations concerning the suitability of the physical condition of the Property by the date scheduled for the Property Closing, the Developer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section.

6.13 "AS-IS". Developer acknowledges and agrees that it is purchasing the Property solely in reliance on its own investigation, and that no representations and/or warranties of any kind whatsoever, express or implied, have been made by City, or by its officers, employees, representatives or agents. Developer further acknowledges and agrees that Developer will be purchasing the Property in "AS IS" condition with all faults and conditions then existing in and on the Property, whether known or unknown; provided that the foregoing shall not constitute a release of City under any statute or common law theory. Notwithstanding the foregoing, City acknowledges and agrees that neither this Section 6.13, nor any other term, provision or condition of this Agreement obligates Developer, as between it and City, and prior to the Property Closing, to remediate, or to incur any cost to remediate, any Hazardous Materials that were released or existed on the Property prior to the Property Closing. Developer acknowledges and agrees that, as between it and City, nothing in this Agreement shall ever be deemed, construed or interpreted to obligate City to remediate, or to incur any expense to remediate, any Hazardous Materials discovered on the Property either before or after the Property Closing unless and until City expressly agrees to do so in writing. The City represents and warrants to Developer that the City has disclosed to Developer all information that the City has in its possession concerning the presence of Hazardous Materials at the Property.

6.14 Developer Right to Terminate Upon Discovery of Hazardous Materials. If, prior to the Property Closing, Developer discovers Hazardous Materials the cost of remediation of which exceeds the limits of any applicable insurance policy, then Developer, subject to the condition set forth below, shall have the right, prior to the Property Closing, to terminate this Agreement by thirty (30) days' written notice to City. Developer's right so to terminate this Agreement shall be subject to the condition precedent that Developer first have (a) submitted to City any and all information then available to Developer as to the nature and scope of the Hazardous Materials discovered and as to the cost estimated to remediate them, if any such cost estimate exists, and (b) offered to City the right, within fifteen (15) days after receipt of said statement, or such longer period of time as may reasonably be required by City to obtain competitive bids for the work, to elect, at its sole and absolute discretion, to cause such work to

be performed, at City's sole cost and expense, to the reasonable satisfaction of Developer. If City so elects and causes such work to be performed as soon as reasonably possible, then Developer shall not have the right to terminate this Agreement under this Section 6.14 provided the work can be, and is, completed by the Outside Closing Date.

6.15 Failure of Conditions Precedent; Termination. In the event that by the Outside Closing Date each of the conditions set forth in Section 6.7 is not fulfilled, or waived by City pursuant to Section 6.11, City may at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the parties from further obligations hereunder. In the event that by the Outside Closing Date each of the conditions set forth in Section 6.8 are not fulfilled, or waived by the Developer pursuant to Section 6.11, Developer may, at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the parties from further obligations hereunder. In the event this Agreement is terminated, all documents and funds delivered by the Developer to City or Escrow Agent shall be immediately returned to Developer and all documents and funds delivered by City to Developer or Escrow Agent shall be returned immediately to City. Nothing in this Section 6.15 shall be construed as releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder.

6.16 Condition of Title. The City shall convey to the Developer fee simple title to Parcel 1 free and clear of the deed restriction prohibiting access from the Property to Fletcher Parkway and all other recorded liens, encumbrances, assessments, leases and taxes, except the provisions of the Grant Deed, and the printed conditions and exceptions contained in the City Title Policy as approved the Developer pursuant to Section 6.8(d). Developer shall have the right to reasonably approve or disapprove the condition of title as reflected in the City Title Policy; provided, however, that Developer hereby approves the lien of current non-delinquent real property taxes and assessments, if any.

6.17 Taxes and Assessments. Ad valorem taxes and assessments, if any, on Parcel 1, and taxes upon this Agreement or any rights hereunder levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the City. All ad valorem taxes and assessments levied or imposed for any period of time commencing after the close of the Escrow shall be paid by the Developer.

6.18 Conveyance Free of Possession. Parcel 1 shall be conveyed free of any possession or right of possession by any person except that of Developer and the easements and other encumbrances of record (subject to Developer's right to review the condition of title pursuant to Section 6.8(c)).

6.19 Initiation of Specific Plan. Prior to the Property Closing, the City shall have approved, or (if not approved) initiated the Specific Plan as described in Section 16 of this Agreement and the Developer shall have deposited with Escrow its waiver of objections, and its irrevocable and written consent to the Specific Plan application.

7. Development of the Property.

7.1 Scope of Development. The Property shall be developed as provided in the Scope of Development which is attached hereto as Attachment No. 6 and incorporated herein by reference. The improvements to be constructed on the Hotel Component of the Property include a sixty thousand (60,000) square foot, 85-room or more, Hampton Inn (or a Permitted Replacement Hotel), and on the Retail Component of the Property include approximately seventeen thousand (17,000) rentable square feet of retail and/or restaurant improvements, with a shared parking area and shared access areas for both Components on each Component (collectively are referred to herein as the "Improvements"). The Developer or Developers shall commence and complete construction of the Improvements by the respective times established therefore in the Schedule of Performance, subject to Section 9.3. The development shall be constructed consistent with plans and specifications submitted to and approved by the City in conjunction with required planning entitlements and applicable building codes, and shall incorporate or show compliance with all applicable conditions of project approval.

7.2 City Approvals. Approval by the City pursuant to Sections 7.3, 7.4 and 7.5 hereof shall be required in addition to all City approvals. The Property shall be developed as established in this Agreement and such documents, except as changes may be mutually agreed upon between the Developer and the City. Any such changes shall be within the limitations of the Scope of Development.

7.3 Construction Drawings and Related Documents. By the time set forth in the Schedule of Performance, the Developer shall prepare and submit to the City construction drawings, landscape plans, and related documents for development of the Property for building permit(s).

During the preparation of all drawings and plans, City staff and the Developer shall hold progress meetings as needed to coordinate the preparation of, submission to, and review of drawings, plans and related documents by the City. The City staff and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City can receive prompt and speedy consideration. The Developer shall be obligated to obtain all City approvals, including building permits and operating permits required for the construction of the Improvements.

The City agrees that all aspects of entitlement permit review and processing and inspections will receive expedited processing, within reason, and subject to City's obligations under other entitlement applications. Nothing herein shall require the City, as the plan reviewing and permitting agency, to disregard local, state, or federal laws relative to the proposed development and shall be managed directly by the City Manager's office with use of senior and experienced staff.

7.4 Approval of Plans, Drawings, and Related Documents. The City shall have the right of planning, including plan check, review of all plans and submissions including any changes therein. During each stage of the processing of the plans, drawings and related documents for the Improvements, the City shall have the right to reasonably require additional information and shall advise the Developer if any submittal of plans or drawings is not complete

or not in accordance with City procedures. If the City determines that such a submittal is not complete or not in accordance with such procedures, such tender shall not be deemed to constitute a submittal for purposes of satisfying the Schedule of Performance. If the City does not take action with respect to any submittal within the time set forth in the Schedule of Performance, the Developer's time to perform hereunder shall be extended by one day for each day by which the City's action is late.

If the Developer desires to make any substantial changes in the construction plans after their approval by the City, the Developer shall submit the proposed change to the City for their approval. If the construction plans, as modified by the proposed change, conform to the requirements of Section 7.2 of this Agreement and the Scope of Development, the City will approve or reject the proposed change and notify the Developer in writing within the time period set forth in the Schedule of Performance. In the event that the City has neither approved or rejected such proposed change within such time period day period, the Developer may notify the City in writing that the City is in violation of such requirement and that such change will be deemed approved within fifteen (15) days of the City's receipt of such notice, and if the City still has not accepted or rejected such changes within such additional fifteen (15) day period, the proposed change shall be deemed approved.

7.5 Cost of Construction. The Developer contemplates financing the Project with a combination of equity and debt. The cost to acquire the Property and construct the Improvements is set forth in the "Project Budget", which is attached hereto as Attachment No. 4 and incorporated herein. The cost of constructing improvements for and the development of the Project and constructing all of the on-site and off-site improvements at or about the Property (e.g. all improvements outside of the "building envelope") required to be constructed in connection with the development of the Project, including without limitation all landscaping, lighting, curbs, gutters and pavement, shall be borne initially by Developer provided, however, the City shall reimburse the Developer for the cost of such off-site improvements described in Attachment "6" within thirty (30) days after the City's receipt of an invoice thereof from Developer. It is uncertain whether the conveyance of the Property to Developer, or any other form of City assistance in relation to the Project would make any part of the construction or development a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("Prevailing Wage Law"), such that it would cause Developer to be required to pay prevailing wages for any aspect of the development, and the City makes no representations or warranties to Developer that the Project is subject to the Prevailing Wage Law. Accordingly, Developer agrees to indemnify, defend (with counsel approved by City) and hold the City, its subdivisions, departments and its respective appointed and elected officers, officials, agents and employees from and against any actions, fines, penalties, attorneys' fees and damages, arising out of any claims that the Project is subject to the Prevailing Wage Law, including any administrative proceeding or other legal challenge.

7.6 City Right to Inspect Developer Records. The City and its authorized representatives shall, at all times after reasonable prior notice, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of the Developer which in any manner relate to the costs of the Improvements as set forth in paragraph (b) of Section 5 under this Agreement. The Developer's staff shall cooperate fully with the Director or City's authorized auditors when they conduct such audits. Within thirty (30)

days of the submittal of such audit report, the Developer shall provide a written response to all conditions or findings reported in such audit report. The response must discuss each condition or finding and set forth a proposed resolution, including a schedule for correcting any deficiency. All conditions or correction actions shall take place within six (6) months after receipt of the audit report unless the Director or his or her designee authorizes an extension of time to submit such corrections. The failure of Developer to complete the corrections, if any, is a condition precedent to the Director's actions as described in paragraph (b) of Section 5 of this Agreement.

7.7 Schedule of Performance. The Developer shall promptly begin and thereafter diligently prosecute to complete the Project, with all construction commencing and being completed within the times specified therefor in the Schedule of Performance, subject to extensions permitted by Section 9.3 of this Agreement. It is understood and agreed by Developer that no Certificate of Occupancy for the Retail Component will be issued until (i) Developer has obtained all building permits and has begun constructing the Hotel Component beyond the Hotel's foundation and (ii) the Operating Covenant has been executed and recorded.

7.8 Bodily Injury and Property Damage Insurance. The Developer shall defend, indemnify, assume all responsibility for and hold the City, its subdivisions, departments, officers, elected officials, and employees, harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including reasonable attorney's fees and costs), which may be caused by any of the Developer's activities under this Agreement, whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of the Agreement; provided, however, the foregoing shall not apply to any such claims or suits to the extent arising from the negligence or willful misconduct to the City or its subdivisions, departments, officers, elected officials, employees agents or contractors. The Developer shall take out and maintain during the life of this Agreement a commercial general liability policy with limits of a minimum of \$2,000,000 and State of California required levels of Workers' Compensation insurance, only if Developer has employees, for all work performed under this Agreement in accordance with City requirements. Developer shall name City, its subdivisions, departments, officers, elected officials, and employees as additional insured on the policy of commercial general liability insurance. The policy of commercial general liability insurance shall be approved by the City's legal counsel.

The Developer shall furnish a certificate of insurance for the commercial general liability policy countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage certified by an endorsement to the policy as stated in the certification. This countersigned certificate and policy endorsement shall name the City (and its subdivisions, departments, officers, elected officials, agents, representatives, consultants and employees) as additional insureds under the policy. The certificate by the insurance carrier and policy endorsement shall contain a statement of obligation on the part of the carrier to notify the City 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, but only if it is the practice of the insurance carrier to provide such notification. The commercial general liability coverage provided hereunder by the Developer shall be primary insurance and not contributing with any insurance maintained by the City, and the policy shall contain such an endorsement. The insurance policy or endorsement

shall contain a waiver of subrogation for the benefit of the City, and shall include finished products coverage. The Developer shall provide the required certificate at or prior to the Property Closing.

The Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

7.9 City and Other Governmental Agency Permits. Before commencement of construction or other works of improvement upon the Property, the Developer shall, at its own expense, take all actions necessary and proper to secure or cause to be secured any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work. The City will, without obligation to incur liability or expense therefor, use its best efforts to expedite issuance of building permits for construction that meets the requirements of the City code.

7.10 Rights of Access. For the purpose of assuring compliance with this Agreement, representatives of the City shall have the right of access to all portions of the Property during the construction period without charges or fees, upon providing notice twenty-four (24) hours in advance to Developer, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Project, so long as they comply with all safety rules. Such representatives of the City shall be those who are so identified in writing by the Director. The City shall indemnify and hold the Developer harmless from any bodily injury arising out of the activities of the City as referred to in this Section 7.10.

The Developer and the City agree to cooperate in placing and maintaining on the Property during construction one sign indicating the respective roles of the Developer and the City in the Project.

7.11 Local, State and Federal Laws. The Developer shall carry out the construction of the Project in conformity with all applicable laws, including all applicable federal and state labor standards; provided, however, Developer and its contractors, successors, assigns, transferees, and lessees do not waive their rights to contest any such laws, rules or standards.

7.12 Antidiscrimination During Construction. The Developer, for itself and its successors and assigns, agrees that in the construction of the Project provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual preference or age.

7.13 Taxes, Assessments, Encumbrances and Liens. The Developer shall, after acquisition, pay prior to delinquency, all future ad valorem taxes and assessments for the Property.

7.14 Release of Construction Covenants. Promptly after completion of the construction of the Improvements in conformity with this Agreement, the City shall deliver to

the Developer a Release of Construction Covenants, executed and acknowledged by the City substantially in the form provided on Attachment 5, which is attached hereto and incorporated herein by this reference. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the construction of the Improvements, and the Release of Construction Covenants shall so state. Following the issuance of a Release of Construction Covenants, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to this Agreement; however, any such party shall remain subject to the terms and conditions of Operating Covenant for the term thereof, to the extent applicable.

If City refuses or fails to furnish a Release of Construction Covenants in accordance with the preceding paragraph, and after written request from the Developer, the City shall, within fifteen (15) days after receipt of such written request therefor, provide the Developer with a written statement of the reasons the City refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the City's opinion of the actions the Developer must take or cause to be taken to obtain the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Project, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 8182 of the California Civil Code.

8. Use of the Property.

8.1 Use in Conformance with Plan and Agreement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof that the Developer, such successors and such assignees, shall use, operate and maintain the Property and the Project thereon in conformity with this Agreement and shall devote the Property and the Project thereon to the uses specified in the Specific Plan, City's Municipal Code and this Agreement for the periods of time specified herein.

8.2 Long Term Maintenance of the Project. The Developer shall maintain or cause to be maintained the interiors and exteriors of the Project in a safe, decent, and sanitary manner, in accordance with the standard of maintenance in conformity with the El Cajon Municipal Code. If at any time Developer fails to maintain the Project in accordance with this Agreement and Developer does not correct or commence to correct such condition within thirty (30) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance, or thirty days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever remedies it may have at law or at equity, shall have the right to enter upon the applicable portion of the Project and perform all acts and work reasonably necessary to protect, maintain, and preserve the Project and landscaped areas on the Property. The following standards shall be complied with by Developer and its maintenance staff, contractors or subcontractors:

(a) Developer shall maintain all common areas, all interior and exterior facades, and all exterior Project site areas, in a safe, decent, and sanitary manner. The Developer agrees to provide utility services, administrative services, supplies, contract services,

maintenance, maintenance reserves, and management for the entire Project including the interior spaces, the common area spaces and the exterior common areas, parkway landscaping and sidewalks. The Developer shall provide electric, gas and water services to the Property and provide property, fire and liability insurance in the amounts set forth in this Agreement; payment of all property taxes and personal property taxes; payment of any and all assessments; and maintenance and replacement of all exterior landscaping.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant and irrigation materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees, as needed.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(d) All maintenance work shall conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of maintenance.

(e) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons possessing valid California applicators licenses, and in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

(f) Parking lots, lighting fixtures, trash/recycling enclosures, and all areas which can be seen from the adjacent streets shall be kept free from any accumulation of debris or waste materials by regularly scheduled maintenance.

8.3 Rights of Access. The City, for itself and other public agencies, at their sole risk and expense, shall have the right upon reasonable notice to Developer, to enter the Property or any part thereof which is occupied or controlled by the Developer, at all reasonable times for the purpose of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Property. Any such entry shall be made only after reasonable notice to Developer. Upon receipt of such notice, the Developer agrees to cooperate with the City in making the Property available for inspection by the City. Developer acknowledges and agrees that in the event that if for any reason the Developer fails to consent to such entry or inspection, the City may obtain an administrative inspection warrant or take such other legal actions as may be necessary to gain entry to and inspect the Property. City shall indemnify and hold Developer harmless from any costs, claims, damages or liabilities pertaining to any entry.

8.4 Effect of Violation of the Provisions of this Agreement after Completion of Construction. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding upon and for the benefit and in favor of the Developer and the City, their respective successors and assigns, as to those covenants which are for their benefit. The covenants contained in this Agreement shall remain in effect until the Operating Covenant Termination Date (as defined in Section 3 of this Agreement). The covenants against discrimination set forth in Section 8.5, below, shall remain in perpetuity.

The City 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 rights 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. The Agreement and the covenants shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Property. The City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

8.5 Nondiscrimination. The Developer covenants by and for itself 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, sexual preference, disability, familial status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. The foregoing covenants shall run with the land.

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

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, disability, familial 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 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 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:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, disability, familial status, ancestry or national origin 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, sexual preference, marital status, disability, familial status, ancestry or national origin, 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."

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, the City and any successor in interest to the Property. The covenants against discrimination shall remain in effect in perpetuity.

8.6 Operating Covenant. On or prior to the earlier of (i) the conveyance of the Hotel Component to the Developer of the Hotel Component, or (ii) issuance of a Certificate of Occupancy for any portion of the Retail Component, the Developer of the Hotel Component shall execute and acknowledge an Operating Covenant substantially in the form attached hereto and incorporated herein as Attachment 8 (the "Operating Covenant"). The Developer's execution of the Operating Covenant shall be a material component of this Agreement. The Operating Covenant shall obligate the Developer of the Hotel Component to construct the Hotel Component and shall obligate such Developer, or its approved assignee or successor, to operate the Hotel Component for a minimum period of fifteen (15) years, commencing on the date the City issues a Release of Construction Covenants for the Project.

9. **General Provisions.**

9.1 Notices, Demands and Communications Between the Parties. Written notices, demands and communications between the City and the Developer shall be sufficiently given if delivered by hand (and a receipt therefor is obtained or is refused to be given) or dispatched by registered or certified mail, postage prepaid, return receipt requested, or sent by telecopy or overnight delivery service, to the City and the Developer at the addresses provided pursuant to Sections 2.1 and 2.2, respectively, and to such other addresses as either party may from time to time designate by mail as provided in this Section 9.1. Notices between the Parties shall be provided to the following address:

To City: City of El Cajon
200 Civic Center Way
El Cajon, CA 92020
Attention: Douglas Williford, City Manager

With a copy to: El Cajon City Attorney
200 Civic Center Way
El Cajon, CA 92020
Attention: Morgan L. Foley, Esq.

If to Developer: Brixton Fletcher, LLC
120 South Sierra Avenue
Solana Beach, CA 92075
Attn: Travis King

With a copy to: Cox, Castle & Nicholson LLP
2029 Century Park East, 21st Floor
Los Angeles, CA 90067
Attn: Elizabeth A. Willes

Any written notice, demand or communication shall be deemed received immediately if delivered by hand or sent by telecopy, shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail, and shall be deemed received on the next business day after it is sent if delivered by overnight delivery service.

9.2 Conflicts of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any 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. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

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

9.3 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: war, insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; acts or failures to act of any public or governmental agency or entity (other than the acts or failures to act of the City) or any other causes beyond the control or without the fault of the party claiming an extension of time to

perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Any requests for extension shall be in writing. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer.

10. Defaults and Remedies.

10.1 Defaults – General. Subject to the extensions of time set forth in Section 9.3 or this Section 10.1, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings for damages or specific performance against the party in default until thirty (30) days after giving such notice; provided that if the party is proceeding with diligence to cure, such party shall have such greater time as may be necessary to cure given the nature of the default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

10.2 Institution of Legal Actions. In addition to any other rights or remedies, but subject to the notice and cure period set forth in Section 10.1 above, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Legal actions must be instituted in the Superior Court of the County of San Diego, State of California, or in the Federal District Court in the Southern District of California. Each party hereby waives its right to remove any action from San Diego County as is otherwise provided in California Code of Civil Procedure section 394.

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

10.4 Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the Director or in such other manner as may be provided by law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon an agent designated for service of process as filed with the California Secretary of State and shall be valid whether made within or without the State of California or in such other manner as may be provided by law.

10.5 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.

10.6 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.

10.7 Attorneys' Fees. If any action at law or equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs of litigation from the non-prevailing party.

10.8 Termination by the Developer. In the event that the City is in material default of any of its obligations under this Agreement, and such default has not been cured in accordance with Section 10.1 hereof, then this Agreement, at the option of the Developer, and in addition to any other remedies available to Developer at law or in equity, may be terminated by written notice thereof to the City.

10.9 Termination by the City. In the event that:

(a) The Developer (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein or in the Property, the Project or any portion thereof in violation of this Agreement; or

(b) There is a change in the ownership of the Developer contrary to the provisions of Section 2.3 hereof; or

(c) The Developer fails to submit insurance required pursuant to Sections 7.8 of this Agreement by the time established in the Schedule of Performance (Attachment No. 3); or

(d) The Developer is in material default of any of its obligations under this Agreement, and such default has not or is not being cured in accordance with Section 10.1 hereof, then at the option of the City this Agreement and any rights of the Developer or any assignee or transferee in the Agreement shall, upon written notice from the City, be terminated by the City.

10.10 Term of the Agreement. This Agreement shall be effective on the Effective Date and shall expire upon the Operating Covenant Termination Date, unless earlier terminated in accordance with the terms hereof.

11. Special Provisions.

11.1 Commissions. The City and the Developer both represent to the other party that they have not engaged the services of any finder or broker and that they are not liable for any commissions, broker's fees, or finder's fees, and agree to indemnify and hold harmless the other party from such commissions or fees as are alleged to be due from the party making such representations.

11.2 Successors in Interest. The terms, covenants, conditions and restrictions of this Agreement shall extend to and shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the City and the Developer.

11.3 Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter hereof. Any prior agreements, promises, negotiations or representations, whether oral or in writing, which are not expressly set forth in this Agreement, are superseded and of no further force or effect. Subsequent modifications to this Agreement shall be in writing and signed by both the City and the Developer.

11.4 Captions and Construction. Captions in this Agreement are for convenience only and shall not be used in construing meaning. This Agreement shall be construed as a whole and in accordance with its fair meaning.

11.5 Severability. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding on the parties hereto.

11.6 Cooperation. The City and the Developer agree to cooperate with each other so as to achieve the objectives of this Agreement in a timely and efficacious manner.

11.7 Further Documents. Upon written request, the City and the Developer shall execute, deliver, or cause to be executed and delivered, such additional instruments and documents as are necessary to perform the terms of this Agreement.

11.8 Developer and City Relationship. It is hereby acknowledged that the relationship between City and Developer is not that of a partnership or joint venture and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project, provided that the Developer remains in compliance with this Agreement.

11.9 City Approvals and Actions. The City shall maintain authority of this Agreement and the authority to implement this Agreement through the City's Director (or his or her duly authorized representative). The Director shall have the authority, but not the obligation, to make approvals, issue interpretations, waive provisions, execute documents, make and execute further agreements and/or enter into amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses on the Project, or materially or substantially add to the costs incurred or to be incurred by the City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance.

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

12. Entire Agreement, Waivers.

This Agreement may be signed in counterparts, and is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 33 and Attachments 1 through 8, which constitute the entire understanding and agreement of the parties.

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

In any circumstance where under this Agreement either party is required to approve or disapprove any matter, approval shall not be unreasonably withheld.

13. Time For Acceptance Of Agreement By City.

This Agreement, when executed by the Developer and delivered to the City, must be authorized, executed and delivered by the City on or before thirty (30) days after signing and delivery of this Agreement by Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement. The date of this Agreement shall be the date when it shall have been signed by the City.

14. Scope and Duration.

All of the covenants and restrictions of this Agreement are imposed on the Property for the direct benefit of the Property and the tenants and occupants of the Property as a part of a general plan of improvement, development, building, occupation, and maintenance of properties in the City of El Cajon. These covenants and restrictions will run with the land and will be binding on all of the owners of the Property and all persons claiming under them, and continue to be in full force and effect during the Operating Covenant.

15. Lender Protection

15.1 Holder Not Obligated to Construct or Operate. The holder of any mortgage or deed of trust (a "Holder") shall not be obligated by the provisions of this Agreement to construct or complete the Project or any portion thereof or to perform the Operating Covenant, or to guarantee such construction or completion or performance of the Operating Covenant; nor shall any covenant or any other provision in this Agreement or the Operating Covenant 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.

15.2 Notice of Default to Holder; Right to Cure. Whenever the City delivers any notice of default ("Notice of Default") or demand to Developer with respect to any breach or default by Developer under this Agreement or the Operating Covenant, and if Developer fails to cure the default within the applicable time period, the City shall 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 City are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy 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; provided, however if the Holder is legally prevented from curing such default because of a bankruptcy by the Developer or because such cure requires physical possession of the Property then the thirty (30) day period shall be tolled until such bankruptcy is confirmed, rejected or otherwise resolved or the Holder has obtained lawful physical possession of the Property. Nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or completion of the Project, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to the City by written agreement reasonably satisfactory to the City, which election to assume may be made within ninety (90) days following Holder's securing of title to the Property. Such assumption shall not have the effect of causing the Holder to be responsible for any prior damage obligations of Developer to the City. The Holder, in that event, must agree to complete, in the manner provided in this Agreement, the Project. Any such Holder properly completing the Project or portion thereof shall be entitled to a Release of Construction Covenants. It is understood that a Holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Project (or portion thereof) if and to the extent any such Holder has within such thirty (30) day period commenced foreclosure proceedings to obtain title and/or possession and thereafter the Holder diligently pursues such proceedings to completion and cures or remedies the default. The Schedule of Performance shall be extended for the benefit of the Holder to allow for Holder's acquisition of the Property as provided in this Section 15.2.

15.3 Failure of Holder to Complete Project. In any case where the Holder has not exercised the option to construct as set forth in Section 15.2, or if it has exercised the option but has defaulted thereunder and failed to timely cure such default, the City may, by giving written notice to the Holder, purchase its mortgage or deed of trust by payment to the Holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Property or any part thereof has vested in the Holder, the City, if it so desires, shall be entitled to a conveyance of title to the Property or such portion thereof from the Holder to the Agency upon payment to the Holder of an amount equal to the sum of the following:

- (a) The unpaid mortgage or deed of trust debt 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 Project or part thereof;
- (d) The costs of any Improvements made by such Holder;

(e) Any prepayment charges, default interest, and/or late charges imposed pursuant to the loan documents and agreed to by Developer; and

(f) 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 the City.

16. Specific Plan for Property

The City shall initiate an application for the Specific Plan for the Property, which shall provide for the systematic implementation of the City's General Plan for the Property, consistent with the intent of the parties to this Agreement.

16.1 Restrictions on Use of Property. The Specific Plan shall provide for the permitted use of the Property consistent with this Agreement and the Operating Covenant attached to this Agreement as Attachment "8". At a minimum the covenants for development and maintenance of the Property contained in Attachment "8" shall be included in the Specific Plan.

16.2 Life of Specific Plan. The Specific Plan shall remain in existence not less than the term set forth in the Operating Covenant. If the Operating Covenant is eliminated due to foreclosure or by order of a court of competent jurisdiction the Specific Plan shall remain in full force and effect, the enforceability of the Operating Covenant notwithstanding.

16.3 Developer Cooperation and Consent. The Developer hereby covenants that it shall cooperate with the City in the processing of its application for the Specific Plan; it further covenants that it shall provide such written consents to the Specific Plan application, and written waivers of objections to the terms and conditions of the Specific Plan that are, at a minimum, identical to the Developer's covenants under this Agreement and Attachment "8".

16.4 Binding on Successors. The Specific Plan shall remain in full force and effect, and shall be binding upon the heirs, successors and assigns of the Developer.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK].

IN WITNESS WHEREOF, the City and the Developer have signed this Agreement on the respective dates set forth below.

APPROVED AS TO CONTENT:

“City”
CITY OF EL CAJON, a charter city and municipal corporation

Dated: _____

By: _____
Bill Wells, Mayor

ATTEST:

Belinda Hawley, City Clerk

“Developer”
BRIXTON FLETCHER, LLC,
a Delaware limited liability company

Dated: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Morgan L. Foley
City Attorney

ATTACHMENT "2"

LEGAL DESCRIPTION OF PROJECT SITE

Real property in the City of El Cajon, County of San Diego, State of California, described as follows:

PARCEL 1:

ALL THAT REAL PROPERTY DESCRIBED IN A FINAL ORDER OF CONDEMNATION TO THE STATE OF CALIFORNIA AS SHOWN IN DOCUMENT RECORDED ON MAY 05, 1957 IN BOOK 6585, PAGE 237 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, STATE OF CALIFORNIA, AND LYING SOUTHERLY AND EASTERLY OF THAT REAL PROPERTY DESCRIBED IN DEED FROM THE STATE OF CALIFORNIA TO THE CITY OF EL CAJON, RECORDED ON AUGUST 25, 1965 AS INSTRUMENT NO. 154878, IN THE OFFICE OF SAID COUNTY RECORDER, AND BOUNDED ON THE SOUTH, WEST AND EAST BY A LINE SHOWN ON PAGE 2 OF 4 OF STATE OF CALIFORNIA, DIVISION OF HIGHWAYS MONUMENTATION MAP (MS 652) FOR ROUTE II-SD-67, ON FILE IN THE COUNTY SURVEYOR'S OFFICE OF SAID COUNTY AND DESCRIBED AS FOLLOWS:

BEGINNING AT A 1" IRON PIPE WITH 3/4" DIVISION OF HIGHWAYS TAG, SAID POINT BEARS NORTH 05°16'03" EAST, 644.39 FEET FROM A 1" IRON PIPE WITH 3/4" DIVISION OF HIGHWAYS TAG LABELED AS "113.86' LT. OF 184+29.41" ON SAID SHEET 2, THENCE; (1) SOUTH 05°16'03" WEST 644.39 FEET TO A 1" IRON PIPE WITH 3/4" DIVISION OF HIGHWAYS TAG LABELED AS "113.86' LT. OF 184+29.41", THENCE; (2) SOUTH 76°01'23" WEST 140.55 FEET TO A 1" IRON PIPE WITH 1/4" DIVISION OF HIGHWAYS TAG LABELED AS "80.00' LT. OF 182+93.00", THENCE; (3) SOUTH 89°57'39" WEST 283.45 FEET TO THE BEGINNING OF A 70.00 FOOT RADIUS CURVE TO THE RIGHT MARKED BY A 1" IRON PIPE WITH 1/4" DIVISION OF HIGHWAYS TAG LABELED AS "80.00' LT. OF 180+09.55" THENCE; (4) ALONG SAID CURVE A DISTANCE OF 127.83 FEET THROUGH A CENTRAL ANGLE OF 104°38'06" TO A POINT SHOWN AS A 1" IRON PIPE WITH 1/4" DIVISION OF HIGHWAYS TAG LABELED AS "R RADIAL TO 365R, NORTH 75°24'25" WEST" AND BEING THE POINT OF TERMINUS.

TOGETHER WITH THAT PORTION OF THE WEST HALF OF LOT 14 OF MAGNOLIA RANCH TRACT (MAP 1674) IN TRACT "K" OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, LYING EASTERLY OF THE EASTERLY RIGHT OF WAY FOR NORTH MAGNOLIA AVENUE, AND WESTERLY OF THE EAST HALF OF SAID LOT 14.

APN: PORTION OF 483-071-52 AND ALL OF 483-071-53

ATTACHMENT "3"

SCHEDULE OF PERFORMANCE

	Item of Performance	Time for Completion
1.	Escrow opened	Within 5 days after City executes this Agreement.
2.	Approval of Specific Plan of Property	Prior to sale of property.
3.	Submittal of Plans by Developer to City for review	Within 90 days after the City executes this Agreement.
3.	Plan check review by applicable City departments and preparation of any corrections to Developer.	City will use reasonable efforts to cause such review, and to obtain and provide to Developer any corrections, within 45 days of receipt.
4.	Developer to correct and resubmit (as necessary to address City comments) plans.	Within 45 days of receipt of City first round comments provided to Developer or Developer representative in Item 3 above.
5.	Plan check re-review by applicable City departments; Developer obtains issuance of building permits (if Developer entitled to issuance).	City will use reasonable efforts to cause such re-review and the issuance of building permits (if Developer is entitled to issuance) within three (3) weeks of Developer submittal of items listed in Item 4 above.
6.	Developer and City complete the sale of the Project Site	On or before February 1, 2018.
7.	Developer constructs Project	Within eighteen (18) months after acquisition of Property.
8.	Developer of Hotel Component executes Operating Covenant	Concurrent with or prior to earlier of sale of Hotel Component to Developer of Hotel Component or issuance of first certificate of occupancy for Retail Component
9.	City executes and records Operating Covenant	Concurrent with or prior to earlier of sale of Hotel Component to Developer of Hotel Component or issuance of first certificate of occupancy for Retail Component
10.	Developer obtains certificate of occupancy for Project.	Upon completion of the project.

This Schedule of Performance represents the parties' target dates. However this Schedule of Performance may be adjusted by the City Director so long as Developer moves the Project forward and obtains a certificate of occupancy for the Project by no later than eighteen (18) months (subject to delays described in Section 9.3 of the Agreement) from the date the building permit is issued or the Property Closing, whichever is later to occur. This Schedule of Performance does not include the time of performance for all obligations arising under the Agreement; rather this schedule focuses only on the development schedule of the Project. The parties are referred to the Agreement for the total description of the parties' obligations and times for performance of matters not identified in this Schedule. The Developer understands that

obligations contained in the Agreement may be conditions precedent to the City's obligations under this schedule.

Nothing herein shall be construed to limit the City's legislative authority, which City may exercise, in City's sole and absolute discretion. In all cases where City action is required, City shall use reasonable efforts to cause City to take such action in the time prescribed herein.

ATTACHMENT "4"

PROJECT BUDGET

TO BE PREPARED BY DEVELOPER.

<u>DESCRIPTION:</u>	<u>BUDGET</u>
SUB TOTAL:	\$
CONSTRUCTION TOTAL:	\$

ATTACHMENT "5"
RELEASE OF CONSTRUCTION COVENANTS
[SEE FOLLOWING DOCUMENT]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Cox, Castle & Nicholson LLP
2029 Century Park East, 21st Floor
Los Angeles, CA 90067
Attn: Elizabeth A. Willes

[Space above for Recorder.]

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the "Release") is made by the **CITY OF EL CAJON**, a charter city and municipal corporation (the "City"), in favor of **BRIXTON FLETCHER, LLC**, a Delaware limited liability company (the "Developer"), as of the date set forth below.

RECITALS

A. The City and Developer have entered into that certain Disposition and Development Agreement (the "DDA") dated _____, 2017 concerning the redevelopment of certain real property situated in the City of El Cajon, California, as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Site").

B. As referenced in Section 7.14 of the DDA, the City is authorized and required to furnish the Developer or its successors with a Release of Construction Covenants upon completion of construction of the "Project" (as defined in the DDA), which Release is required to be in such form as to permit it to be recorded in the Recorder's office of San Diego County. This Release is conclusive determination of satisfactory completion of the construction and development of the Project.

C. The City has conclusively determined that construction and development of the Project has been satisfactorily completed.

NOW, THEREFORE, the City hereby certifies as follows:

1. The Project to be constructed by the Developer has been satisfactorily completed in accordance with the provisions of said DDA.

2. This Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage, securing money loaned to finance the Project or any part thereof.

3. This Release of Construction Covenants is the release of construction covenants referred to in, and satisfies the requirements of, Section 7.14 of the DDA for construction of the Project.

4. This Release of Construction Covenants is not a Notice of Completion as referred to in California Civil Code Section 8182.

5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the DDA or any other provisions any other documents executed pursuant to the DDA, all of which shall remain enforceable according to their terms of the documents incorporated therein.

BY WITNESS WHEREOF, the City and the Developer have signed this Release of Construction Covenants as of the respective dates set forth below.

“Developer”

BRIXTON FLETCHER, LLC,
a Delaware limited liability company

Dated: _____

By: _____

Name: _____

Title: _____

“City”

CITY OF EL CAJON, a charter city and
municipal corporation

Dated: _____

By: _____

Bill Wells, Mayor

ATTEST:

Belinda Hawley, City Clerk

APPROVED AS TO FORM:

Morgan L. Foley
City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF PROJECT SITE

ATTACHMENT "6"

SCOPE OF DEVELOPMENT

[TO BE COMPLETED BY DEVELOPER]

List of Public Improvements and Costs (Estimated)

Curbs, gutters and sidewalks

Driveways

Pedestrian ramps

Hotel Site Development and Costs (Estimated)

ATTACHMENT "7"

GRANT DEED

(To be Prepared by Escrow)

ATTACHMENT "8"
OPERATING COVENANT
[See Following Document]

RECORDING REQUESTED BY AND
When Recorded Mail to:

City of El Cajon
200 Civic Center Way
El Cajon, CA 92020
Attn: Douglas Williford, City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

OPERATING COVENANT

THIS OPERATING COVENANT (“Operating Covenant”) is made this _____ day of _____, 2017 (the “Effective Date”), by and between the **CITY OF EL CAJON**, a charter city and municipal corporation (the “City”), and _____, a _____ limited liability company (the “Developer”), with reference to the following:

A. The City and the Developer (or Developer’s predecessor in interest) have executed a Disposition and Development Agreement (“Agreement”), dated as of _____, 2017, which provides, inter alia, for the development of that certain real property located in the City of El Cajon, County of San Diego, State of California, more fully described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”), and Developer’s construction and operation thereon of the Hotel Component of the Project as further defined in the Agreement. The Agreement is available for public inspection and copying at the office of the City Clerk, El Cajon City Hall, 200 Civic Center Way, El Cajon, CA 92020.

B. Developer holds fee title to the Property.

C. Pursuant to the Agreement, Developer has agreed to purchase the Property and construct the Hotel Component of the Project on the Property.

D. The Agreement also provides for the recordation of this Operating Covenant against the Hotel Component of the Property to memorialize certain covenants, conditions, and restrictions regarding the use, maintenance, and operation of the Hotel Component of the Property by Developer and Developer’s successors and assigns.

E. The City has fee interests in parks, City Hall, and in various streets, sidewalks, and other property within the City of El Cajon (collectively, the “Benefited Public Property”), and is responsible for planning of land uses within the City in such a manner as to provide for the health, safety, and welfare of the residents of the City. The Benefited Public Property is legally described in Exhibit “B” attached hereto and incorporated herein by this reference.

NOW, THEREFORE, Developer hereby covenants, agrees, and declares by and for itself and its successors and assigns that the Hotel Component of the Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following

covenants, conditions, and restrictions (sometimes collectively referred to hereinafter as the "Covenants"). These Covenants shall run with the Hotel Component of the Property and shall be binding on all parties having or acquiring any right, title, or interest in the Hotel Component of the Property or any part thereof and shall inure to the benefit of the City and its successors and assigns regardless of whether the City holds any interest in any real property benefited thereby.

1. Covenant Regarding Specific Uses.

Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to Developer's interest in the Hotel Component of the Property or any part thereof, that within the times set forth in the Schedule of Performance attached to the Agreement as Attachment 3 (the "Schedule of Performance"), but subject to delays as contemplated by Section 9.3 of the Agreement, Developer shall commence, diligently proceed with, and satisfactorily complete construction of the Hotel Component of the Project so as to entitle Developer to the City's issuance of a Release of Construction Covenants for the Hotel Component of the Project as provided for in Section 7.14 of the Agreement. The foregoing covenant shall be deemed satisfied and shall terminate upon the City's issuance of a Release of Construction Covenants.

For a term (the "Term") commencing upon the Effective Date hereof and ending on the fifteenth (15th) year anniversary of the date the Release of Construction Covenants for the Hotel Component of the Project is issued (the "Operating Covenant Termination Date"), the Developer hereby covenants and agrees to devote the Hotel Component of the Property for the exclusive purpose and use of development and operation of the Hotel Component of the Project as an approximately sixty thousand (60,000) square foot, 85-room or more, Hampton Inn (or a Permitted Replacement Hotel, as defined in the Agreement) with pool, meeting room, outdoor patio, and parking area (the "Hotel"), and will comply with the other obligations contained herein. Notwithstanding anything herein to the contrary, the nondiscrimination covenants contained in subdivision (a) of Section 4 hereof shall run with the land in perpetuity and shall not terminate on the Operating Covenant Termination Date. Except as provided below, or with the prior written consent of the City for each instance, which consent may be granted or withheld in the City's sole and absolute discretion, the failure of the Developer (or its tenant) to operate any portion of the Hotel Component of the Project on the Property as required herein for thirty (30) or more consecutive days following written notice thereof to Developer (the "Failure to Operate Notice") shall, at the City's option, constitute a default hereunder; provided, however, that the Developer shall for purposes of this Section 1 be deemed to be operating such portion of the Hotel Component of the Project during any period that the Developer is prevented from operating such portion due to (i) required or necessary repair, restoration or rehabilitation of such portion of the Hotel Component of the Project (provided that the period during which such portion of the Hotel Component of the Project is not operated as a result of the repair, restoration or rehabilitation shall in no event exceed thirty (30) days), unless the repair, restoration or rehabilitation cannot reasonably be completed within such thirty (30) day period, in which case the period shall extend as necessary for completion, provided such repair restoration or rehabilitation was commenced within the thirty (30) period and is diligently pursued to completion or (ii) war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or

supplier; acts or omissions of any third party; or acts or failures to act of the City other public or governmental agency or entity or any other causes beyond the control or without the fault of the Developer. Notwithstanding anything to the contrary herein, (a) an extension of time for any cause listed in romanette (ii) above 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 Developer is sent to the City within ten (10) business days following receipt of the Failure Notice, and (b) Developer is not entitled pursuant to this Section 1 to an extension of time to perform because of past, present, or future difficulty in obtaining financing necessary to operate the Project because of economic or market conditions.

2. Performance of Maintenance.

Developer shall maintain the Hotel Component of the Project, the Property and all “improvements” (as defined hereinafter) thereon in accordance with the Maintenance Standards, as hereinafter defined. As used herein, the term “Improvements” shall mean and include, but not be limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Property and any and all other improvements on the Property.

To accomplish said maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Operating Covenant.

The following standards (“Maintenance Standards”) shall be complied with by Developer and Developer’s maintenance staff, contractors or subcontractors:

1. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

2. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, graffiti, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

3. All maintenance work shall conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of maintenance.

4. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

5. The Hotel Component of the Project and Property shall be maintained in conformance and in compliance with the approved Property construction and architectural plans and design scheme, as the same may be amended from time to time with the approval of the City, and reasonable commercial development maintenance standards for similar projects, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curblin.

3. Failure to Maintain Property.

In the event Developer does not maintain the Hotel Component of the Property in the manner set forth herein and in accordance with the Maintenance Standards, City shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice thereof to Developer. However, prior to taking any such action, City agrees to notify Developer in writing if the condition of the Hotel Component of the Project or Property does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon written notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City, then Developer shall have forty-eight (48) hours to rectify the problem.

In the event Developer fails to correct, remedy, or cure (or for deficiencies which cannot reasonably be corrected, remedied, or cured within thirty (30) days has failed to commence correcting, remedying or curing such maintenance deficiency and diligently pursue such correction, remedy, or cure to completion) after written notification and after the period of correction has lapsed, then City shall have the right to maintain such improvements. Developer agrees to pay City such charges and costs. Until so paid, the City shall have a lien on the Property for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Property. Upon recordation of a Notice of a Claim of Lien against the Property, such lien shall constitute a lien on the fee estate in and to the Property prior and superior to all other monetary liens except: (i) all taxes, bonds, assessments, and other levies that, by law, would be superior thereto; (ii) the lien or charge of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority of any such lien for costs incurred to comply with this Agreement shall date from the date of the recordation of the Notice of Claim of Lien. Developer shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

4. Compliance with Law.

Developer shall comply with all local, state and federal laws relating to the uses of or condition of the Property and the Project. The operation of the Project shall be in compliance

with the requirements of any entitlements issued by the City for the Project, including, as applicable, a conditional use permit, site development permit, and specific plan amendment.

(a) Nondiscrimination Covenants. Developer covenants by and for itself and any successors in interest to all or any portion of the Property that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees of the Property. The foregoing covenants shall run with the land.

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

(1) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference, 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."

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

"That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual preference, 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."

(3) 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, sexual preference, 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.”

5. Sales and Use Tax Covenant.

From the date this Operating Covenant is recorded against the Hotel Component of the Property until the Operating Covenant Termination Date, Developer shall designate the Property as the point of sale for sales tax purposes for all goods and services sold or leased on the Property, whose sales and leases originate from the Property.

6. Covenant to Pay Taxes and Assessments.

From the date this Operating Covenant is recorded against the Hotel Component of the Property until the Operating Covenant Termination Date, Developer shall pay or cause to be paid, prior to delinquency, all ad valorem real estate taxes, special taxes, and assessments levied against the Property and any improvements thereon, subject to Developer’s right to contest any such tax or assessment in good faith. During such period Developer shall remove or have removed any levy or attachment made on the Property or any part thereof or assures the satisfaction thereof within a reasonable time and prior to a sale of the Property.

7. Defaults.

Failure or delay by either party to perform any term or provision of this Operating Covenant constitutes a default under this Operating Covenant. A party claiming a default shall give written notice of default to the other party, specifying the default complained of and the actions required to correct such default.

Unless otherwise provided by the Agreement, the claimant shall not institute proceedings against the other party if the other 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 completes such cure, correction or remedy as soon as reasonably practicable after receipt of such notice.

8. Legal Actions.

In addition to any other rights or remedies and subject to the notice and cure provisions in Section 7 above, any party may institute legal action to seek specific performance of the terms of this Operating Covenant, or to cure, correct or remedy any default, or to obtain any other legal or equitable remedy consistent with the purpose of this Operating Covenant. A party shall also have the right to pursue damages for the other party’s defaults, but in no event shall a party be entitled to damages for economic loss, lost profits, or any other economic or consequential damages of any kind. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California or in the Federal District Court in the Central District of California. Each party hereby expressly waives any right to remove any such action from San Diego County as is otherwise permitted by California Code of Civil Procedure section 394. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorney’s fees and costs and such other

costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

The internal laws of the State of California shall govern the interpretation and enforcement of this Operating Covenant, without regard to conflict of laws.

In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City's Director, as defined in the Agreement, in addition to such other manner as may be provided by law.

In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon an agent designated for service of process as filed with the California Secretary of State, whether made within or outside the State of California, or in such other manner as may be provided by law.

Except as otherwise expressly stated in this Operating Covenant, 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.

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.

9. Effect of Violation of the Terms and Provisions of this Operating Covenant.

The covenants established in this Operating Covenant shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, and each of their successors and assigns, as to those covenants which are for their benefit. The covenants contained in this Operating Covenant shall remain in effect for the periods of time specified therein. The City is deemed the beneficiary of the terms and provisions of this Operating Covenant and of the covenants running with the land, for and in their own rights 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 Operating Covenant and the covenants running with the land have been provided. This Operating Covenant and the covenants shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Property. The City shall have the right, if the Operating Covenant or covenants are breached, but subject to the notice and cure rights set forth herein, 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 to which they or any other beneficiaries of this Operating Covenant and covenants may be entitled. Pursuant to applicable law, including, but not limited to, Sections 1462, 1465 and 1468 of the Civil Code of the State of California, all provisions of this Covenant Agreement shall run with the land and be binding upon and inure to the benefit of the Benefited Public Property and the Property and each and every portion thereof or interest therein, and all parties having or acquiring any right, title, or interest in the Property or any portion thereof, and their successors and assigns.

10. Miscellaneous Provisions.

If any provision of this Operating Covenant or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Operating Covenant, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Operating Covenant; and each provision of this Operating Covenant shall be valid and enforceable to the fullest extent permitted by law.

This Operating Covenant shall be construed in accordance with the internal laws of the State of California without regard to conflict of law principles.

This Operating Covenant shall be binding upon and inure to the benefit of the successors and assigns of the Developer but any Transfer shall be subject to the requirements and provisions of Section 8 of the Agreement.

This Operating Covenant is subject to the lender protection provisions of Section 15 of the Agreement, the terms of which are incorporated herein by this reference.

11. Notices.

All notices under this Agreement shall be effective (i) upon personal delivery, (ii) upon delivery by reputable overnight courier that provides a receipt with the date and time of delivery, (iii) via facsimile, so long as the sender receives confirmation of successful transmission from the sending machine, or (iv) three (3) business days after deposit in the United States mail, registered or certified, postage fully prepaid and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To City: City of El Cajon
200 Civic Center Way
El Cajon, CA 92020
Attention: Douglas Williford, City Manager

With a copy to: El Cajon City Attorney
200 Civic Center Way
El Cajon, CA 92020
Attention: Morgan L. Foley, Esq.

To Developer: _____

IN WITNESS WHEREOF, the parties hereto has executed this instrument the day and year first hereinabove written.

“Developer”

_____,
a _____ limited liability company

Dated: _____

By: _____

Name: _____

Title: _____

“City”

CITY OF EL CAJON, a charter city and
municipal corporation

Dated: _____

By: _____

Bill Wells, Mayor

ATTEST:

Belinda Hawley, City Clerk

APPROVED AS TO FORM:

Morgan L. Foley
City Attorney

ALL PURPOSE ACKNOWLEDGMENT.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

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

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

WITNESS my hand and official seal.

Signature

(SEAL)

ALL PURPOSE ACKNOWLEDGMENT.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO).

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

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

WITNESS my hand and official seal.

Signature

(SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION OF HOTEL PROPERTY

[NOTE: INSERT REFERENCE IN HOTEL PARCEL IN FINAL RECORDED PARCEL MAP]

EXHIBIT "B"

DESCRIPTION OF BENEFITED PUBLIC PROPERTIES IN EL CAJON

[TO BE COMPLETED BY CITY].

TABLE OF CONTENTS

	Page No.
1. The Property.....	2
2. Parties to the Agreement.....	2
2.1 Agency	2
2.2 Developer	2
2.3 Prohibition Against Change in Ownership, Management and Control	3
2.4 Agency Consideration of Proposed Transfer; Release of Transferor Upon Permitted or Approved Transfer	4
2.5 Successors and Assigns.....	4
3. Definitions.....	5
3.1 Defined Terms	5
4. Omitted.	8
5. Project Construction Contract.....	8
6. Acquisition of the Property; Purchase Price	8
6.1 Escrow.....	9
6.2 Deposits Into Escrow	9
6.3 Escrow Agent Obligations	9
6.4 Funds in Escrow.....	10
6.5 Failure to Close	10
6.6 Amendments	10
6.7 Agency’s Conditions to Closing	10
6.8 Developer’s Conditions to Closing.....	11
6.9 Agency Right to Terminate.....	12
6.10 Developer Right to Terminate	12
6.11 Waiver of Conditions.....	13
6.12 Inspections	13
6.13 “AS-IS”	13
6.14 Developer Right to Terminate Upon Discovery of Hazardous Materials.....	13
6.15 Failure of Conditions Precedent; Termination.....	14
6.16 Condition of Title.....	14
6.17 Taxes and Assessments.....	14
6.18 Conveyance Free of Possession	14
6.19 Initiation of Specific Plan	14
7. Development of the Property	15
7.1 Scope of Development.....	15
7.2 City Approvals.....	15
7.3 Construction Drawings and Related Documents	15
7.4 Approval of Plans, Drawings, and Related Documents.....	15

7.5	Cost of Construction	16
7.6	Agency Right to Inspect Developer Records.....	16
7.7	Schedule of Performance	17
7.8	Bodily Injury and Property Damage Insurance	17
7.9	City and Other Governmental Agency Permits	18
7.10	Rights of Access	18
7.11	Local, State and Federal Laws	18
7.12	Antidiscrimination During Construction	18
7.13	Taxes, Assessments, Encumbrances and Liens	18
7.14	Release of Construction Covenants	19
8.	Use of the Property	19
8.1	Use in Conformance with Plan and Agreement.....	19
8.2	Long Term Maintenance of the Project	19
8.3	Rights of Access	20
8.4	Effect of Violation of the Provisions of this Agreement after Completion of Construction.....	21
8.5	Nondiscrimination.....	21
8.6	Operating Covenant.....	22
9.	General Provisions	22
9.1	Notices, Demands and Communications Between the Parties	22
9.2	Conflicts of Interest.....	23
9.3	Enforced Delay: Extension of Times of Performance	23
10.	Defaults and Remedies	24
10.1	Defaults – General	24
10.2	Institution of Legal Actions	24
10.3	Applicable Law	24
10.4	Acceptance of Service of Process	24
10.5	Rights and Remedies are Cumulative	25
10.6	Inaction Not a Waiver of Default.....	25
10.7	Attorneys’ Fees	25
10.8	Termination by the Developer	25
10.9	Termination by the City	25
10.10	Term of the Agreement.....	25
11.	Special Provisions.....	25
11.1	Commissions.....	25
11.2	Successors in Interest.....	26
11.3	Entire Agreement	26
11.4	Captions and Construction.....	26
11.5	Severability	26
11.6	Cooperation.....	26
11.7	Further Documents.....	26
11.8	Developer and Agency Relationship	26
11.9	Agency Approvals and Actions	26

11.10	Computation of Time.....	26
12.	Entire Agreement, Waivers.....	27
13.	Time For Acceptance Of Agreement By Agency.....	27
14.	Scope and Duration.....	27
15.	Lender Protection.....	27
15.1	Holder Not Obligated to Construct or Operate.....	27
15.2	Notice of Default to Holder; Right to Cure.....	28
15.3	Failure of Holder to Complete Project.....	28
16.	Specific Plan for Property.....	29
16.1	Restrictions on Use of Property.....	29
16.2	Life of Specific Plan.....	29
16.3	Developer Cooperation and Consent.....	29
16.4	Binding on Successors.....	29

ATTACHMENTS

Attachment No. 1	Property Map
Attachment No. 2	Legal Description
Attachment No. 3	Schedule of Performance
Attachment No. 4	Project Budget
Attachment No. 5	Release of Construction Covenants
Attachment No. 6	Scope of Development
Attachment No. 7	Grant Deed
Attachment No. 8	Operating Covenant
Attachment No. 9	Parking Easement

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of _____, 2017 (the "Effective Date"), by and between the **SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY** the _____ (the "Agency"), and **BRIXTON FLETCHER, LLC**, a Delaware limited liability company (the "Developer") (the City and the Developer are collectively reference in this Agreement herein as the "Parties"), with reference to the following:

RECITALS

A. The Agency owns fee title to certain real property located at 100 Fletcher Parkway in the City of El Cajon, County of San Diego, State of California ("Parcel 2"). Parcel 2 is part of a larger site (the "Property") comprised of two parcels: Parcel 1, owned by the City of El Cajon (the "City"), which is the subject of a separate agreement between Developer and the City (the "City Agreement") and Parcel 2, which is owned by the Agency, which is the subject of this Agreement. The City, the Successor Agency, and Developer contemplate that the entirety of the Property will be conveyed to Developer and developed in accordance with this Agreement and the City Agreement.

B. The Agency's Long Range Property Management Plan, which was approved by the State Department of Finance on February 21, 2014, identifies the Property as available for sale to a third party for potential private redevelopment. The Agency is entering this Agreement in accordance with the approved Long Range Property Management Plan.

C. The Parties intend, in this Agreement, to set forth the terms and conditions relating to (i) the Agency's sale of the Parcel 2 to Developer and (ii) Developer's design, construction, and operation, of the Project (as defined in Section 3.1).

D. On or about _____, 2017, the El Cajon Planning Commission adopted Resolution Nos. _____, approving Specific Plan No. _____, for the development and operation of the Project, and found the environmental review of the Project in accordance with the California Environmental Quality Act (CEQA) and Title 14, section 15332 of the California Code of Regulations has been addressed in an Addendum to a previously adopted Final Mitigated Negative Declaration and Mitigation, Monitoring and Reporting Program.

E. On or about _____, 2017, the El Cajon City Council similarly adopted Resolution Nos. _____, approving Specific Plan No. _____, for the development and operation of the Project, and found the environmental review of the Project in accordance with the California Environmental Quality Act (CEQA) and Title 14, section 15332 of the California Code of Regulations has been addressed in an Addendum to a previously adopted Final Mitigated Negative Declaration and Mitigation, Monitoring and Reporting Program.

F. This Agreement and the Developer's development of the Project 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 goals, objectives and public purposes and provisions of applicable state and local

laws and requirements under which the redevelopment of the City's Fletcher Parkway/Parkway Plaza commercial area, in which the Project is located, has been undertaken.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, the Agency and Developer hereto agree as follows:

1. The Property.

The Property is designated on the "Property Map" which is attached hereto as Attachment No. 1, and described in the "Legal Description," which is attached hereto as Attachment No. 2, both of which are incorporated herein by reference. The Property is located between Fletcher Parkway, Magnolia Avenue and Highway 67, in the City of El Cajon, California.

2. Parties to the Agreement.

2.1 Agency. The Agency is the City of El Cajon, solely in its capacity as the Successor Agency to the El Cajon Redevelopment Agency. The principal office of the Agency is located at 200 Civic Center Way, El Cajon, California 92020.

2.2 Developer. The Developer is Brixton Fletcher, LLC, a Delaware limited liability company, whose principal office and mailing address of the Developer for the purposes of this Agreement is 120 South Sierra Avenue, Solana Beach, California 92075, Attn: Travis King. "Developer" shall mean any transferee of Developer's interest in the Project or Hotel Component made in accordance with Section 2.3 of this Agreement.

The Developer represents and warrants to the City as follows:

(a) The Developer is a duly established Delaware limited liability company and has duly authorized, executed and delivered this Agreement and any and all other agreements and documents required to be executed and delivered by the Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement.

(b) The Developer does not have any material contingent obligations or any material contractual agreements which could materially adversely affect the ability of the Developer to carry out its obligations hereunder.

(c) There are no material pending or, so far as is known to the Developer, threatened, legal proceedings to which the Developer is or may be made a party or to which any of its property is or may become subject, which have not been fully disclosed in the documentation submitted to the Agency, which could materially adversely affect the ability of the Developer to carry out its obligations hereunder.

(d) There is no action or proceeding pending or, to the Developer's best knowledge, threatened, relating to the dissolution or liquidation of the Developer, and there is no action or proceeding pending or, to the Developer's best knowledge, threatened by or against the Developer, which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of the Developer to carry out its obligations hereunder.

(e) The Developer has performed, and will perform, all of its obligations to be performed at or prior to this date, or subsequent to this date, in accordance with the "Schedule of Performance," which is attached hereto as Attachment No. 3 and incorporated herein, and is not in default hereunder.

Each of the foregoing items (a) to (e), inclusive, shall be deemed to be ongoing representations and warranties; however, provided the Developer gives the notice required by the following sentence, a legal proceeding commenced after the date hereof shall not constitute a breach of item (c) above. The Developer shall advise the Agency in writing if there is any material change pertaining to any matters set forth or referenced in the foregoing items (a) to (e), inclusive.

2.3 Prohibition Against Change in Ownership, Management and Control. The qualifications and identity of the Developer are of particular interest and concern to the Agency. It is because of these qualifications and identities that the Agency has entered into this Agreement with the Developer. Consequently, except as expressly set forth in this Section 2.3, no person, whether a voluntary or involuntary successor in interest of the Developer, shall acquire any rights or powers under this Agreement nor shall the Developer assign or transfer all or any part of this Agreement or any rights hereunder without the prior written approval of the Agency. Written approval of the Agency shall also be required prior to any and all changes whatsoever in the identity of the person in control of the Developer, including any change in, or addition of, general partners of the Developer. Any purported transfer, voluntary, involuntary, or by operation of law, except with the prior written consent of the Agency in accordance with this Section 2.3, shall constitute a default of Developer and shall confer no rights whatsoever upon any purported assignee or transferee.

Notwithstanding any other provision of this Agreement to the contrary, Agency approval of an assignment of this Agreement or conveyance of the Property, the Project, or any part thereof, shall not be required in connection with paragraphs (a) through (d) below and shall not be unreasonably withheld in connection with (e) below:

(a) Any transfer by the Developer to a "Related Person or Entity" (as defined below).

(b) A transfer consisting of the conveyance or dedication of any portion of the Property to the Agency or other appropriate governmental agency or public utilities, where the granting of such easements permits or facilitates the development of the Property and the Project.

(c) A partial assignment and/or transfer by the Developer of the Hotel Component to Excel Hotel Group, Inc. ("Excel") or an Excel Related Person or Entity.

(d) A transfer by the Developer to an entity that is not a Related Person or Entity, but which is approved by Hilton Franchise Holding, LLC, for continued operation as a Hampton Inn or other Permitted Replacement Hotel.

(e) Any transfer for (i) financing purposes to the holder of a mortgage; (ii) any refinancing or permanent financing of the mortgage; (iii) any transfer to any person or

entity pursuant to foreclosure or deed in lieu of foreclosure of any such mortgage referred to in clauses (i) or (ii).

As used in this Agreement, a "Related Person or Entity" shall mean an entity in which Developer or any entity which controls, is controlled by or under with common control by Developer, provided, however, that in the event such transfer or assignment includes the Hotel Component, such Related Person or Entity shall demonstrate that such person or entity has been approved in writing by Hilton Franchise Holding, LLC, to operate the Hotel Component of the Project.

In the event of any transfer by Developer not requiring the Agency's prior approval, including a partial assignment or transfer of the Hotel Component to Excel, Developer agrees that at least thirty (30) days prior to such transfer, Developer shall give written notice to the City of such transfer and Developer shall provide satisfactory evidence that the transferee has assumed or upon the effective date of transfer will assume in writing through an assignment and assumption agreement, in a form reasonably acceptable to the Agency, all of the obligations of the Developer under this Agreement related to the portion of the property and/or Agreement being assigned and/or transferred that remain unperformed as of such transfer or which arise from and after the date of transfer.

Following a transfer of the Hotel Component, (i) the Developer of the Retail Component shall be solely responsible for the development of the Retail Component and shall not be responsible for development of the Hotel Component and (ii) the Developer of the Hotel Component shall be solely responsible for development of the Hotel Component and shall not be responsible for development of the Retail Component. A default by one Developer shall not be considered a Default by the other Developer.

2.4 Agency Consideration of Proposed Transfer; Release of Transferor Upon Permitted or Approved Transfer. If the Developer desires to cause a transfer of any of its interests in this Agreement or the Property and such transfer requires the Agency's approval under Section 2.3, Developer shall request in writing to the Agency that it consent to such transfer, which consent shall not be unreasonably delayed, conditioned, or withheld. A transfer shall be conditioned upon: (i) the proposed assignee expressly assuming, in writing, the unexecuted obligations hereunder of the transferor/assignor, as applicable, as to times following the effective date of the assignment and (ii) the proposed assignee demonstrating to the reasonable satisfaction of the Agency that such person or entity has adequate financial capacity to complete the development and/or operation of the Project on the Property.

Notwithstanding any other provision set forth in this Agreement to the contrary, upon the effective date of a permitted or approved transfer, and provided that the transferor/assignor shall have delivered to the Agency an executed assignment and assumption agreement in a form reasonably acceptable to Agency legal counsel, the transferor/assignor shall be released from all further liabilities and obligations hereunder and the Operating Covenant that have been so transferred and assigned.

2.5 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall run with the Property and be binding upon the Developer and the Agency and

their successors and assigns. Whenever the term “Developer” or “Agency” is used in this Agreement, such term shall include any other successors and assigns.

3. Definitions.

3.1 Defined Terms. As used in this Agreement, capitalized terms are defined where first used or as set forth in this Section 3.1. Capitalized terms used in an attachment attached hereto and not defined therein shall also have the meanings set forth in this Section 3.1.

“Building Permit” means all permits issued by City and required for commencement of construction of the Project.

“Business Day” means a weekday on which El Cajon City Hall is open to conduct the public’s business.

“City” means the City of El Cajon, California.

“Construction Contract” has the meaning set forth in Section 5(a).

“County” means the County of San Diego, California.

“Developer” has the meaning set forth in the opening paragraph of this Agreement, subject to Section 2.2.

“Developer Title Policy” has the meaning set forth in Section 6.8(c).

“Director” means the Assistant City Manager and Director of the El Cajon Public Works Department, or an individual designated as the Director by the Assistant City Manager and Director of the El Cajon Public Works Department.

“Escrow” means the escrow through which the Property Closing is conducted.

“Escrow Agent” means First American Title Company.

“Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County of San Diego, the City and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer, or the Project.

“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 that is (i) defined as a “hazardous waste,” “acutely hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under

Sections 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., (xii) methyl-tertiary butyl ether, (xiii) perchlorate or (xiv) 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 the environment. For purposes hereof, “Hazardous Materials” excludes materials and substances in quantities as are commonly used in the construction and operation of a hotel, provided that such materials and substances are used in accordance with all applicable laws.

“Hotel” means the proposed 85 room or more Hampton Inn (or a Permitted Replacement Hotel) that is the subject of this Project.

“Hotel Component” means that portion of the Project that is exclusively dedicated to the Hotel and its related facilities.

“Indemnitees” means the Agency, its subdivisions, departments, and its respective elected and appointed officers, officials, members, employees, representatives, agents, volunteers, predecessors, and successors.

“Official Records” means the Official Records of the County.

“Operator” means the Developer of the Hotel Component or its designee.

“Operating Covenant Termination Date” means fifteen (15) years from the date the Release of Construction Covenants is issued or required to be issued.

“Outside Closing Date” means the time frame identified in the Schedule of Performance (Attachment No. 3) for closing escrow on the sale of the Project Site, but in no event more than twelve (12) months from the Effective Date of this DDA.

“Parcel 1” means that portion of the Property owned by the City, designated as Parcel 1 in the depiction in Attachment No. 1.

“Parcel 2” means that portion of the Property owned by the Agency, designated as Parcel 2 in the depiction in Attachment No. 1.

“Permitted Replacement Hotel” means (i) another Hilton brand that meets or exceeds the attributes of a “Hampton Inn” or (ii) another national hotel franchisor’s brand comparable to “Hampton Inn.”

“Project” means the Developer’s acquisition of the Property, and the design and construction of the following two Project components: (i) an approximately 85 room or more, limited service Hampton Inn (or a Permitted Replacement Hotel) (the “Hotel Component”), and the continuous operation of the Hotel, its amenities, and ancillary services, on the Property by Operator for a minimum of fifteen (15) years, on approximately 1.5 acres of land, depicted as Parcel 3 on the Tentative Parcel Map, and (ii) approximately 17,000 rentable square feet of retail and/or restaurant on the remaining 2.5 acres of land, depicted as Parcels 1 and 2 on the Tentative Parcel Map (the “Retail Component”), each in accordance with this Agreement, including, without limitation, in accordance with the Scope of Development and the Final Construction Documents.

“Project Budget” means the preliminary budget materials attached hereto and incorporated herein as Attachment No. 4.

“Project Costs” means all costs of any nature incurred in connection with the planning, design, and development of the Project.

“Property” means that certain real property depicted in Attachment No. 1, which is attached hereto and incorporated herein by this reference.

“Property Closing” means closing of the conveyance, and delivery of possession, of the Property to Developer pursuant thereto.

“Public Improvements” means all on- and off-site improvements that (i) are required to be constructed to serve the Project and (ii) will be dedicated to the City of El Cajon upon Developer’s completion thereof. The Public Improvements are described in the Scope of Development.

“Release of Construction Covenants” means a release document substantially in the form attached hereto and incorporated herein as Attachment No. 5 to be executed by Agency and recorded in the Official Records upon Developer’s completion of the Project, as described in Section 7.14.

“Retail Component” means that portion of the Project that is exclusively dedicated to the retail improvements (exclusive of the Hotel) and its related facilities.

“Schedule of Performance” means the Schedule of Performance attached hereto and incorporated herein as Attachment No. 3.

“Scope of Development” means the Scope of Development attached hereto and incorporated herein as Attachment No. 6.

“Specific Plan” means a specific plan, as defined in California Government Code sections 65450 *et seq.*, and Chapter 17.70 of the El Cajon Municipal Code, which is applicable to

the Property and which is required by Section 16 of this Agreement. The Specific Plan may be supplemental and in addition to, or may be a part of, any existing specific plans applicable to the Property.

“Successor Agency,” or “Agency,” means the City, solely in its capacity as the successor agency to the Redevelopment Agency for the City of El Cajon. The Successor Agency owns Parcel 2.

“Title Company” means First American Title Company, or such other title insurance company as may be agreed to by Developer and Executive Director.

4. Omitted.

5. Project Construction Contract.

(a) The anticipated sources and uses of funds for the development of the Project are set forth in the Project Budget (Attachment No. 4). At or prior to the Property Closing, and as a condition precedent to the Agency’s obligation to transfer Parcel 2 to Developer, the Developer or Developers if the Hotel Component has been transferred to a second Developer shall submit to the Director a copy of the fee-based construction contract or guaranteed maximum price construction contract between each Developer and its respective general contractor for all of the improvements required to be constructed by such Developer hereunder, certified by such Developer to be a true and correct copy thereof (the “Construction Contract”).

(b) In lieu of a corporate surety bond or bonds or other security instrument, with the Developer’s contractor or contractors as principal, in a penal sum not less than one hundred percent (100%) of the amount of the cost of constructing the Project guaranteeing completion of construction and the payment of wages for services engaged and bills contracted for materials, supplies, and equipment used in the performance of the work, and protecting the Developer from any liability, losses, or damages arising therefrom, the Director shall have the right to inspect, at reasonable times and reasonable places, Developer’s current development financial records to ensure the Agency that the Project Budget remains appropriate for the development of the Improvements. The Director shall proceed in accordance with Section 7.6, below, and if the Director determines, in his reasonable discretion, that the Project Budget is insufficient to complete the construction of the Improvements, and correction of any deficiencies cannot be completed, Developer shall agree to a requirement that disbursements from the construction loan from its lender shall require the approval of the Director or his assignee, and shall cooperate with the Agency in establishing this obligation with its lender. The requirements of this subsection (b) shall terminate upon the issuance of a certificate of occupancy by the City’s chief building official or his designee. The Director may accept alternate security in his or her sole and absolute discretion.

6. Acquisition of the Property; Purchase Price.

The Developer shall acquire a fee simple title to Parcel 2 pursuant to the grant deed in the form attached hereto and incorporated herein as Attachment No. 7 (the “Grant Deed”). Developer’s purchase price for the Property (the “Purchase Price”) is FOUR MILLION

SEVENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$4,075,000.00) that will be paid through a deposit, into escrow as further described below. Of the Purchase Price \$ _____ will be attributed to Parcel 1, and \$ _____ will be attributed to Parcel 2, which will be paid to the Successor Agency.

6.1 Escrow. Agency and Developer agree to open an Escrow with First American Title Company (the "Escrow Agent"), by the time established in the Schedule of Performance. This Agreement constitutes the Agency's and Developer's escrow instructions for the City's sale and the Developer's purchase of the Parcel 1 and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the Escrow. The Escrow Agent is hereby empowered to act under this Agreement, and the Escrow Agent, upon indicating within five (5) days after the opening of the Escrow its acceptance of the provisions of this Section 6.1, in writing, delivered to the Agency and the Developer, shall carry out its duties as Escrow Agent hereunder. In the event of any conflict between any additional escrow instructions required by the Escrow Agent and the provisions of this Agreement, the provisions of this Agreement shall supersede and control. Any amendment of the escrow instructions set forth or described herein shall be in writing and signed by both the Agency and the Developer. All communications from the Escrow Agent to Agency or Developer shall be in writing and directed to the addresses and in the manner established in Section 9.1 of this Agreement for notices, demands and communications between Agency and Developer.

6.2 Deposits Into Escrow. Agency and Developer shall deposit the following documents and pay into the Escrow the following fees, charges, and costs promptly after the Escrow Agent has notified the City and the Developer of the total amount of such fees, charges, and costs, but not earlier than five (5) days prior to the scheduled date for the Property Closing:

- a. Developer shall deposit the Purchase Price;
- b. Agency and Developer shall each pay one-half of the Escrow Fee;
- c. Agency shall pay the costs, if any, of drawing the Grant Deed;
- d. Agency shall pay the recording fees, if any;
- e. Agency and Developer shall pay their respective notary fees;
- f. Agency shall pay for any transfer tax and any state, county or city documentary stamps; and
- g. Agency shall deposit with the Escrow Agent the fully executed Grant Deed, and any other document required by the City or Escrow Agent for execution.

6.3 Escrow Agent Obligations. The Escrow Agent shall notify the Agency and Developer when all outstanding documents, including the Grant Deed, have been executed and submitted to Escrow by the applicable party.

Upon confirmation by the Escrow Agent that all of the Agency's Conditions to Closing and all of the Developer's Conditions to Closing have been satisfied, or waived by the appropriate party, the Escrow Agent shall record the following documents in the following order of recordation: Grant Deed and _____.

6.4 Funds in Escrow. All funds received in the Escrow shall be deposited by the Escrow Agent in a general escrow account with any state or national bank doing business in the State of California and reasonably approved by the Director and Developer, and such funds may be combined with other escrow funds of the Escrow Agent. All disbursements shall be made on the basis of a thirty (30) day month.

6.5 Failure to Close. If the Property Closing does not occur on or before the Outside Closing Date, any party who then shall have fully performed the acts to be performed before the conveyance of Parcel 1 may, in writing, demand the return of its money, papers, or documents from the Escrow Agent. No demand for return shall be recognized until fifteen (15) days after the Escrow Agent (or the party making such demand) shall have mailed copies of such demand to the other party. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party within the fifteen (15) day period, in which event the Escrow Agent is authorized to hold all money, papers and documents until instructed by mutual agreement of the parties or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the Escrow Agent shall conduct the Property Closing as soon as possible.

If objections are raised in the manner provided above, the Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both the Director and Developer, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction. If no such objections are made within said fifteen (15) day period, the Escrow Agent shall immediately return the demanded money, papers or documents.

6.6 Amendments. Any amendment to these Escrow instructions shall be in writing and signed by the Director or Agency legal counsel, and Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as the Escrow Agent under such amendment.

6.7 Agency's Conditions to Closing. The Agency's obligations to convey Parcel 2 and the closing of Escrow shall, in addition to any other conditions set forth herein in favor of the City, be conditional and contingent upon the satisfaction, or waiver by the Agency in its sole and absolute discretion, on or before the Outside Closing Date, of each and all of the following conditions (collectively, "Agency's Conditions to Closing"):

(a) Developer shall have deposited into Escrow the Purchase Price and all other sums and documents required by the Developer by this Agreement.

(b) Developer shall have deposited into Escrow any other document required by the Escrow Agent for execution.

(c) The Director shall have received a true and complete copy of a Construction Contract by and between Developer and the General Contractor pursuant to which

the General Contractor has agreed to construct the Project at a cost consistent with the costs set forth therefor in the Project Budget.

(d) The Developer shall have obtained all required Project entitlements.

(e) The Director shall be reasonably satisfied that construction of the Project will commence not later than six (6) months after the Property Closing and will thereafter be completed in a reasonably diligent and continuous manner.

(f) The Title Company is prepared to issue a CLTA Policy of title insurance naming Developer as the insured, and showing Developer as holding title to Parcel 1 ("Agency Title Policy").

(g) The representations of Developer contained in this Agreement shall be correct in all material respects as of the Property Closing as though made on and as of that date and, if requested by the Director, Agency shall have received a certificate to that effect signed by Developer.

(h) No Event of Default by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both would constitute an Event of Default by Developer and, if requested by the Director, Agency shall have received a certificate to that effect signed by Developer.

(i) Developer shall have executed and delivered to Escrow a disposition and development agreement (or executed counterpart thereof) with the City, in form and content acceptable to the Agency, for Developer's acquisition and subsequent development of Parcel 1.

6.8 Developer's Conditions to Closing. Developer's obligations to purchase Parcel 2 from the Agency and the closing of the Escrow shall, in addition to any other conditions set forth herein in favor of the Developer, be conditional and contingent upon the satisfaction, or waiver by the Developer in its sole and absolute discretion, on or before the Outside Closing Date, of each and all of the following conditions (collectively, the "Developer's Closing Conditions"):

(a) Agency has deposited into Escrow the Grant Deed, duly executed and acknowledged by the Agency, and all other sums and documents required of Agency by this Agreement.

(b) Agency shall have delivered to Escrow a disposition and development agreement (or executed counterpart thereof) executed by the City, in form and content acceptable to the Developer, for Developer's acquisition and subsequent development of Parcel 1.

(c) On the Closing Date, the Title Company shall be prepared to issue its ALTA extended coverage form policy of title insurance, with liability in the amount of \$ _____, showing title to Parcel 2 vested in Developer, subject only to such other exceptions as Developer previously approved (the "Developer Title Policy"). The Developer shall further deposit such funds necessary to pay the difference between the premiums for the Agency Title Policy and the Developer's Title Policy.

(d) Developer shall have approved of the condition of title to Parcel 2. With respect thereto, Agency and Developer acknowledge that Developer has obtained from the Title Company a Preliminary Title Report, with copies of all exceptions noted therein, as order number 846973 (the "Report"). If Developer objects to any exception or exceptions in the Report, Agency shall notify Developer within ten (10) days whether or not Agency will cause such exception to be removed by the Property Closing. If Agency declines to cause any such exception to be removed, Developer shall, within ten (10) days, elect either to waive the exception and/or objection or terminate this Agreement by written notice to Agency.

(e) No Event of Default by Agency shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by Agency.

(f) City shall have Approved all Required Entitlements necessary for development of the Project, including without limitation, the Parcel Map and the Specific Plan. The term "Required Entitlements" shall mean all entitlements, permits, approvals, consents and waivers from any federal, state or local, governmental or quasi-governmental agency, body or authority (each an "Authority") and which may be necessary or desirable for Developer's contemplated development and use of the Property consistent with the Qualifying Development, including, as applicable, without limitation, use permits, including conditional use permits, and/or any required approvals under the California Environmental Quality Act, all of which (A) shall be in such form, on such terms and subject only to such conditions as are acceptable to Developer in its sole discretion, and (B) shall have been "Approved" (as defined below) by all applicable Authorities. The term "Approved" shall mean the date on which the Required Entitlements have been approved and, if applicable, executed by all applicable Authorities, including, without limitation, the City of El Cajon, and the greater of (1) a period of ninety (90) days has passed after the date on which the City has voted in favor of the adoption of and has taken final action on all of the Required Entitlements (the "Final Action Date"), and (2) a period of thirty-five (35) days has passed after the filing and posting of a notice of determination, related to such final action by the City of El Cajon with the County Clerk for the County of San Diego in accordance with Section 21152 of the Public Resource Code or, if no such notice of determination, as applicable, has been filed, a period of one hundred eighty (180) days has passed after the Final Action Date, all without an administrative appeal or judicial challenge to the Required Entitlements having been filed, or, if an administrative appeal or judicial challenge has been filed, such administrative appeal or judicial challenge has been finally resolved in a manner acceptable to Developer in its sole discretion.

6.9 Agency Right to Terminate. Prior to the Property Closing, Agency, if it is not then in material default under this Agreement, may terminate this Agreement by giving thirty a (30) days' written notice to Developer if, by the Outside Closing Date, any of the conditions set forth in Section 6.7 have not been satisfied.

6.10 Developer Right to Terminate. Prior to the Property Closing, Developer, if it is not then in material default under this Agreement, may terminate this Agreement by giving thirty (30) days' written notice to Agency if, by the Outside Closing Date, any of the conditions set forth in Section 6.8 have not been satisfied.

6.11 Waiver of Conditions. The conditions set forth in Section 6.7 are for City's benefit only and the Director may waive all or any part of such rights by written notice to Developer. The conditions set forth in Section 6.8 are for Developer's benefit only and Developer may waive all or any part of such rights by written notice to Agency.

6.12 Inspections. The Developer shall conduct the Developer's own investigation of the Property, including but not limited to its physical condition, the soils and toxic conditions of the Property and all other matters which in the Developer's judgment affect or influence the Developer's proposed use of the Property and the Developer's willingness to develop the Property pursuant to this Agreement. The Developer's investigation may include, without limitation, the preparation by a duly licensed soils engineer of a soils report for the Property. If, in the Developer's reasonable judgment, the physical condition of the Property is unsuitable for the use or uses to which the Property will be put to the extent that it is not economically feasible for the Developer to develop the Property pursuant to this Agreement, then the Developer shall have the option either to take any action necessary to place the Property in a condition suitable for development, or terminate this Agreement pursuant to Section 6.10 hereof. If the Developer has not notified the Agency of its determinations concerning the suitability of the physical condition of the Property by the date scheduled for the Property Closing, the Developer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section.

6.13 "AS-IS". Developer acknowledges and agrees that it is purchasing the Property solely in reliance on its own investigation, and that no representations and/or warranties of any kind whatsoever, express or implied, have been made by Agency, or by its officers, employees, representatives or agents. Developer further acknowledges and agrees that Developer will be purchasing the Property in "AS IS" condition with all faults and conditions then existing in and on the Property, whether known or unknown; provided that the foregoing shall not constitute a release of Agency under any statute or common law theory. Notwithstanding the foregoing, Agency acknowledges and agrees that neither this Section 6.13, nor any other term, provision or condition of this Agreement obligates Developer, as between it and Agency, and prior to the Property Closing, to remediate, or to incur any cost to remediate, any Hazardous Materials that were released or existed on the Property prior to the Property Closing. Developer acknowledges and agrees that, as between it and Agency, nothing in this Agreement shall ever be deemed, construed or interpreted to obligate Agency to remediate, or to incur any expense to remediate, any Hazardous Materials discovered on the Property either before or after the Property Closing unless and until Agency expressly agrees to do so in writing. The Agency represents and warrants to Developer that the Agency has disclosed to Developer all information that the City has in its possession concerning the presence of Hazardous Materials at the Property.

6.14 Developer Right to Terminate Upon Discovery of Hazardous Materials. If, prior to the Property Closing, Developer discovers Hazardous Materials the cost of remediation of which exceeds the limits of any applicable insurance policy, then Developer, subject to the condition set forth below, shall have the right, prior to the Property Closing, to terminate this Agreement by thirty (30) days' written notice to Agency. Developer's right so to terminate this Agreement shall be subject to the condition precedent that Developer first have (a) submitted to Agency any and all information then available to Developer as to the nature and scope of the Hazardous Materials discovered and as to the cost estimated to remediate them, if any such cost estimate exists, and (b) offered to Agency the right, within fifteen (15) days after receipt of said

statement, or such longer period of time as may reasonably be required by Agency to obtain competitive bids for the work, to elect, at its sole and absolute discretion, to cause such work to be performed, at Agency's sole cost and expense, to the reasonable satisfaction of Developer. If Agency so elects and causes such work to be performed as soon as reasonably possible, then Developer shall not have the right to terminate this Agreement under this Section 6.14 provided the work can be, and is, completed by the Outside Closing Date.

6.15 Failure of Conditions Precedent; Termination. In the event that by the Outside Closing Date each of the conditions set forth in Section 6.7 is not fulfilled, or waived by Agency pursuant to Section 6.11, Agency may at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the parties from further obligations hereunder. In the event that by the Outside Closing Date each of the conditions set forth in Section 6.8 are not fulfilled, or waived by the Developer pursuant to Section 6.11, Developer may, at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the parties from further obligations hereunder. In the event this Agreement is terminated, all documents and funds delivered by the Developer to Agency or Escrow Agent shall be immediately returned to Developer and all documents and funds delivered by Agency to Developer or Escrow Agent shall be returned immediately to Agency. Nothing in this Section 6.15 shall be construed as releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder.

6.16 Condition of Title. The Agency shall convey to the Developer fee simple title to Parcel 2 free and clear of the deed restriction prohibiting access from the Property to Fletcher Parkway and all other recorded liens, encumbrances, assessments, leases and taxes, except the provisions of the Grant Deed, and the printed conditions and exceptions contained in the Agency Title Policy as approved the Developer pursuant to Section 6.8(d). Developer shall have the right to reasonably approve or disapprove the condition of title as reflected in the Agency Title Policy; provided, however, that Developer hereby approves the lien of current non-delinquent real property taxes and assessments, if any.

6.17 Taxes and Assessments. Ad valorem taxes and assessments, if any, on Parcel 2, and taxes upon this Agreement or any rights hereunder levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the Agency. All ad valorem taxes and assessments levied or imposed for any period of time commencing after the close of the Escrow shall be paid by the Developer.

6.18 Conveyance Free of Possession. Parcel 2 shall be conveyed free of any possession or right of possession by any person except that of Developer and the easements and other encumbrances of record (subject to Developer's right to review the condition of title pursuant to Section 6.8(c)).

6.19 Initiation of Specific Plan. Prior to the Property Closing, the Agency shall have approved, or (if not approved) initiated the Specific Plan as described in Section 16 of this Agreement and the Developer shall have deposited with Escrow its waiver of objections, and its irrevocable and written consent to the Specific Plan application.

7. Development of the Property.

7.1 Scope of Development. The Property shall be developed as provided in the Scope of Development which is attached hereto as Attachment No. 6 and incorporated herein by reference. The improvements to be constructed on the Hotel Component of the Property include a sixty thousand (60,000) square foot, 85-room or more, Hampton Inn (or a Permitted Replacement Hotel), and on the Retail Component of the Property include approximately seventeen thousand (17,000) rentable square feet of retail and/or restaurant improvements, with a shared parking area and shared access areas for both Components on each Component (collectively are referred to herein as the "Improvements"). The Developer or Developers shall commence and complete construction of the Improvements by the respective times established therefore in the Schedule of Performance, subject to Section 9.3. The development shall be constructed consistent with plans and specifications submitted to and approved by the Agency and/or City in conjunction with required planning entitlements and applicable building codes, and shall incorporate or show compliance with all applicable conditions of project approval.

7.2 City Approvals. Approval by the Agency pursuant to Sections 7.3, 7.4 and 7.5 hereof shall be required in addition to all City approvals. The Property shall be developed as established in this Agreement and such documents, except as changes may be mutually agreed upon between the Developer and the Agency. Any such changes shall be within the limitations of the Scope of Development.

7.3 Construction Drawings and Related Documents. By the time set forth in the Schedule of Performance, the Developer shall prepare and submit to the Agency construction drawings, landscape plans, and related documents for development of the Property for building permit(s).

During the preparation of all drawings and plans, City staff and the Developer shall hold progress meetings as needed to coordinate the preparation of, submission to, and review of drawings, plans and related documents by the City. The City staff and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City can receive prompt and speedy consideration. The Developer shall be obligated to obtain all City approvals, including building permits and operating permits required for the construction of the Improvements.

The Agency agrees that all aspects of entitlement permit review and processing and inspections will receive expedited processing, within reason, and subject to City's obligations under other entitlement applications. Nothing herein shall require the City, as the plan reviewing and permitting agency, to disregard local, state, or federal laws relative to the proposed development and shall be managed directly by the City Manager's office with use of senior and experienced staff.

7.4 Approval of Plans, Drawings, and Related Documents. The City shall have the right of planning, including plan check, review of all plans and submissions including any changes therein. During each stage of the processing of the plans, drawings and related documents for the Improvements, the City shall have the right to reasonably require additional information and shall advise the Developer if any submittal of plans or drawings is not complete

or not in accordance with City procedures. If the City determines that such a submittal is not complete or not in accordance with such procedures, such tender shall not be deemed to constitute a submittal for purposes of satisfying the Schedule of Performance. If the City does not take action with respect to any submittal within the time set forth in the Schedule of Performance, the Developer's time to perform hereunder shall be extended by one day for each day by which the City's action is late.

If the Developer desires to make any substantial changes in the construction plans after their approval by the City, the Developer shall submit the proposed change to the Agency for their approval. If the construction plans, as modified by the proposed change, conform to the requirements of Section 7.2 of this Agreement and the Scope of Development, the Agency will approve or reject the proposed change and notify the Developer in writing within the time period set forth in the Schedule of Performance. In the event that the Agency has neither approved or rejected such proposed change within such time period day period, the Developer may notify the Agency in writing that the Agency is in violation of such requirement and that such change will be deemed approved within fifteen (15) days of the Agency's receipt of such notice, and if the Agency still has not accepted or rejected such changes within such additional fifteen (15) day period, the proposed change shall be deemed approved.

7.5 Cost of Construction. The Developer contemplates financing the Project with a combination of equity and debt. The cost to acquire the Property and construct the Improvements is set forth in the "Project Budget", which is attached hereto as Attachment No. 4 and incorporated herein. The cost of constructing improvements for and the development of the Project and constructing all of the on-site and off-site improvements at or about the Property (e.g. all improvements outside of the "building envelope") required to be constructed in connection with the development of the Project, including without limitation all landscaping, lighting, curbs, gutters and pavement, shall be borne initially by Developer provided, however, the Agency shall reimburse the Developer for the cost of such off-site improvements described in Attachment "6" within thirty (30) days after the Agency's receipt of an invoice thereof from Developer. It is uncertain whether the conveyance of the Property to Developer, or any other form of Agency assistance in relation to the Project would make any part of the construction or development a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("Prevailing Wage Law"), such that it would cause Developer to be required to pay prevailing wages for any aspect of the development, and the Agency makes no representations or warranties to Developer that the Project is subject to the Prevailing Wage Law. Accordingly, Developer agrees to indemnify, defend (with counsel approved by City) and hold the Agency, its subdivisions, departments and its respective appointed and elected officers, officials, agents and employees from and against any actions, fines, penalties, attorneys' fees and damages, arising out of any claims that the Project is subject to the Prevailing Wage Law, including any administrative proceeding or other legal challenge.

7.6 Agency Right to Inspect Developer Records. The Agency and its authorized representatives shall, at all times after reasonable prior notice, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of the Developer which in any manner relate to the costs of the Improvements as set forth in paragraph (b) of Section 5 under this Agreement. The Developer's staff shall cooperate fully with the Director or Agency's authorized auditors when they conduct such audits. Within thirty

(30) days of the submittal of such audit report, the Developer shall provide a written response to all conditions or findings reported in such audit report. The response must discuss each condition or finding and set forth a proposed resolution, including a schedule for correcting any deficiency. All conditions or correction actions shall take place within six (6) months after receipt of the audit report unless the Director or his or her designee authorizes an extension of time to submit such corrections. The failure of Developer to complete the corrections, if any, is a condition precedent to the Director's actions as described in paragraph (b) of Section 5 of this Agreement.

7.7 Schedule of Performance. The Developer shall promptly begin and thereafter diligently prosecute to complete the Project, with all construction commencing and being completed within the times specified therefor in the Schedule of Performance, subject to extensions permitted by Section 9.3 of this Agreement. It is understood and agreed by Developer that no Certificate of Occupancy for the Retail Component will be issued until (i) Developer has obtained all building permits and has begun constructing the Hotel Component beyond the Hotel's foundation and (ii) the Operating Covenant has been executed and recorded.

7.8 Bodily Injury and Property Damage Insurance. The Developer shall defend, indemnify, assume all responsibility for and hold the Agency, its subdivisions, departments, officers, elected officials, and employees, harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including reasonable attorney's fees and costs), which may be caused by any of the Developer's activities under this Agreement, whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of the Agreement; provided, however, the foregoing shall not apply to any such claims or suits to the extent arising from the negligence or willful misconduct to the City or its subdivisions, departments, officers, elected officials, employees agents or contractors. The Developer shall take out and maintain during the life of this Agreement a commercial general liability policy with limits of a minimum of \$2,000,000 and State of California required levels of Workers' Compensation insurance, only if Developer has employees; for all work performed under this Agreement in accordance with Agency requirements. Developer shall name Agency, its subdivisions, departments, officers, elected officials, and employees as additional insured on the policy of commercial general liability insurance. The policy of commercial general liability insurance shall be approved by the Agency's legal counsel.

The Developer shall furnish a certificate of insurance for the commercial general liability policy countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage certified by an endorsement to the policy as stated in the certification. This countersigned certificate and policy endorsement shall name the Agency (and its subdivisions, departments, officers, elected officials, agents, representatives, consultants and employees) as additional insureds under the policy. The certificate by the insurance carrier and policy endorsement shall contain a statement of obligation on the part of the carrier to notify the Agency 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, but only if it is the practice of the insurance carrier to provide such notification. The commercial general liability coverage provided hereunder by the

Developer shall be primary insurance and not contributing with any insurance maintained by the Agency, and the policy shall contain such an endorsement. The insurance policy or endorsement shall contain a waiver of subrogation for the benefit of the Agency, and shall include finished products coverage. The Developer shall provide the required certificate at or prior to the Property Closing.

The Developer shall also furnish or cause to be furnished to the Agency evidence satisfactory to the Agency that any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

7.9 City and Other Governmental Agency Permits. Before commencement of construction or other works of improvement upon the Property, the Developer shall, at its own expense, take all actions necessary and proper to secure or cause to be secured any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work. The Agency will, without obligation to incur liability or expense therefor, use its best efforts to expedite issuance of building permits for construction that meets the requirements of the City code.

7.10 Rights of Access. For the purpose of assuring compliance with this Agreement, representatives of the Agency shall have the right of access to all portions of the Property during the construction period without charges or fees, upon providing notice twenty-four (24) hours in advance to Developer, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Project, so long as they comply with all safety rules. Such representatives of the Agency shall be those who are so identified in writing by the Director. The Agency shall indemnify and hold the Developer harmless from any bodily injury arising out of the activities of the Agency as referred to in this Section 7.10.

The Developer and the Agency agree to cooperate in placing and maintaining on the Property during construction one sign indicating the respective roles of the Developer and the Agency in the Project.

7.11 Local, State and Federal Laws. The Developer shall carry out the construction of the Project in conformity with all applicable laws, including all applicable federal and state labor standards; provided, however, Developer and its contractors, successors, assigns, transferees, and lessees do not waive their rights to contest any such laws, rules or standards.

7.12 Antidiscrimination During Construction. The Developer, for itself and its successors and assigns, agrees that in the construction of the Project provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual preference or age.

7.13 Taxes, Assessments, Encumbrances and Liens. The Developer shall, after acquisition, pay prior to delinquency, all future ad valorem taxes and assessments for the Property.

7.14 Release of Construction Covenants. Promptly after completion of the construction of the Improvements in conformity with this Agreement, the Agency shall deliver to the Developer a Release of Construction Covenants, executed and acknowledged by the Agency substantially in the form provided on Attachment 5, which is attached hereto and incorporated herein by this reference. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the construction of the Improvements, and the Release of Construction Covenants shall so state. Following the issuance of a Release of Construction Covenants, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to this Agreement; however, any such party shall remain subject to the terms and conditions of Operating Covenant for the term thereof, to the extent applicable.

If Agency refuses or fails to furnish a Release of Construction Covenants in accordance with the preceding paragraph, and after written request from the Developer, the Agency shall, within fifteen (15) days after receipt of such written request therefor, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the Agency's opinion of the actions the Developer must take or cause to be taken to obtain the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Project, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 8182 of the California Civil Code.

8. Use of the Property.

8.1 Use in Conformance with Plan and Agreement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof that the Developer, such successors and such assignees, shall use, operate and maintain the Property and the Project thereon in conformity with this Agreement and shall devote the Property and the Project thereon to the uses specified in the Specific Plan, City's Municipal Code and this Agreement for the periods of time specified herein.

8.2 Long Term Maintenance of the Project. The Developer shall maintain or cause to be maintained the interiors and exteriors of the Project in a safe, decent, and sanitary manner, in accordance with the standard of maintenance in conformity with the El Cajon Municipal Code. If at any time Developer fails to maintain the Project in accordance with this Agreement and Developer does not correct or commence to correct such condition within thirty (30) days after written notice from the Agency with respect to graffiti, debris, waste material, and general maintenance, or thirty days after written notice from the Agency with respect to landscaping and building improvements, then the Agency, in addition to whatever remedies it may have at law or at equity, shall have the right to enter upon the applicable portion of the Project and perform all acts and work reasonably necessary to protect, maintain, and preserve the Project and landscaped areas on the Property. The following standards shall be complied with by Developer and its maintenance staff, contractors or subcontractors:

(a) Developer shall maintain all common areas, all interior and exterior facades, and all exterior Project site areas, in a safe, decent, and sanitary manner. The Developer agrees to provide utility services, administrative services, supplies, contract services, maintenance, maintenance reserves, and management for the entire Project including the interior spaces, the common area spaces and the exterior common areas, parkway landscaping and sidewalks. The Developer shall provide electric, gas and water services to the Property and provide property, fire and liability insurance in the amounts set forth in this Agreement; payment of all property taxes and personal property taxes; payment of any and all assessments; and maintenance and replacement of all exterior landscaping.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant and irrigation materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees, as needed.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(d) All maintenance work shall conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of maintenance.

(e) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons possessing valid California applicators licenses, and in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

(f) Parking lots, lighting fixtures, trash/recycling enclosures, and all areas which can be seen from the adjacent streets shall be kept free from any accumulation of debris or waste materials by regularly scheduled maintenance.

8.3 Rights of Access. The Agency, for itself and other public agencies, at their sole risk and expense, shall have the right upon reasonable notice to Developer, to enter the Property or any part thereof which is occupied or controlled by the Developer, at all reasonable times for the purpose of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Property. Any such entry shall be made only after reasonable notice to Developer. Upon receipt of such notice, the Developer agrees to cooperate with the Agency in making the Property available for inspection by the Agency. Developer acknowledges and agrees that in the event that if for any reason the Developer fails to consent to such entry or inspection, the Agency may obtain an administrative inspection warrant

or take such other legal actions as may be necessary to gain entry to and inspect the Property. Agency shall indemnify and hold Developer harmless from any costs, claims, damages or liabilities pertaining to any entry.

8.4 Effect of Violation of the Provisions of this Agreement after Completion of Construction. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding upon and for the benefit and in favor of the Developer and the City, their respective successors and assigns, as to those covenants which are for their benefit. The covenants contained in this Agreement shall remain in effect until the Operating Covenant Termination Date (as defined in Section 3 of this Agreement). The covenants against discrimination set forth in Section 8.5, below, shall remain in perpetuity.

The Agency 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 rights 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. The Agreement and the covenants shall run in favor of the Agency, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Property. The Agency 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 to which it or any other beneficiaries of this Agreement and covenants may be entitled.

8.5 Nondiscrimination. The Developer covenants by and for itself 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, sexual preference, disability, familial status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. The foregoing covenants shall run with the land.

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

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, disability, familial 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 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 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:

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, disability, familial status, ancestry or national origin 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, sexual preference, marital status, disability, familial status, ancestry or national origin, 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.”.

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, the City and any successor in interest to the Property. The covenants against discrimination shall remain in effect in perpetuity.

8.6 Operating Covenant. On or prior to the earlier of (i) the conveyance of the Hotel Component to the Developer of the Hotel Component, or (ii) issuance of a Certificate of Occupancy for any portion of the Retail Component, the Developer of the Hotel Component shall execute and acknowledge an Operating Covenant substantially in the form attached hereto and incorporated herein as Attachment 8 (the “Operating Covenant”). The Developer’s execution of the Operating Covenant shall be a material component of this Agreement. The Operating Covenant shall obligate the Developer of the Hotel Component to construct the Hotel Component and shall obligate such Developer, or its approved assignee or successor, to operate the Hotel Component for a minimum period of fifteen (15) years, commencing on the date the City issues a Release of Construction Covenants for the Project.

9. General Provisions.

9.1 Notices, Demands and Communications Between the Parties. Written notices, demands and communications between the City and the Developer shall be sufficiently given if delivered by hand (and a receipt therefor is obtained or is refused to be given) or dispatched by registered or certified mail, postage prepaid, return receipt requested, or sent by telecopy or overnight delivery service, to the City and the Developer at the addresses provided pursuant to

embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; acts or failures to act of any public or governmental agency or entity (other than the acts or failures to act of the Agency) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Any requests for extension shall be in writing. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Developer.

10. Defaults and Remedies.

10.1 Defaults – General. Subject to the extensions of time set forth in Section 9.3 or this Section 10.1, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings for damages or specific performance against the party in default until thirty (30) days after giving such notice; provided that if the party is proceeding with diligence to cure, such party shall have such greater time as may be necessary to cure given the nature of the default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

10.2 Institution of Legal Actions. In addition to any other rights or remedies, but subject to the notice and cure period set forth in Section 10.1 above, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Legal actions must be instituted in the Superior Court of the County of San Diego, State of California, or in the Federal District Court in the Southern District of California. Each party hereby waives its right to remove any action from San Diego County as is otherwise provided in California Code of Civil Procedure section 394.

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

10.4 Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Director or in such other manner as may be provided by law. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon an agent designated for service of process as filed with the California Secretary of State and shall be valid whether made within or without the State of California or in such other manner as may be provided by law.

10.5 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.

10.6 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.

10.7 Attorneys' Fees. If any action at law or equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs of litigation from the non-prevailing party.

10.8 Termination by the Developer. In the event that the Agency is in material default of any of its obligations under this Agreement, and such default has not been cured in accordance with Section 10.1 hereof, then this Agreement, at the option of the Developer, and in addition to any other remedies available to Developer at law or in equity, may be terminated by written notice thereof to the Agency.

10.9 Termination by the City. In the event that:

(a) The Developer (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein or in the Property, the Project or any portion thereof in violation of this Agreement; or

(b) There is a change in the ownership of the Developer contrary to the provisions of Section 2.3 hereof; or

(c) The Developer fails to submit insurance required pursuant to Sections 7.8 of this Agreement by the time established in the Schedule of Performance (Attachment No. 3); or

(d) The Developer is in material default of any of its obligations under this Agreement, and such default has not or is not being cured in accordance with Section 10.1 hereof, then at the option of the Agency this Agreement and any rights of the Developer or any assignee or transferee in the Agreement shall, upon written notice from the City, be terminated by the Agency.

10.10 Term of the Agreement. This Agreement shall be effective on the Effective Date and shall expire upon the Operating Covenant Termination Date, unless earlier terminated in accordance with the terms hereof.

11. **Special Provisions.**

11.1 Commissions. The Agency and the Developer both represent to the other party that they have not engaged the services of any finder or broker and that they are not liable for

any commissions, broker's fees, or finder's fees, and agree to indemnify and hold harmless the other party from such commissions or fees as are alleged to be due from the party making such representations.

11.2 Successors in Interest. The terms, covenants, conditions and restrictions of this Agreement shall extend to and shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Agency and the Developer.

11.3 Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter hereof. Any prior agreements, promises, negotiations or representations, whether oral or in writing, which are not expressly set forth in this Agreement, are superseded and of no further force or effect. Subsequent modifications to this Agreement shall be in writing and signed by both the Agency and the Developer.

11.4 Captions and Construction. Captions in this Agreement are for convenience only and shall not be used in construing meaning. This Agreement shall be construed as a whole and in accordance with its fair meaning.

11.5 Severability. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding on the parties hereto.

11.6 Cooperation. The Agency and the Developer agree to cooperate with each other so as to achieve the objectives of this Agreement in a timely and efficacious manner.

11.7 Further Documents. Upon written request, the Agency and the Developer shall execute, deliver, or cause to be executed and delivered, such additional instruments and documents as are necessary to perform the terms of this Agreement.

11.8 Developer and Agency Relationship. It is hereby acknowledged that the relationship between Agency and Developer is not that of a partnership or joint venture and that Agency and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project, provided that the Developer remains in compliance with this Agreement.

11.9 Agency Approvals and Actions. The Agency shall maintain authority of this Agreement and the authority to implement this Agreement through the City's Director (or his or her duly authorized representative). The Director shall have the authority, but not the obligation, to make approvals, issue interpretations, waive provisions, execute documents, make and execute further agreements and/or enter into amendments of this Agreement on behalf of the Agency so long as such actions do not materially or substantially change the uses on the Project, or materially or substantially add to the costs incurred or to be incurred by the Agency as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance.

11.10 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day, unless the last day

is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

12. Entire Agreement, Waivers.

This Agreement may be signed in counterparts, and is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 33 and Attachments 1 through 8, which constitute the entire understanding and agreement of the parties.

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

In any circumstance where under this Agreement either party is required to approve or disapprove any matter, approval shall not be unreasonably withheld.

13. Time For Acceptance Of Agreement By Agency.

This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before thirty (30) days after signing and delivery of this Agreement by Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement. The date of this Agreement shall be the date when it shall have been signed by the Agency.

14. Scope and Duration.

All of the covenants and restrictions of this Agreement are imposed on the Property for the direct benefit of the Property and the tenants and occupants of the Property as a part of a general plan of improvement, development, building, occupation, and maintenance of properties in the City of El Cajon. These covenants and restrictions will run with the land and will be binding on all of the owners of the Property and all persons claiming under them, and continue to be in full force and effect during the Operating Covenant.

15. Lender Protection

15.1 Holder Not Obligated to Construct or Operate. The holder of any mortgage or deed of trust (a "Holder") shall not be obligated by the provisions of this Agreement to construct or complete the Project or any portion thereof or to perform the Operating Covenant, or to guarantee such construction or completion or performance of the Operating Covenant; nor shall any covenant or any other provision in this Agreement or the Operating Covenant 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.

15.2 Notice of Default to Holder; Right to Cure. Whenever the Agency delivers any notice of default ("Notice of Default") or demand to Developer with respect to any breach or default by Developer under this Agreement or the Operating Covenant, and if Developer fails to cure the default within the applicable time period, the Agency shall 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 Agency are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy 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; provided, however if the Holder is legally prevented from curing such default because of a bankruptcy by the Developer or because such cure requires physical possession of the Property then the thirty (30) day period shall be tolled until such bankruptcy is confirmed, rejected or otherwise resolved or the Holder has obtained lawful physical possession of the Property. Nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or completion of the Project, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to the Agency by written agreement reasonably satisfactory to the Agency, which election to assume may be made within ninety (90) days following Holder's securing of title to the Property. Such assumption shall not have the effect of causing the Holder to be responsible for any prior damage obligations of Developer to the Agency. The Holder, in that event, must agree to complete, in the manner provided in this Agreement, the Project. Any such Holder properly completing the Project or portion thereof shall be entitled to a Release of Construction Covenants. It is understood that a Holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Project (or portion thereof) if and to the extent any such Holder has within such thirty (30) day period commenced foreclosure proceedings to obtain title and/or possession and thereafter the Holder diligently pursues such proceedings to completion and cures or remedies the default. The Schedule of Performance shall be extended for the benefit of the Holder to allow for Holder's acquisition of the Property as provided in this Section 15.2.

15.3 Failure of Holder to Complete Project. In any case where the Holder has not exercised the option to construct as set forth in Section 15.2, or if it has exercised the option but has defaulted thereunder and failed to timely cure such default, the Agency may, by giving written notice to the Holder, purchase its mortgage or deed of trust by payment to the Holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Property or any part thereof has vested in the Holder, the Agency, if it so desires, shall be entitled to a conveyance of title to the Property or such portion thereof from the Holder to the Agency upon payment to the Holder of an amount equal to the sum of the following:

(a) The unpaid mortgage or deed of trust debt 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 Project or part thereof;

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

(e) Any prepayment charges, default interest, and/or late charges imposed pursuant to the loan documents and agreed to by Developer; and

(f) 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 the Agency.

16. Specific Plan for Property

The City shall initiate an application for the Specific Plan for the Property, which shall provide for the systematic implementation of the City's General Plan for the Property, consistent with the intent of the parties to this Agreement.

16.1 Restrictions on Use of Property. The Specific Plan shall provide for the permitted use of the Property consistent with this Agreement and the Operating Covenant attached to this Agreement as Attachment "8". At a minimum the covenants for development and maintenance of the Property contained in Attachment "8" shall be included in the Specific Plan.

16.2 Life of Specific Plan. The Specific Plan shall remain in existence not less than the term set forth in the Operating Covenant. If the Operating Covenant is eliminated due to foreclosure or by order of a court of competent jurisdiction the Specific Plan shall remain in full force and effect, the enforceability of the Operating Covenant notwithstanding.

16.3 Developer Cooperation and Consent. The Developer hereby covenants that it shall cooperate with the City in the processing of its application for the Specific Plan; it further covenants that it shall provide such written consents to the Specific Plan application, and written waivers of objections to the terms and conditions of the Specific Plan that are, at a minimum, identical to the Developer's covenants under this Agreement and Attachment "8".

16.4 Binding on Successors. The Specific Plan shall remain in full force and effect, and shall be binding upon the heirs, successors and assigns of the Developer.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK].

IN WITNESS WHEREOF, the Agency and the Developer have signed this Agreement on the respective dates set forth below.

APPROVED AS TO CONTENT:

“Agency”

**SUCCESSOR AGENCY TO THE EI
CAJON REDEVELOPMENT AGENCY**, a
public body, corporate and politic

Dated: _____

By: _____
DOUGLAS WILLIFORD
Executive Director

ATTEST:

Belinda Hawley, City Clerk

“Developer”

BRIXTON FLETCHER, LLC,
a Delaware limited liability company

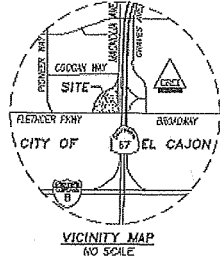
Dated: _____

By: _____
Name: _____
Title: _____

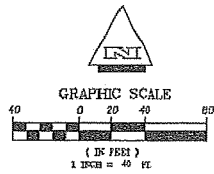
APPROVED AS TO FORM:

Morgan L. Foley
City Attorney

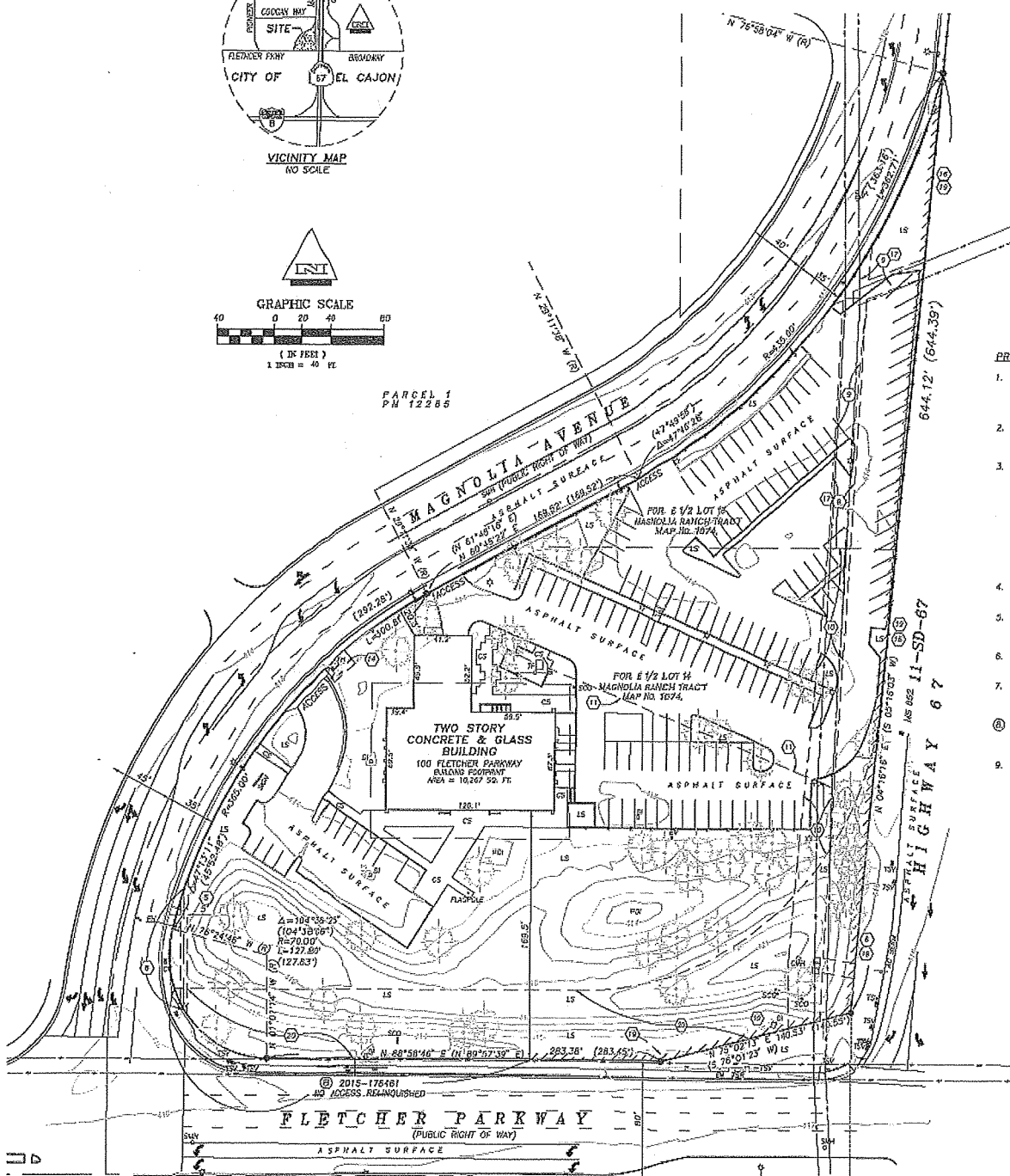
ATTACHMENT "1"
PROPERTY MAP



VICINITY MAP
NO SCALE



PARCEL 1
PM 12285



- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

ATTACHMENT "2"

LEGAL DESCRIPTION OF PROJECT SITE

All of that real property located in the City of El Cajon, County of San Diego, State of California, described as follows:

"Parcel 2"

THAT PORTION OF LOT 14 OF MAGNOLIA RANCH TRACT, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1674, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 29, 1915, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF THE EAST ONE-HALF OF SAID LOT 14, DISTANT ALONG SAID NORTH LINE, NORTH 89°57'39" EAST, 234.20 FEET FROM THE NORTHWEST CORNER OF SAID EAST ONE-HALF OF LOT 14; THENCE ALONG THE FOLLOWING COURSES:

1. LEAVING SAID NORTH LINE, SOUTH 67°17'57" EAST, 286.37 FEET; THENCE
2. FROM A TANGENT THAT BEARS NORTH 6°39'55" EAST, SOUTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST, WITH A RADIUS OF 218 FEET, THROUGH AN ANGLE OF 83°17'44", A DISTANCE OF 316.82 FEET; THENCE
3. TANGENT TO SAID CURVE SOUTH 89°57'39" WEST 281.84 FEET TO SAID WEST LINE OF THE EAST ONE-HALF OF SAID LOT 14; THENCE
4. CONTINUING SOUTH 89°57'39", 6.67 FEET; THENCE
5. FROM A TANGENT THAT BEARS NORTH 19°13'16" WEST, NORTHERLY ALONG A CURVE CONCAVE TO THE EAST WITH A RADIUS OF 70 FEET, THROUGH AN ANGLE OF 33°48'51", A DISTANCE OF 41.31 FEET TO A POINT OF COMPOUND CURVATURE; THENCE
6. FROM A TANGENT THAT BEARS NORTH 14°35'35" EAST, NORTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHEAST WITH A RADIUS OF 365 FEET, THROUGH AN ANGLE OF 47°12'41", A DISTANCE OF 300.76 FEET; THENCE
7. TANGENT TO SAID CURVE NORTH 61°48'16" EAST, 69.85 FEET TO THE POINT OF BEGINNING.

APN: PORTION OF 483-071-52

(continued)

"Parcel 2" continued

THAT PORTION OF THE EAST HALF OF LOTS 13 AND 14 OF MAGNOLIA RANCH TRACT, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1674, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ON SEPTEMBER 29, 1915, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE EAST HALF OF SAID LOT 14; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 14, SOUTH $89^{\circ}57'39''$ EAST, 254.30 FEET TO THE SOUTHEASTERLY CORNER OF LAND DESCRIBED IN DEED TO THE CITY OF EL CAJON, RECORDED AUGUST 25, 1965 AS INSTRUMENT NO. 154881 AND THE TRUE POINT OF BEGINNING; THENCE ALONG THE SOUTHEASTERLY BOUNDARY OF SAID LAND AS FOLLOWS: NORTH $61^{\circ}48'16''$ EAST, 99.67 FEET TO THE SOUTHEASTERLY BOUNDARY OF A TANGENT 435.00 FOOT RADIUS CURVE THEREIN, CONCAVE NORTHWESTERLY; AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $24^{\circ}48'51''$ A DISTANCE OF 188.35 FEET TO THE NORTHEASTERLY CORNER OF SAID LAND DESCRIBED IN DEED TO TITLE INSURANCE AND TRUST COMPANY, RECORDED AUGUST 25, 1965 AS INSTRUMENT NO. 154882; THENCE ALONG THE BOUNDARY OF SAID LAND AS FOLLOWS: CONTINUING NORTHEASTERLY ALONG THE ARC OF SAID 435.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF $23^{\circ}01'29''$ A DISTANCE OF 174.81 FEET; SOUTH $05^{\circ}16'03''$ WEST, 432.50 FEET TO THE BEGINNING OF A TANGENT 218 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $01^{\circ}23'52''$ A DISTANCE OF 5.32 FEET; AND NORTH $67^{\circ}17'57''$ WEST 286.37 FEET TO THE TRUE POINT OF BEGINNING.

APN: PORTION OF 483-071-52

ATTACHMENT "3"

SCHEDULE OF PERFORMANCE

	Item of Performance	Time for Completion
1.	Escrow opened	Within 5 days after City executes this Agreement.
2.	Approval of Specific Plan of Property	Prior to sale of property.
3.	Submittal of Plans by Developer to City for review	Within 90 days after the City executes this Agreement.
3.	Plan check review by applicable City departments and preparation of any corrections to Developer.	City will use reasonable efforts to cause such review, and to obtain and provide to Developer any corrections, within 45 days of receipt.
4.	Developer to correct and resubmit (as necessary to address City comments) plans.	Within 45 days of receipt of City first round comments provided to Developer or Developer representative in Item 3 above.
5.	Plan check re-review by applicable City departments; Developer obtains issuance of building permits (if Developer entitled to issuance).	City will use reasonable efforts to cause such re-review and the issuance of building permits (if Developer is entitled to issuance) within three (3) weeks of Developer submittal of items listed in Item 4 above.
6.	Developer and City complete the sale of the Project Site	On or before February 1, 2018.
7.	Developer constructs Project	Within eighteen (18) months after acquisition of Property.
8.	Developer of Hotel Component executes Operating Covenant	Concurrent with or prior to earlier of sale of Hotel Component to Developer of Hotel Component or issuance of first certificate of occupancy for Retail Component
9.	City executes and records Operating Covenant	Concurrent with or prior to earlier of sale of Hotel Component to Developer of Hotel Component or issuance of first certificate of occupancy for Retail Component
10.	Developer obtains certificate of occupancy for Project.	Upon completion of the project.

This Schedule of Performance represents the parties' target dates. However this Schedule of Performance may be adjusted by the City Director so long as Developer moves the Project forward and obtains a certificate of occupancy for the Project by no later than eighteen (18) months (subject to delays described in Section 9.3 of the Agreement) from the date the building permit is issued or the Property Closing, whichever is later to occur. This Schedule of Performance does not include the time of performance for all obligations arising under the Agreement; rather this schedule focuses only on the development schedule of the Project. The parties are referred to the Agreement for the total description of the parties' obligations and times for performance of matters not identified in this Schedule. The Developer understands that

obligations contained in the Agreement may be conditions precedent to the City's obligations under this schedule.

Nothing herein shall be construed to limit the City's legislative authority, which City may exercise, in City's sole and absolute discretion. In all cases where City action is required, City shall use reasonable efforts to cause City to take such action in the time prescribed herein.

ATTACHMENT "4"

PROJECT BUDGET

TO BE PREPARED BY DEVELOPER.

<u>DESCRIPTION:</u>	<u>BUDGET</u>
SUB TOTAL:	\$
CONSTRUCTION TOTAL:	\$

ATTACHMENT "5"
RELEASE OF CONSTRUCTION COVENANTS
[SEE FOLLOWING DOCUMENT]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Cox, Castle & Nicholson LLP
2029 Century Park East, 21st Floor
Los Angeles, CA 90067
Attn: Elizabeth A. Willes

[Space above for Recorder.]

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the "Release") is made by the **CITY OF EL CAJON**, a solely in its capacity as the **SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY** (the "Agency"), in favor of **BRIXTON FLETCHER, LLC**, a Delaware limited liability company (the "Developer"), as of the date set forth below.

RECITALS

A. The Agency and Developer have entered into that certain Disposition and Development Agreement (the "DDA") dated _____, 2017 concerning the redevelopment of certain real property situated in the City of El Cajon, California, as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Site").

B. As referenced in Section 7.14 of the DDA, the Agency is authorized and required to furnish the Developer or its successors with a Release of Construction Covenants upon completion of construction of the "Project" (as defined in the DDA), which Release is required to be in such form as to permit it to be recorded in the Recorder's office of San Diego County. This Release is conclusive determination of satisfactory completion of the construction and development of the Project.

C. The Agency has conclusively determined that construction and development of the Project has been satisfactorily completed.

NOW, THEREFORE, the Agency hereby certifies as follows:

1. The Project to be constructed by the Developer has been satisfactorily completed in accordance with the provisions of said DDA.

2. This Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage, securing money loaned to finance the Project or any part thereof.

3. This Release of Construction Covenants is the release of construction covenants referred to in, and satisfies the requirements of, Section 7.14 of the DDA for construction of the Project.

4. This Release of Construction Covenants is not a Notice of Completion as referred to in California Civil Code Section 8182.

5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the DDA or any other provisions any other documents executed pursuant to the DDA, all of which shall remain enforceable according to their terms of the documents incorporated therein.

BY WITNESS WHEREOF, the City and the Developer have signed this Release of Construction Covenants as of the respective dates set forth below.

“Developer”

BRIXTON FLETCHER, LLC,
a Delaware limited liability company

Dated: _____

By: _____

Name: _____

Title: _____

“Agency”

**SUCCESSOR AGENCY TO THE EL
CAJON REDEVELOPMENT AGENCY**

Dated: _____

By: _____

Bill Wells, Chairperson

ATTEST:

Belinda Hawley, Secretary

APPROVED AS TO FORM:

Morgan L. Foley
General Counsel

ATTACHMENT "7"

GRANT DEED

(To be Prepared by Escrow)

ATTACHMENT "8"
OPERATING COVENANT

[See Following Document]

RECORDING REQUESTED BY AND
When Recorded Mail to:

City of El Cajon
200 Civic Center Way
El Cajon, CA 92020
Attn: Douglas Williford, City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

OPERATING COVENANT

THIS OPERATING COVENANT (“Operating Covenant”) is made this _____ day of _____, 2017 (the “Effective Date”), by and between the **CITY OF EL CAJON SOLELY IN ITS CAPACITY AS SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY** (the “Agency”), and _____, a _____ limited liability company (the “Developer”), with reference to the following:

A. The Agency and the Developer (or Developer’s predecessor in interest) have executed a Disposition and Development Agreement (“Agreement”), dated as of _____, 2017, which provides, inter alia, for the development of that certain real property located in the City of El Cajon, County of San Diego, State of California, more fully described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”), and Developer’s construction and operation thereon of the Hotel Component of the Project as further defined in the Agreement. The Agreement is available for public inspection and copying at the office of the City Clerk, El Cajon City Hall, 200 Civic Center Way, El Cajon, CA 92020.

B. Developer holds fee title to the Property.

C. Pursuant to the Agreement, Developer has agreed to purchase the Property and construct the Hotel Component of the Project on the Property.

D. The Agreement also provides for the recordation of this Operating Covenant against the Hotel Component of the Property to memorialize certain covenants, conditions, and restrictions regarding the use, maintenance, and operation of the Hotel Component of the Property by Developer and Developer’s successors and assigns.

E. It is understood by the parties that the Agency shall assign all right, title, and interest, in and to the Agreement and this Operating Covenant as soon as practical following transfer of Agency’s interest in the Property to the Developer, to the City of El Cajon, a charter city and municipal corporation (the “City”). Developer hereby consents to such assignment and, upon assignment shall release Agency from any obligations contained herein and in the Agreement, and shall look solely to the City for compliance with the terms and conditions of the Agreement and this Operating Covenant.

F. The City has fee interests in parks, City Hall, and in various streets, sidewalks, and other property within the City of El Cajon (collectively, the "Benefited Public Property"), and is responsible for planning of land uses within the City in such a manner as to provide for the health, safety, and welfare of the residents of the City. The Benefited Public Property is legally described in Exhibit "B" attached hereto and incorporated herein by this reference.

NOW, THEREFORE, Developer hereby covenants, agrees, and declares by and for itself and its successors and assigns that the Hotel Component of the Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, and restrictions (sometimes collectively referred to hereinafter as the "Covenants"). These Covenants shall run with the Hotel Component of the Property and shall be binding on all parties having or acquiring any right, title, or interest in the Hotel Component of the Property or any part thereof and shall inure to the benefit of the Agency and its successors and assigns regardless of whether the Agency holds any interest in any real property benefited thereby.

1. Covenant Regarding Specific Uses.

Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to Developer's interest in the Hotel Component of the Property or any part thereof, that within the times set forth in the Schedule of Performance attached to the Agreement as Attachment 3 (the "Schedule of Performance"), but subject to delays as contemplated by Section 9.3 of the Agreement, Developer shall commence, diligently proceed with, and satisfactorily complete construction of the Hotel Component of the Project so as to entitle Developer to the Agency's issuance of a Release of Construction Covenants for the Hotel Component of the Project as provided for in Section 7.14 of the Agreement. The foregoing covenant shall be deemed satisfied and shall terminate upon the Agency's issuance of a Release of Construction Covenants.

For a term (the "Term") commencing upon the Effective Date hereof and ending on the fifteenth (15th) year anniversary of the date the Release of Construction Covenants for the Hotel Component of the Project is issued (the "Operating Covenant Termination Date"), the Developer hereby covenants and agrees to devote the Hotel Component of the Property for the exclusive purpose and use of development and operation of the Hotel Component of the Project as an approximately sixty thousand (60,000) square foot, 85-room or more, Hampton Inn (or a Permitted Replacement Hotel, as defined in the Agreement) with pool, meeting room, outdoor patio, and parking area (the "Hotel"), and will comply with the other obligations contained herein. Notwithstanding anything herein to the contrary, the nondiscrimination covenants contained in subdivision (a) of Section 4 hereof shall run with the land in perpetuity and shall not terminate on the Operating Covenant Termination Date. Except as provided below, or with the prior written consent of the Agency for each instance, which consent may be granted or withheld in the Agency's sole and absolute discretion, the failure of the Developer (or its tenant) to operate any portion of the Hotel Component of the Project on the Property as required herein for thirty (30) or more consecutive days following written notice thereof to Developer (the "Failure to Operate Notice") shall, at the Agency's option, constitute a default hereunder; provided, however, that the Developer shall for purposes of this Section 1 be deemed to be operating such portion of the Hotel Component of the Project during any period that the Developer is prevented

from operating such portion due to (i) required or necessary repair, restoration or rehabilitation of such portion of the Hotel Component of the Project (provided that the period during which such portion of the Hotel Component of the Project is not operated as a result of the repair, restoration or rehabilitation shall in no event exceed thirty (30) days), unless the repair, restoration or rehabilitation cannot reasonably be completed within such thirty (30) day period, in which case the period shall extend as necessary for completion, provided such repair restoration or rehabilitation was commenced within the thirty (30) period and is diligently pursued to completion or (ii) war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of any third party; or acts or failures to act of the Agency other public or governmental agency or entity or any other causes beyond the control or without the fault of the Developer. Notwithstanding anything to the contrary herein, (a) an extension of time for any cause listed in romanette (ii) above 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 Developer is sent to the Agency within ten (10) business days following receipt of the Failure Notice, and (b) Developer is not entitled pursuant to this Section 1 to an extension of time to perform because of past, present, or future difficulty in obtaining financing necessary to operate the Project because of economic or market conditions.

2. Performance of Maintenance.

Developer shall maintain the Hotel Component of the Project, the Property and all "improvements" (as defined hereinafter) thereon in accordance with the Maintenance Standards, as hereinafter defined. As used herein, the term "Improvements" shall mean and include, but not be limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Property and any and all other improvements on the Property.

To accomplish said maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Operating Covenant.

The following standards ("Maintenance Standards") shall be complied with by Developer and Developer's maintenance staff, contractors or subcontractors:

1. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

2. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all

such areas clear of dirt, mud, trash, graffiti, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

3. All maintenance work shall conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of maintenance.

4. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

5. The Hotel Component of the Project and Property shall be maintained in conformance and in compliance with the approved Property construction and architectural plans and design scheme, as the same may be amended from time to time with the approval of the Agency, and reasonable commercial development maintenance standards for similar projects, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curblin.

3. Failure to Maintain Property.

In the event Developer does not maintain the Hotel Component of the Property in the manner set forth herein and in accordance with the Maintenance Standards, Agency shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice thereof to Developer. However, prior to taking any such action, Agency agrees to notify Developer in writing if the condition of the Hotel Component of the Project or Property does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon written notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the Agency, then Developer shall have forty-eight (48) hours to rectify the problem.

In the event Developer fails to correct, remedy, or cure (or for deficiencies which cannot reasonably be corrected, remedied, or cured within thirty (30) days has failed to commence correcting, remedying or curing such maintenance deficiency and diligently pursue such correction, remedy, or cure to completion) after written notification and after the period of correction has lapsed, then Agency shall have the right to maintain such improvements. Developer agrees to pay Agency such charges and costs. Until so paid, the Agency shall have a lien on the Property for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Property. Upon recordation of a Notice of a Claim of Lien against the Property, such lien shall constitute a lien on the fee estate in and to the Property prior and superior to all other monetary liens except: (i) all taxes, bonds, assessments, and other levies that, by law, would be superior thereto; (ii) the lien or charge of any mortgage, deed of trust, or other security interest then of record made in good faith and for

value, it being understood that the priority of any such lien for costs incurred to comply with this Agreement shall date from the date of the recordation of the Notice of Claim of Lien. Developer shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

4. Compliance with Law.

Developer shall comply with all local, state and federal laws relating to the uses of or condition of the Property and the Project. The operation of the Project shall be in compliance with the requirements of any entitlements issued by the Agency for the Project, including, as applicable, a conditional use permit, site development permit, and specific plan amendment.

(a) Nondiscrimination Covenants. Developer covenants by and for itself and any successors in interest to all or any portion of the Property that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees of the Property. The foregoing covenants shall run with the land.

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

(1) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference, 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."

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

"That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual preference, 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.”

(3) 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, sexual preference, 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.”

5. Sales and Use Tax Covenant.

From the date this Operating Covenant is recorded against the Hotel Component of the Property until the Operating Covenant Termination Date, Developer shall designate the Property as the point of sale for sales tax purposes for all goods and services sold or leased on the Property, whose sales and leases originate from the Property.

6. Covenant to Pay Taxes and Assessments.

From the date this Operating Covenant is recorded against the Hotel Component of the Property until the Operating Covenant Termination Date, Developer shall pay or cause to be paid, prior to delinquency, all ad valorem real estate taxes, special taxes, and assessments levied against the Property and any improvements thereon, subject to Developer’s right to contest any such tax or assessment in good faith. During such period Developer shall remove or have removed any levy or attachment made on the Property or any part thereof or assures the satisfaction thereof within a reasonable time and prior to a sale of the Property.

7. Defaults.

Failure or delay by either party to perform any term or provision of this Operating Covenant constitutes a default under this Operating Covenant. A party claiming a default shall give written notice of default to the other party, specifying the default complained of and the actions required to correct such default.

Unless otherwise provided by the Agreement, the claimant shall not institute proceedings against the other party if the other 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 completes such cure, correction or remedy as soon as reasonably practicable after receipt of such notice.

8. Legal Actions.

In addition to any other rights or remedies and subject to the notice and cure provisions in Section 7 above, any party may institute legal action to seek specific performance of the terms of this Operating Covenant, or to cure, correct or remedy any default, or to obtain any other legal or equitable remedy consistent with the purpose of this Operating Covenant. A party shall also

have the right to pursue damages for the other party's defaults, but in no event shall a party be entitled to damages for economic loss, lost profits, or any other economic or consequential damages of any kind. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California or in the Federal District Court in the Central District of California. Each party hereby expressly waives any right to remove any such action from San Diego County as is otherwise permitted by California Code of Civil Procedure section 394. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorney's fees and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

The internal laws of the State of California shall govern the interpretation and enforcement of this Operating Covenant, without regard to conflict of laws.

In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the City's Director, as defined in the Agreement, in addition to such other manner as may be provided by law.

In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon an agent designated for service of process as filed with the California Secretary of State, whether made within or outside the State of California, or in such other manner as may be provided by law.

Except as otherwise expressly stated in this Operating Covenant, 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.

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.

9. Effect of Violation of the Terms and Provisions of this Operating Covenant.

The covenants established in this Operating Covenant shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency, and each of their successors and assigns, as to those covenants which are for their benefit. The covenants contained in this Operating Covenant shall remain in effect for the periods of time specified therein. The Agency is deemed the beneficiary of the terms and provisions of this Operating Covenant and of the covenants running with the land, for and in their own rights 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 Operating Covenant and the covenants running with the land have been provided. This Operating Covenant and the covenants shall run in favor of the Agency, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Property. The Agency shall have the right, if the Operating Covenant or covenants are breached, but subject to the notice and cure rights set forth herein, 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 to which they or any other beneficiaries of this Operating Covenant and covenants may be entitled. Pursuant to applicable law, including, but not limited to, Sections 1462, 1465 and 1468 of the Civil Code of the State of California, all provisions of this Covenant Agreement shall run with the land and be binding upon and inure to the benefit of the Benefited Public Property and the Property and each and every portion thereof or interest therein, and all parties having or acquiring any right, title, or interest in the Property or any portion thereof, and their successors and assigns.

10. Miscellaneous Provisions.

If any provision of this Operating Covenant or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Operating Covenant, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Operating Covenant; and each provision of this Operating Covenant shall be valid and enforceable to the fullest extent permitted by law.

This Operating Covenant shall be construed in accordance with the internal laws of the State of California without regard to conflict of law principles.

This Operating Covenant shall be binding upon and inure to the benefit of the successors and assigns of the Developer but any Transfer shall be subject to the requirements and provisions of Section 8 of the Agreement provided, however, that Developer hereby consents to the assignment of this Operating Covenant by Agency to the City, without any further consent being required.

This Operating Covenant is subject to the lender protection provisions of Section 15 of the Agreement, the terms of which are incorporated herein by this reference.

11. Notices.

All notices under this Agreement shall be effective (i) upon personal delivery, (ii) upon delivery by reputable overnight courier that provides a receipt with the date and time of delivery, (iii) via facsimile, so long as the sender receives confirmation of successful transmission from the sending machine, or (iv) three (3) business days after deposit in the United States mail, registered or certified, postage fully prepaid and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To Agency: Successor Agency to the El Cajon Redevelopment Agency
200 Civic Center Way
El Cajon, CA 92020
Attention: Douglas Williford, Executive Director

With a copy to: El Cajon City Attorney
200 Civic Center Way
El Cajon, CA 92020
Attention: Morgan L. Foley, Esq.

To Developer:

IN WITNESS WHEREOF, the parties hereto has executed this instrument the day and year first hereinabove written.

“Developer”

_____,
a _____ limited liability company

Dated: _____

By: _____

Name: _____

Title: _____

“Agency”

**SUCCESSOR AGENCY TO THE EL
CAJON REDEVELOPMENT AGENCY
CITY OF EL CAJON**, a charter city and
municipal corporation

Dated: _____

By: _____

Bill Wells, Chairperson

ATTEST:

Belinda Hawley, Secretary

APPROVED AS TO FORM:

Morgan L. Foley
General Counsel

EXHIBIT "A"

LEGAL DESCRIPTION OF HOTEL PROPERTY

[NOTE: INSERT REFERENCE IN HOTEL PARCEL IN FINAL RECORDED PARCEL MAP]

EXHIBIT "B"

DESCRIPTION OF BENEFITED PUBLIC PROPERTIES IN EL CAJON

[TO BE COMPLETED BY CITY].

PROPERTY PROFILE

Site # 15	Former El Cajon Police Department Headquarters
Location:	100 Fletcher Parkway, El Cajon, CA 92020
APN:	483-071-52-00
Lot Size (SF):	151,589
Building SF:	23,870 (including basement)
General Plan:	RC (Regional Commercial)
Zoning:	C-R, Regional Commercial
Highest/Best Use:	Regional commercial, hotel, office
Date Acquired:	June 16, 2011
Purchase Price:	\$4,850,000.00
Source of Funds:	Tax Increment
Purpose of Acquisition:	<p>This property was acquired on June 16, 2011, at fair market as-demolished value of \$4,850,000 for redevelopment activities on a key parcel located at the intersection of Highway 67 and Highway 8 within the Redevelopment Project Area. A down-payment of \$1,000,000 was provided to the City and the balance was financed over five-years at 3% per annum.</p> <p>The site became available for redevelopment opportunities as a result of completion and relocation of the former El Cajon Police Department Headquarters to the new Public Safety Center at 100 Civic Center Way.</p>
Status & Revenues:	Vacant; This site does not generate revenue
Environmental issues, Brownfield or other Restrictions:	<p>Environmental: Phase 1 Environmental Site Assessment report dated September 7, 2011; Hazardous Building Materials Survey dated December 14, 2011. Asbestos and lead-containing surfaces identified and will be removed through an abatement plan and the demolition process. Reports available in the Public Works Division.</p> <p>Brownfield: Not applicable</p> <p>Restrictions: The site is governed by the Gillespie Field Airport Land Use Compatibility Plan and is located in the Airport Influence Area Review Area No. 1. An Airport Land Use Commission Determination of Consistency Finding will be required as part of any future development entitlement process.</p>
Transit Oriented Development Site:	Not applicable.
Discussion & History:	<p>The City initiated the decommissioning process on April 26, 2011, in anticipation of the Police Department's move to the Public Safety Center upon completion in Fall 2011.</p> <p>The Agency acquired this property on June 16, 2011. On March 13, 2012, the City Council adopted the Mitigated Negative Declaration and Mitigation, Monitoring and Reporting Program; approved General Plan Amendment No. 2011-01 changing the land use designation from Public Institution/ Special Development Area No. 8 to Regional Commercial; and introduced an ordinance amending Specific Plan No. 19 to remove the subject site from its governance; and introduced an ordinance rezoning the</p>

PROPERTY PROFILE

Site # 15	Former El Cajon Police Department Headquarters
	<p>site from M, C-N and RS-6 to the C-R zone. The zoning and specific plan amendment became effective on May 10, 2012.</p> <p>Because the property has been operated as the former Police Station Headquarters since the 1960's, reuse of the existing building for large scale commercial activity is unlikely as the property is functionally obsolete, hazardous materials abatement is required, the building cannot be rehabilitated cost-effectively, and should be cleared in preparation for new development.</p>
Classification:	Available for Sale
Use of Broker:	See Disposal Strategy
Value As-Is:	\$5,100,000 as of March 9, 2011
Value As-Demolished:	\$4,850,000 as March 9, 2011
Disposal Strategy:	<p>Authorize the Successor Agency to:</p> <ol style="list-style-type: none"> 1. Offer for sale to persons on interest list; 2. Offer for sale in the open market through an approved Broker. <p>The Successor Agency shall remit net proceeds, if any, within five working days upon consummation of each transfer/sale, for distribution to the Affected Taxing Entities.</p>
Appendices:	21

SUBJECT PHOTOGRAPHS

March 9, 2011



Looking northeasterly toward the front of the subject.



Looking northwesterly toward the front of the subject.

SUBJECT PHOTOGRAPHS

March 9, 2011



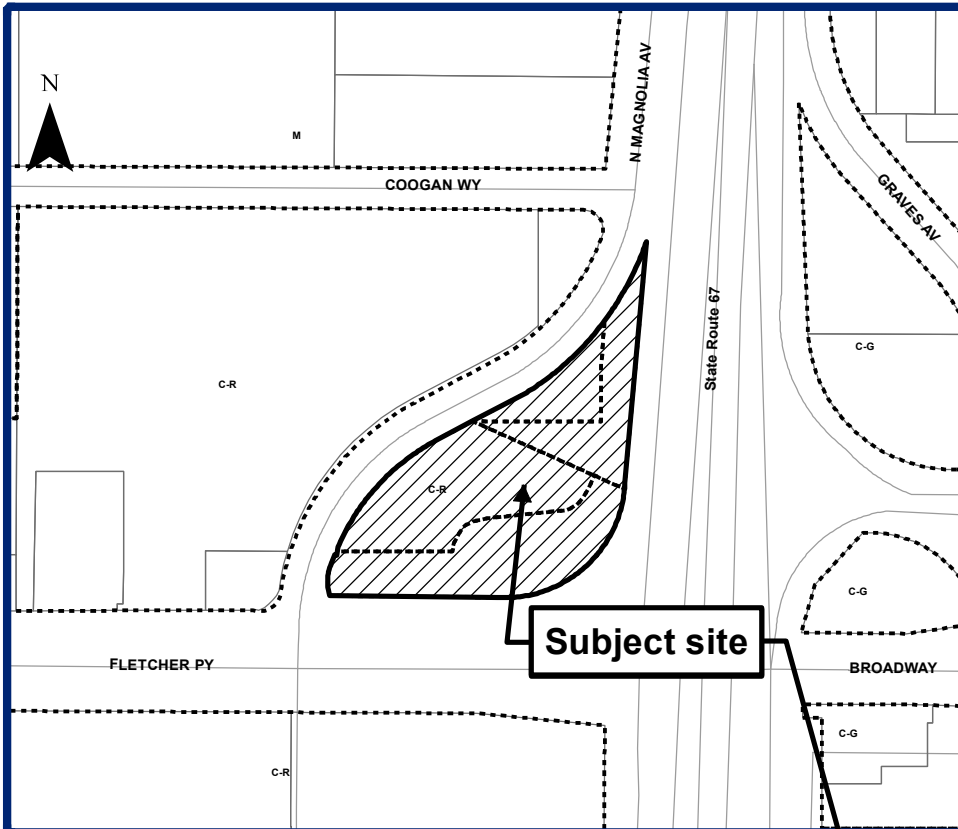
Looking in a westerly direction toward the subject from the parking lot.



Looking in an easterly direction toward the subject parking lot from Magnolia Avenue.

Long Range Property Management Plan

Site No. 15
100 Fletcher Parkway



Property Features:

- C-R Zoning
- 3.48 Acres
- APN No. 483-071-52
- Demolish property in preparation of sale
- Offer for sale and development through an approved broker
- Disposition timing phase 3

City of El Cajon Successor Agency Oversight Board

200 Civic Center Way
El Cajon, CA 92020
Phone: 619.441.1741
Fax: 619.441.1743
cityofelcajon.us





October 2, 2015

Ms. Victoria Danganan, Senior Accountant
City of El Cajon
200 Civic Center Way
El Cajon, CA 92020

Dear Ms. Danganan:

Subject: Oversight Board Action Determination

The City of El Cajon Successor Agency (Agency) notified the California Department of Finance (Finance) of its August 19, 2015 Oversight Board (OB) Resolution on August 19, 2015. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

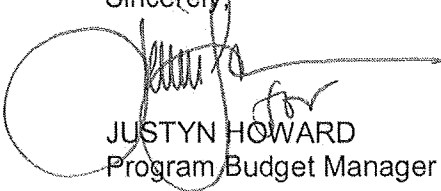
Based on our review and application of the law, OB Resolution No. OB-05-15, approving an Exclusive Negotiation Agreement (Agreement) for real property located at 100 Fletcher Parkway (Assessor's Parcel Number 483-071-52), is approved.

The above property is listed in the Agency's Long-Range Property Management Plan (LRPMP), which was approved by Finance on February 21, 2014. The disposition plan for this property is to offer the property for sale. Entering into an Agreement for the purchase and development of this property is consistent with the approved LRPMP.

This is our determination with respect to OB action taken.

Please direct inquiries to Wendy Griffe, Supervisor, or Jared Smith, Lead Analyst at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Program Budget Manager

cc: Ms. Holly Reed-Falk, Financial Operations Manager, City of El Cajon
Ms. Tracy Sandoval, Assistant Chief Financial Officer, San Diego County

**EXCLUSIVE NEGOTIATION AGREEMENT
BY AND BETWEEN THE
SUCCESSOR AGENCY TO THE EL CAJON
REDEVELOPMENT AGENCY AND BRIXTON
CAPITAL AC, LLC and EXCEL HOTEL GROUP, INC.**

This Exclusive Negotiation Agreement (the "Agreement") by and between the CITY OF EL CAJON, a charter city and municipal corporation, solely in its capacity as the SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY (the "Successor Agency"), and BRIXTON CAPITAL AC, LLC, a Delaware limited liability company ("Brixton") and EXCEL HOTEL GROUP, INC., a California corporation ("Excel", and together with Brixton, collectively, the "Developer") (Successor Agency and Developer are occasionally referred to herein individually as the "Party" and collectively as the "Parties"), is entered into on the date in which it is fully executed, and based on the terms and provisions set-forth below.

RECITALS

WHEREAS, the Successor Agency and the City of El Cajon (the "City") are fee title owners of two parcels comprising approximately 4.14 acres of real property generally located at 100 Fletcher Parkway, on the north side of Fletcher Parkway, the east side of North Magnolia Avenue, and west of Highway 67 in the City of El Cajon, County of San Diego, State of California, as more particularly described in Exhibit C(the "Property"). The Property is the site of the former El Cajon Police Department Station and adjacent right-of-way previously owned by the Department of Transportation for the State of California. Of the two parcels comprising the Property, the Successor Agency owns the parcel comprising approximately 3.48 acres (the "Successor Agency Parcel"). The City owns the parcel comprising approximately .66 acres (the "City Parcel"). The City is not a party to this Agreement; and

WHEREAS, consistent with applicable laws and policies, the City and the Successor Agency issued a Request for Interest for a potential development of the City Parcel and the Successor Agency Parcel, and following the completion of that process, the City and the Successor Agency selected the Developer as a potential party for development of the City Parcel and the Successor Agency Parcel; and

WHEREAS, the Successor Agency is interested in considering the sale of the Successor Agency Parcel to the Developer with the intention of combining the Successor Agency Parcel with the City Parcel for the purpose of considering the Developer's proposal to develop an upscale, approximately 80-bed Hampton Inn hotel project with possible secondary retail and office uses (the "Project"); and

WHEREAS, the Successor Agency contemplates that the Project would contribute to the City's efforts to revitalize dormant properties along Fletcher Parkway and maintain a vibrant and expanding group of businesses in the City to promote economic development and employment opportunities for its citizens; and

WHEREAS, recent changes in redevelopment law and the allocation of property tax revenues between municipalities and the State of California require the public and private sectors

to consider new and innovative structures to promote redevelopment in order to realize significant public benefits in the form of increase revenues and employment opportunities, and to continue in efforts to prevent or eliminate blight in the community; and

WHEREAS, the Successor Agency and the Developer desire to enter into this Agreement to: (1) negotiate in good faith as to the development of the Project on the Successor Agency Parcel; (2) outline the Project description and design; (3) conduct due diligence on the economic viability of the Project; (4) prepare separate Disposition and Development Agreements for the City Parcel and the Successor Agency Parcel (each, a "Development Agreement," together the "Development Agreements") for the Successor Agency's consideration; (5) determine if and how the Successor Agency can promote the economic sustainability of the Project; and (6) determine what, if any, modifications may be necessary and appropriate to the Project to improve its viability as a vital business enterprise in the City, all in compliance with the Successor Agency's obligations under applicable law, including the California Environmental Quality Act ("CEQA"); and

WHEREAS, the Successor Agency anticipates that following execution of this Agreement, and through the period of negotiation and preparation of the Development Agreements, the Successor Agency, as well as certain consultants and attorneys for the Successor Agency, will devote substantial time and effort in reviewing documents, proposals, and plans, and meeting with the Developer, each other, and other necessary parties; and

WHEREAS, the Successor Agency acknowledges that the Developer will also expend substantial time and resources hereunder and the Parties are willing to engage in these activities, subject to the terms and conditions set-forth in this Agreement.

NOW THEREFORE, in consideration of the recitals and mutual covenants and conditions contained herein, the parties hereto agree as follows:

A. Project Site.

1. The Developer has selected the Property as the location for development of the Project. The Property is located within the City as generally depicted on Exhibit A, attached hereto and incorporated herein by this reference.
2. During the term of this Agreement, the Developer at its sole expense shall determine the exact square footage of the Property during the planning activities outlined below. The Successor Agency shall provide reasonable cooperative assistance to the Developer, as determined in the reasonable discretion of the City Manager.
3. During the term of this Agreement, the Developer shall have the right, but not obligation, to make such inspections and examinations of the Property as it deems necessary to evaluate the proposed Project. Successor Agency shall, upon reasonable notice and at reasonable times, make the Property available to Developer and its agents, employees, consultants and representatives for such inspections and tests as Developer deems appropriate, at Developer's sole cost and expense.

B. Period of Negotiations.

1. The Successor Agency agrees to negotiate exclusively with the Developer regarding the future use and disposition of the Successor Agency Parcel and any future modifications to, and use and disposition of, the Successor Agency Parcel during the term of this Agreement. The Agreement shall commence upon the date the Successor Agency approves and executes this Agreement (the "Effective Date") and continue for 180 days (the "Negotiation Period"). The Negotiation Period may be extended as provided for herein. The Parties agree to negotiate in good faith and conduct due diligence activities during the Negotiation Period and any extension thereof. If Development Agreements for both the Successor Agency Parcel and City Parcel have not yet been executed upon the termination of the initial Negotiation Period, this Agreement may be extended for 90 days by written consent of the Developer and the City Manager to enable the Successor Agency to: (1) determine whether it desires to enter into such Development Agreements, and (2) take the actions necessary to authorize the Successor Agency to sign the Development Agreements, if the City desires to enter into such Development Agreements.
2. If the Successor Agency and the City have not signed both Development Agreements by the expiration of the Negotiation Period (as the Negotiation Period may be extended by operation of the preceding paragraph), then this Agreement shall automatically terminate, unless the Successor Agency, in its sole discretion, agrees in writing to an extension. **It is expressly understood by the Parties that the execution and delivery of each Development Agreement shall be a condition precedent the execution and delivery of the other Development Agreement, so that the Successor Agency Parcel and the City Parcel shall be sold together to the Developer for the Project.**
3. The duration of the Negotiation Period shall be extended by the duration of any "Event of Force Majeure" that may occur from time to time during the term hereof. The term "Event of Force Majeure" shall mean any and all acts of God, strikes, lock-outs, other industrial disturbances, acts of the public enemy, laws, rules, and regulations of governmental entities, wars or warlike action (whether actual, impending, or expected and whether de jure or de facto), insurrections, riots, vandalism, terrorism, epidemics, inclement weather, fire or other casualty, civil disturbances, confiscation or seizure by any government or public authority, lawsuits brought by third parties, governmental or administrative action, inaction, or omission, or any other causes, whether the kind herein enumerated or otherwise, that are not reasonably within the control of, or caused by, the Party claiming the right to delay the performance on account of such occurrence; provided however, in no circumstances shall the monetary inability of a Party to perform any covenant, agreement, or other obligation contained in this Agreement be construed to be an Event of Force Majeure. Upon either Party hereto becoming aware of an Event of Force Majeure, it shall promptly notify the other Party hereof of such occurrence.

4. The Successor Agency agrees that during the Negotiation Period, the Successor Agency shall neither negotiate nor enter into a development agreement, disposition agreement or any other agreement regarding the Property with any other person or entity regarding the Successor Agency Parcel. The obligation to negotiate in good faith requires the respective parties to communicate with each other with respect to those issues for which agreement has not been reached, and in such communication to follow reasonable negotiation procedures, including meetings, telephone conversations, and correspondence.

C. Negotiation Deposit.

1. The Developer shall tender to the Successor Agency, no later than fifteen (15) days after the Effective Date of this Agreement, and the City shall accept, a deposit (the "Negotiation Deposit") in the amount of Five Thousand Dollars (\$5,000.00), in the form of a cashier or certified check, or wire transfer, payable to the Successor Agency. The Developer agrees that the Successor Agency may use the Negotiation Deposit to reimburse itself for its reasonable costs to negotiate the Development Agreement as contemplated under this Agreement (the "Successor Agency Negotiation Costs"). Such Successor Agency Negotiation Costs shall be limited to the amount of the Negotiation Deposit for those costs incurred after the date of this Agreement and shall include costs such as: reasonable attorneys' fees, appraiser fees, title reports, and any other third party costs as needed to complete the negotiations of the Development Agreements.
2. The Successor Agency shall submit to the Developer invoices detailing the Successor Agency Negotiation Costs. The Successor Agency shall be free to withdraw funds from the Negotiation Deposit, as needed, provided that it has submitted such invoices to the Developer and those invoices are solely for Successor Agency Negotiation Costs. If the Successor Agency reasonably determines that it must incur additional costs in excess of the Negotiation Deposit, then the Successor Agency shall submit to the Developer a budget of such prospective additional costs in excess of the Negotiation Deposit for approval by the Developer, which approval shall not be unreasonably withheld. If the Developer fails to approve such costs in excess of the Negotiation Deposit within ten (10) days of submission of said costs by the Successor Agency, this Agreement shall terminate; provided that Developer shall not be obligated to approve any budget where additional costs exceed \$10,000. The Negotiation Deposit, less the Successor Agency Negotiation Costs, shall be refundable to the Developer in the event this Agreement is terminated prior to the execution of a Development Agreement. In the event a Development Agreement is fully executed and approved by all requisite action, the balance of the Negotiation Deposit, if any, shall be either returned to the Developer or applied as a credit against amounts, if any, to be paid by the Developer to the Successor Agency pursuant to the Development Agreement. Should the Successor Agency Negotiation Costs approved by Developer exceed the amount of the Negotiation Deposit, the Successor Agency shall submit to the Developer a reimbursement notice along with written evidence of such additional Successor Agency

Negotiation Costs. Within thirty (30) days of the receipt of a reimbursement notice and evidence of additional Successor Agency Negotiation Costs, the Developer shall reimburse the Successor Agency for such Successor Agency Negotiation Costs up to a maximum of \$10,000.

D. Negotiations.

1. Commencing on the Effective Date of this Agreement, the Parties agree to negotiate in good faith to attempt to formulate a plan for development of the Project on the Property, along with the terms and conditions of the Development Agreements. The Parties contemplate that the City will be the lead agency in developing and approving the Project and related agreements, and the Successor Agency shall be a responsible agency. Negotiations regarding the Project and the Development Agreements shall include, but not be limited to the following elements:

a. Project Description. The Developer shall prepare a conceptual development plan for the coordinated development of the City Parcel and the Successor Agency Parcel, which shall be submitted to the City for approval in accordance with the City's normal process for review of discretionary land use entitlements, including compliance with CEQA, and to the Successor Agency for concurrence therewith. Though the City, the Successor Agency, and the Developer have not settled on a definitive scope of development for the Project, it is contemplated that such development could include an approximately 80-bed Hampton Inn hotel with associated amenities such as onsite parking, pool, gym, and conference rooms (the "Hotel"). The Project may also include secondary retail and office uses unrelated to hotel. The Developer shall develop during this period a detailed site plan showing frontage improvements, floor plans, building elevations, building materials, and signage, and a table showing types of uses, square footage planned for each use, number of parking stalls, lot coverage, and planned compliance with the City of El Cajon's General Plan, any existing or pending specific plans, the City's zoning ordinance, building codes, storm water ordinance and regulations, and state and federal laws and regulations requiring non-discrimination in access to the facilities (e.g., ADA).

The Developer expressly acknowledges and agrees that in entering this Agreement the Successor Agency is not committing itself to a specific course of conduct regarding the ultimate development of the properties, and the City and the Successor Agency retain all discretion afforded to them under the law to approve, condition or deny any proposed development. The Developer acknowledges and agrees that it is proceeding at its own risk and expense until such time as the required entitlements, Development Agreements, and disposition agreements are approved and without any assurance that the required entitlements, Development Agreements, or disposition agreements will be approved.

The parties acknowledge and agree that the City and the Successor Agency shall not enter into any Development Agreements or disposition agreements for the Project that will allow for its development until there has been complete compliance with CEQA. The Successor Agency intends, through the exclusive negotiations and planning process contemplated by this Agreement, to identify the actions and activities that would be necessary to develop the City Parcel and the Successor Agency Parcel and thereby facilitate meaningful environmental review. If the ultimate Project is found to cause significant adverse impacts that cannot be mitigated, the Successor Agency retains absolute discretion to: (i) modify the Project to mitigate significant adverse environmental impacts, (ii) select feasible alternatives which avoid significant adverse impacts of the Project, (iii) reject the Project as proposed if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of the Project, or (iv) approve the proposed Project upon a finding that the economic, social or other benefits of the Project outweigh unavoidable significant adverse impacts of the Project.

- b. The schedule for, and phasing of all required development activities, including construction lending, planning entitlements, building permits, construction activities, and implementation of any required environmental mitigations measures.
- c. Terms of the Development Agreements substantially consistent with the preliminary terms described in Exhibit B, attached hereto and incorporated herein by this reference.
- d. Such covenants necessary to ensure the economic sustainability of the Project.
- e. Any design and operational changes that can and should be made to the Hotel to improve its viability and sustainability.

E. Development Agreement Provisions.

The Parties acknowledge that the financial feasibility of the Project and the associated terms are yet to be determined. Although the Parties have developed preliminary terms of the Development Agreements as described in the attached Exhibit B, each Party assumes the risk that, notwithstanding this Agreement, there is no assurance that the Parties will enter into the Development Agreements.

F. Obligations of the Parties.

- 1. From time to time, the Successor Agency and the Developer agree to make oral and/or written progress reports advising each other of all material matters and studies being conducted with respect to project feasibility, constraints, and design. The Successor Agency and the Developer agree to share all results of studies,

reports, and findings, which result in the formation of any conclusions or determinations as to the decision of whether to enter into the Development Agreements.

2. Developer agrees to repair any damage or disturbance it shall cause to the Property, including any environmental damage; provided that Developer shall not be obligated to repair any pre-existing condition merely discovered by Developer as a result of its inspections or investigations, except and only to the extent Developer's actions exacerbate such conditions.

G. Assignment.

The Parties understand and agree that the Successor Agency has selected the Developer as a party to this Agreement based upon its skills and reputation, and its confidence in the Developer successfully constructing and operating the Project. Therefore it is a material condition of this Agreement that the Developer remain a party to this Agreement. Accordingly, this Agreement shall not be assigned by the Developer without the prior written approval of the Successor Agency, which approval the Successor Agency may withhold at its sole discretion, provided, however, the Developer may assign the rights and obligations under this Agreement to any wholly owned subsidiary or other entity of which it maintains control without the consent of the Successor Agency.

H. Remedies for Breach.

1. In the event that the Developer fails to perform any obligation herein, or in the event that the Successor Agency reasonably believes that the Developer is not negotiating diligently and in good faith, the Successor Agency shall provide written notice of such breach to the Developer. The Developer shall then have ten (10) days, after receipt of such written notice, within which to remedy such breach unless additional time is needed to remedy the breach, in which event the Developer shall commence the cure of the breach within the ten (10) day period and thereafter diligently pursue the cure to completion.
2. If the Developer fails to remedy such breach in a timely and reasonable manner within the above period, the Developer and the Successor Agency agree that the Successor Agency may elect to cure a Developer breach and deduct those costs incurred to cure the breach from the Negotiation Deposit, prior to its termination of this Agreement. All remaining amounts of the Negotiation Deposit shall thereafter be refunded to Developer. If such costs to cure a breach exceed the amount of the Negotiation Deposit, then Developer shall pay such costs within fifteen (15) days from notice or invoice from the Successor Agency. Should the Successor Agency Negotiation Costs incurred and approved as contemplated by Paragraph C and this Paragraph H exceed the Negotiation Deposit, the Successor Agency shall be entitled to receive from the Developer and the Developer shall pay the Successor Agency such actual costs within fifteen (15) days. Should the Developer fail to pay such costs within fifteen (15) days from notice or invoice

from the Successor Agency, the outstanding balance shall accrue interest at the rate of ten percent (10%) per annum, until all principal and interest is paid.

3. In the event that the Successor Agency fails to perform any obligation herein, or in the event that the Developer reasonably believes that the Successor Agency is not negotiating diligently and in good faith, the Developer shall provide written notice of such breach to the Successor Agency. The Successor Agency shall then have ten (10) days, after receipt of such written notice, within which to remedy such breach unless additional time is needed to remedy the breach, in which event the Successor Agency shall commence the cure of the breach within the ten (10) day period and thereafter diligently pursue the cure to completion.
4. If the Successor Agency fails to remedy such breach in a timely and reasonable manner within the above period, the Developer and the Successor Agency agree that the Developer may elect to cure a Successor Agency breach and the Developer shall be entitled to receive from the Successor Agency and the Successor Agency shall pay the Developer such actual costs within fifteen (15) days. Should the Successor Agency fail to pay such costs within fifteen (15) days from notice or invoice from the Developer, the outstanding balance shall accrue interest at the rate of ten percent (10%) per annum, until all principal and interest is paid.

I. Insurance and Liability.

During the period of this Agreement, and until such time as the parties to the Agreement fail to reach accord on the execution of the Development Agreements, the Developer shall defend, assume all responsibility for, and hold the Successor Agency, its officers, agents and employees, harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys' fees and costs), to the extent caused by any of its representatives' activities at the Property, whether such activities or performance thereof by the Developer or anyone employed by, or under contract with, the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. Each of Brixton and Excel shall take out and maintain during such period, a separate comprehensive liability policy in the amount of One Million Dollars (\$1,000,000) combined single limit, consistent with City Council Policy D-3 on insurance, and shall protect the Developer, the Successor Agency and its elected and appointed officers, officials, agents, and employees from claims for such damages, evidenced by such endorsements approved by the Successor Agency's general counsel. Evidence of such insurance shall be submitted to the Successor Agency prior to the acceptance and execution of this Agreement by the City. The certificate of insurance shall name the Successor Agency and its elected and appointed officers, officials, agents, and employees as additional insureds under the policy. The certificate of insurance by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify the Successor Agency 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

shall be primary insurance and not contributing with any insurance maintained by the Successor Agency and the policy shall contain such endorsement.

J. Miscellaneous.


1. The terms, covenants, conditions and restrictions of this Agreement shall extend to and shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Successor Agency and the Developer.
2. This Agreement contains the entire agreement between the Parties relating to the subject matter hereof. Any prior agreements, promises, negotiations or representations, which are not expressly set forth in this Agreement are superseded and of no further force or effect. Subsequent modification of this Agreement shall be in writing and signed by both the Successor Agency and the Developer.
3. Captions in this Agreement are for convenience only and shall not be used in construing meaning. This Agreement shall be construed as a whole and in accordance with its fair meaning.
4. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. Any action to interpret or enforce the Agreement or any of its terms shall be brought in the Superior Court of California, San Diego County, Central or East County divisions, or (if in federal court) in the Southern District of California, in San Diego County. Developer hereby expressly waives any right to remove any such action from San Diego County as is otherwise permitted by California Code of Civil Procedure section 394.
5. 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.
6. 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.
7. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding on the Parties.
8. The Successor Agency and the Developer agree to cooperate with each other so as to achieve the objectives of this Agreement in a timely and efficacious manner.

9. Upon further request, the Successor Agency and the Developer shall execute, deliver, or cause to be executed and delivered, such additional instruments and documents as are necessary to perform the terms of this Agreement.
10. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities and representatives of the City and the Developer, and all amendments hereto must be in writing by the appropriate authorities and representatives of the Successor Agency and the Developer.
11. Except as otherwise provided herein, in any circumstance where, under this Agreement, either Party is required to approve or disapprove any matter, approval shall not be unreasonably withheld.

IN WITNESS WHEREOF, the City and the Developer have signed this Agreement on the respective dates set-forth below.

October 13, 2016

SUCCESSOR AGENCY TO THE EI CAJON REDEVELOPMENT AGENCY
a public body, corporate and politic.

By: 
DOUGLAS WILLIFORD
Executive Director

EXCEL HOTEL GROUP, INC.
a California corporation

August 22, 2016

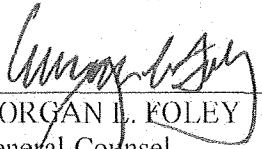
By: 
SURESH PATEL
President

BRIXTON CAPITAL AC, LLC, a Delaware limited liability company

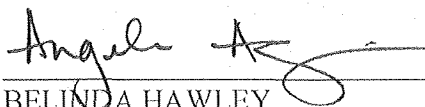
Oct. 27, 2016

By: 
Name: ~~Paul J. Prellwitz~~ TRAVIS KING
Its: Vice President, Construction & Development

APPROVED AS TO FORM:


MORGAN L. FOLEY
General Counsel

ATTEST:


BELINDA HAWLEY
City Clerk

br:

Exhibit A
Project Site Description
[To be provided]

Exhibit B

Preliminary Terms of Development Agreement

City to consider reduced parking for the Hotel per traffic/parking study and/or a shared parking arrangement between the Hotel and retail/office uses.

Victoria Danganan - El Cajon OB Res. No. OB-05-16

From: "Smith, Jared" <Jared.Smith@dof.ca.gov>
To: "vdangana@cityofelcajon.us" <vdangana@cityofelcajon.us>, "hrfalk@city...
Date: 5/19/2016 4:51 PM
Subject: El Cajon OB Res. No. OB-05-16
CC: "Griffe, Wendy" <Wendy.Griffe@dof.ca.gov>

Good afternoon,

Pursuant to Health and Safety Code section 34179 (h), the Department of Finance (Finance) may request a review of Oversight Board actions submitted to Finance. This email serves as notice that Finance is not initiating a review of OB Resolution No. OB-05-16 approving the sale of property. The Agency should dispose of their real properties in accordance with their approved Long Range Property Management Plan.

Please direct questions to Finance's Redevelopment Administration email address at:
Redevelopment_Administration@dof.ca.gov

Sincerely,

Jared Smith
Department of Finance
[916-445-1546](tel:916-445-1546) ext. 3730

**FIRST AMENDMENT TO THE
EXCLUSIVE NEGOTIATION AGREEMENT
BY AND BETWEEN THE
SUCCESSOR AGENCY TO THE
EL CAJON REDEVELOPMENT AGENCY, AND
BRIXTON CAPITAL AC, LLC and EXCEL HOTEL GROUP, INC.**

THIS FIRST AMENDMENT is made and entered into effective the 9th day of APRIL, 2016, by and between the SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY (the "Successor Agency"), and BRIXTON CAPITAL AC, LLC, a Delaware limited liability company, and EXCEL HOTEL GROUP, INC., a California corporation (collectively, the "Developer") (Successor Agency and Developer are occasionally referred to herein individually as the "Party" and collectively as the "Parties").

RECITALS

1. On August 11, 2015, the City Council as Successor Agency to the El Cajon Redevelopment Agency approved the Exclusive Negotiation Agreement (the "ENA") between the Successor Agency and the Developer for the sale and development of Successor Agency-owned property located at 100 Fletcher Parkway (the "Property"). The Oversight Board approved the ENA on August 19, 2015, and the California Department of Finance (the "DOF") approved the Oversight Board's action on October 2, 2015.

2. Since the approval of the ENA, Successor Agency staff has been working diligently with the Developer on various issues involving the Property and the conditions set forth in the ENA. The Developer and the Successor Agency staff are now proposing an amendment to the ENA to extend the Period of Negotiations outlined in the ENA for an additional one hundred eighty-six (186) days, for a total term of one (1) year.

3. Successor Agency and Developer now agree to amend the AGREEMENT to extend the Period of Negotiations for an additional one hundred eighty-six (186) days, for a total term of one (1) year.

4. This FIRST AMENDMENT TO EXCLUSIVE NEGOTIATION AGREEMENT BY AND BETWEEN THE SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY, AND BRIXTON CAPITAL AC, LLC and EXCEL HOTEL GROUP, INC. (the "FIRST AMENDMENT") is necessary to amend the AGREEMENT to extend the term an additional one hundred eighty-six (186) days, for a total term of one (1) year.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Section B(1) of the AGREEMENT is amended to read as follows:

B. Period of Negotiations.

1. The Successor Agency agrees to negotiate exclusively with the Developer regarding the future use and disposition of the Successor Agency Parcel and any future modifications to, and use and disposition of, the Successor Agency Parcel during the term of this Agreement. The Agreement shall commence upon the date the Successor Agency approves and executes this Agreement (the "Effective Date") and continue for a period of one (1) year (the "Negotiation Period"). The Negotiation Period may be extended as provided for herein. The Parties agree to negotiate in good faith and conduct due diligence activities during the Negotiation Period and any extension thereof. If Development Agreements for both the Successor Agency Parcel and City Parcel have not yet been executed upon the termination of the initial Negotiation Period, this Agreement may be extended for 90 days by written consent of the Developer and the City Manager to enable the Successor Agency to: (1) determine whether it desires to enter into such Development Agreements, and (2) take the actions necessary to authorize the Successor Agency to sign the Development Agreements, if the City desires to enter into such Development Agreements.

Section 2. This FIRST AMENDMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 3. Except as otherwise amended by this FIRST AMENDMENT, all other terms and conditions of the AGREEMENT shall remain in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this FIRST AMENDMENT effective the date and year first above written.


APRIL 9, 2016

SUCCESSOR AGENCY TO THE
EI CAJON REDEVELOPMENT AGENCY,
a public body, corporate and politic

By: 
DOUGLAS WILLIFORD, Executive Director


EXCEL HOTEL GROUP, INC.,
a California corporation

August 23rd, 2016

By: 
SURESH PATEL, President

BRIXTON CAPITAL AC, LLC,
a Delaware limited liability company

Oct. 27,, 2016

By: 
Name: Paul J. Prellwitz TRAVIS KING
Title: Vice President, Construction & Development

APPROVED AS TO FORM:


MORGAN L. FOLEY
General Counsel

ATTEST:


601: BELINDA HAWLEY
Secretary

RESOLUTION NO. OB-05-16

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING AND AUTHORIZING THE FIRST AMENDMENT TO THE EXCLUSIVE NEGOTIATION AGREEMENT WITH BRIXTON CAPITAL AND EXCEL HOTEL GROUP, INC., FOR THE PURCHASE AND DEVELOPMENT OF SUCCESSOR AGENCY-OWNED PROPERTY ALONG THE NORTH SIDE OF FLETCHER PARKWAY AND THE EAST SIDE OF NORTH MAGNOLIA AVENUE (100 FLETCHER PARKWAY)

WHEREAS, the City of El Cajon as Successor Agency to the El Cajon Redevelopment Agency (the "Successor Agency") owns one (1) commercial parcel (the "Parcel") identified as 100 Fletcher Parkway, APN# 483-071-52-00, located along the north side of Fletcher Parkway and along the east side of North Magnolia Avenue, in the City of El Cajon; and

WHEREAS, the City of El Cajon (the "City") owns adjacent property acquired from the State of California Department of Transportation, which property lies between the Parcel and the off ramp for California State Route 67, as well as between the Parcel and Fletcher Parkway, which together with the Parcel creates approximately 4.14 acres of commercially-developable property (the "Project Site"); and

WHEREAS, the City, has identified the Project Site as a desirable location for the construction of a hotel and additional retail commercial development; and

WHEREAS, the Successor Agency and the City both desire to enter cooperatively and facilitate the development of the Project Site with a quality hotel, along with on-site parking and complementary commercial development; and

WHEREAS, the City and the Successor Agency have jointly-marketed the Project Site through a Request For Proposals and, having evaluated the proposals, have determined that it is in the best interests of the Successor Agency, the City, and the various affected taxing entities for the Project Site to be sold and developed by Brixton Capital and Excel Hotel Group, Inc. (the "Developer"), for the purpose of constructing an 80-bed Hampton Inn Hotel (the "Hotel"), along with on-site parking, and other commercial buildings that would complement the Hotel with one or more quality restaurants and other retail uses, all to be located on the Project Site;

WHEREAS, the Developer has entered into an Exclusive Negotiation Agreement (the "Agreement") with the Successor Agency for the exclusive right to negotiate the purchase and development of the Project Site and the creation of a development agreement to direct the desired development of the Project Site; and

WHEREAS, the Developer has qualified through the request for proposal bidding process, and a review of its qualifications, and will expend substantial time and resources in order to negotiate in good faith the price and terms of sale, planned uses, and development of the scope of use of the Project Site; and

WHEREAS, the Agreement and related documents were adopted on August 11, 2015, by the City Council acting as the Successor Agency; and approved by the Oversight Board at its meeting of August 19, 2015; and

WHEREAS, since approval of the Agreement, the Successor Agency staff has been working diligently with the Developer on various issues involving the Property and the conditions set forth in the Agreement; and

WHEREAS, the Successor Agency staff and the Developer are proposing a First Amendment to the Agreement to extend the Period of Negotiation set forth in the Agreement from 180 days to up to one (1) year.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY, AS FOLLOWS:

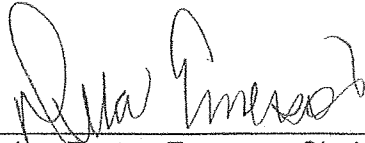
- A. The Oversight Board finds that:
 - 1. The recitals above are true and correct and have been incorporated herein by reference; and
 - 2. Approval to execute the First Amendment to the Agreement is exempt from the California Environmental Quality Act (CEQA) in accordance with section 15061(b); (General Rule) of the CEQA Guidelines. Any future Disposition and Development Agreement resulting from the Agreement, as amended, will be subject to CEQA review; and
 - 3. The proposed First Amendment to the Agreement would provide for a Period of Negotiation for up to one year, and would be in the best interests of the affected taxing entities and the public by bringing buyers who will acquire and develop Successor Agency properties to their fullest potential, resulting in increased property taxes, sale tax, new jobs, and economic prosperity to El Cajon.
- B. The Oversight Board hereby APPROVES the First Amendment to the agreement, as recommended by the City Manager, between the City of El Cajon and Brixton Capital and Excel Hotel Group, Inc., in substantially the form as presented and approved at the meetings on June 14, 2016 and May 18, 2016, by the City Council acting at the Successor Agency and the Oversight Board, respectively; and

- C. The Oversight Board hereby APPROVES the execution of said First Amendment to the Agreement by the City Manager of the City of El Cajon, or such person designated by the City Manager, acting in the capacity of Executive Director of the Successor Agency, with such modifications as the person executing the agreement and the City Attorney shall approve.
- D. The Oversight Board hereby directs the Secretary of the Oversight Board to forward a copy of the First Amendment to the Agreement to the San Diego County Auditor-Controller, the County Administrative Officer, the California State Controller's Office, and the California Department of Finance.

[The remainder of this page intentionally left blank.]


PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly-scheduled meeting held this 18th day of May 2016, by the following vote to wit:

AYES: BUXBAUM, CHADWICK, REARIC, SHUTE, TURNER-EMERSON
ABSTAIN: NONE
ABSENT: DAVIES, NGUYEN



Debra Turner-Emerson, Chairperson

ATTEST:


Majed Al-Ghafry, Oversight Board Secretary



Community Development



July 10, 2017

Douglas Williford, Executive Director
City of El Cajon Successor Agency
200 Civic Center Way
El Cajon, CA 92020

Dear Mr. Williford:

As you know, I have been a participant on the El Cajon Successor Agency Board as a representative of the mid-management bargaining unit (MMPEG). Since my appointment to the position of Director of Community Development, I must resign from the board effective July 1, 2017.

Please note that it was a pleasure to serve on the Successor Agency Board.

Sincerely,

Anthony Shute
Director of Community Development