

ITEM NO. 5
SUCCESSOR AGENCY
CITY OF OCEANSIDE

STAFF REPORT

DATE: July 22, 2014

TO: The Oversight Board of the City of Oceanside Successor Agency

FROM: Property Management

SUBJECT: **ADOPTION OF A RESOLUTION APPROVING A DISPOSITION AGREEMENT AND ESCROW INSTRUCTIONS BETWEEN S.D. MALKIN PROPERTIES, INC. AND THE OCEANSIDE SUCCESSOR AGENCY**

SYNOPSIS

Staff recommends that the Successor Agency adopt a resolution to approve a Disposition Agreement and Escrow Instructions between S.D. Malkin Properties, Inc. and the Oceanside Successor Agency for property owned by the Successor Agency located between Pacific Street on the west, Myers Street on the east, Seagaze Drive on the south and Pier View Way on the north. The property at issue is identified in the Long Range Property Management Plan as the "Pacific Street Lots."

BACKGROUND

The City has been actively engaged for many years to meet a Redevelopment Plan objective to secure a destination resort in the Downtown Area on land acquired for that specific purpose. After a process of issuing a Request for Qualifications and then a Request for Proposals, the City selected S.D. Malkin Properties, Inc., as the developer. At the time, the Community Development Commission (CDC) then entered into a Negotiating Agreement and later a Memorandum of Understanding with the developer, who subsequently applied for development approvals and a coastal permit, and prepared an Environmental Impact Report (EIR). All of the necessary discretionary land use entitlements for the project were approved by the City of Oceanside's CDC on January 16, 2008.

In 2009 the CDC approved a Development Agreement with S.D. Malkin that included an approximate \$28 million subsidy through a combination of tax allocation bonds and the expenditure of previously issued redevelopment bonds. Following approval of the Development Agreement, the State dissolved redevelopment agencies, and there is no longer the ability to issue new bonds for the subsidy. In order for a project to proceed, a revised agreement with the developer is necessary.

After the Department of Finance (DOF) issued a finding of completion to the Oceanside Successor Agency, a Long Range Property Management Plan (LRPMP) was prepared and ultimately approved by the DOF. The Plan calls for the Pacific Street Lots to be sold to S.D. Malkin for a project consistent with the 2008

entitlements of the site. The proposed sale before the Oversight Board implements the LRPMP. For the reasons set forth, the \$1.5 million purchase price is the maximum price the Agency may legally receive for the Pacific Street Lots.

ANALYSIS

S.D. Malkin proposes to build a destination resort in downtown Oceanside that will be a catalyst for other projects. Having a destination resort in the Downtown Area has been in the Redevelopment Plan since the Redevelopment Agency was created in 1975.

Project Description

The flag anticipated by S.D. Malkin (Hyatt Regency or Westin) and Interstate is a pre-approved hotel operator. The architecture, finishes, furniture and fixtures are mandated to be of a quality reflected in a competitive set of hotels as outlined in the Restrictive Covenant which is an exhibit to the Agreement. The hotel competitive set for the South Block includes, among other hotels, the Hilton Huntington Beach, Marriot Coronado, Marriot Del Mar and Sheraton Carlsbad. The hotel competitive set for the North Block includes the Hotel Indigo Downtown San Diego, Shorebreak Huntington Beach and Pacific Terrace Hotel San Diego.

The project will provide 36,000 square feet of public open space and 18,500 square feet of visitor serving commercial, the same as the 2009 DDA. There will be 20,000 square feet of meeting and function space including the Phase I ballroom of 6400 square feet. The Top Gun House and Lot 26 are treated the same as the 2009 DDA with the Top Gun House being incorporated into the North Block development.

The project has been slightly reduced from the prior approved project and will no longer include fractional timeshares. The current project includes 225 rooms for the South Block hotel and no less than 135 rooms for the North Block. The project height will be reduced from 8 to 6 stories on the South Block; however, at this time, the developer anticipates retaining the approved 8 story height on the North Block.

Property Disposition

The proposed Agreement includes the Successor Agency selling the property to S.D. Malkin for \$1.5 million. The purchase price for the property is restricted by Section 141 of the Internal Revenue Code of 1986, since the property was purchased with tax-exempt bonds. The City had an independent review conducted of the tax-exempt bonds and the various actions associated with those bonds to determine the maximum value the property can be sold for. Since the proposed project fulfills a governmental purpose, the maximum prudent amount the property can be sold for is \$1.5 million. A copy of the letter from Stadling, Yocca, Carlson and Rauth, P.C., is attached (Attachment 2). The proceeds of the sale must be used to redeem outstanding bonds. The City's bond counsel has engaged the DOF in discussions about this issue. We understand the DOF acknowledges the issue regarding compliance with the Internal Revenue Code.

The project closing date does not occur until construction is ready to commence. The project may be constructed on both blocks concurrently; however, the developer has the option to phase the project provided the South Block is built first. The developer has an 18-month closing period running from the approval date defined to be the date approved by the Council and Oversight Board and not set aside by DOF. The current Agreement does not provide any extensions to the 18-month closing period. The developer proposes to file a substantial conformity application with the City's Planning Department after the DOF approval to ensure the revised project conforms to all requirements in the previously certified Environmental Impact Report and the other 2008 entitlements.

Project Subsidy

The 2009 DDA included an approximate \$28 million subsidy from the former Redevelopment Agency. The project before the Oversight Board has no financial subsidy from the Successor Agency.

However, the revised project still includes the extraordinary costs including the construction of a large ballroom, and the City's economic consultants have concluded the project requires some form of City-subsidy to be economically viable. The current agreement contemplates a \$13.688 million subsidy including a combination of rebating of transient occupancy taxes exclusively generated by the project, a Development Impact Fee credit, and the City's satisfaction of certain off-site traffic requirements.

The proposed City-subsidy is broken down as follows:

TOT Rebate	\$11,335,250
Off-site Mitigation	\$609,750
<u>DIF Credit</u>	<u>\$1,743,267</u>
Total Subsidy	\$13,688,267

In addition, this project is required to be built using prevailing wages, in accordance with California Labor Code Section 1770.

FISCAL IMPACT

The sale will generate revenue of \$1.5 million. As there are two phases to this project, each phase (block) will have a purchase price of \$750,000. The Long Range Property Management Plan requires that the revenue must be used to redeem outstanding bond debt.

The Successor Agency is not a party to the related agreement between the City of Oceanside and S.D. Malkin Properties that provides an economic subsidy to the project. That agreement will be presented to the City Council following approval of the sales agreement by the DOF. Keyser Marston and Associates is preparing an economic analysis of the financial benefits of the project, including increased property and sales tax, and the estimated number of jobs generated by the subsidy. That analysis will be made available to the public before the City Council public hearing.

Worksheets 1 and 2 (Attachment 3) provide a summary of the TOT cost sharing for both the South and North Block developments. Under the terms of the TOT sharing agreement, S.D. Malkin will receive 100 percent of the TOT for the first three years after Phase I hotel on the South Block is open. The Developer will receive 100 percent of TOT on the Phase II hotel on the North Block also for a period of three years. The City and Developer share in TOT at varying levels for a total period of 15 years on the Phase I hotel and 14 years on the Phase II hotel. After the initial three-year period on the South Block, the City will receive between \$300,000 and \$350,000 annually from the South Block. After the first three years of operation on the North Block, the City is anticipated to receive roughly \$450,000 annually on the North Block in TOT. The Successor Agency is not affected by the TOT sharing agreement as the tax is levied and received exclusively by the City.

Upon completion of the 15-year reimbursement period, the TOT generated will be entirely to the City. The TOT from the South Block is estimated to be \$2.1 million annually and the TOT from the North Block is \$1.3 million annually.

The Agreement also provides a credit against a portion of the project's required Development Impact Fees, as described above. The Successor Agency is not a party to the agreement between S.D. Malkin and the City that provides this credit.

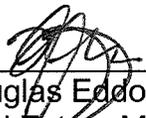
CITY ATTORNEY'S ANALYSIS

The City Attorney, acting as counsel to the Successor Agency, has drafted the Disposition Agreement and has approved it as to form.

RECOMMENDATION

Staff recommends that the Successor Agency adopt a resolution to approve a Disposition Agreement and Escrow Instructions between S.D. Malkin Properties, Inc. and the Oceanside Successor Agency for property owned by the Successor Agency located between Pacific Street on the west, Myers Street on the east, Seagaze Drive on the south and Pier View Way on the north. The property at issue is identified in the Long Range Property Management Plan as the "Pacific Street Lots."

PREPARED BY:



Douglas Eddow
Real Estate Manager

SUBMITTED BY:



Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



James Riley, Financial Services Director



ATTACHMENTS

1. Resolution
2. Letter from Stadling, Yocca, Carlson and Rauth, P.C.
3. Worksheets 1 and 2 for TOT Cost Sharing
4. Disposition Agreement and Escrow Instructions

RESOLUTION NO.

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE CITY OF OCEANSIDE APPROVING THE SALE OF THE PACIFIC STREET LOTS (APNs 147-076-01,02,03,10,11 & 12; 147-261-01 THROUGH 12) TO S.D. MALKIN PROPERTIES, INC.

WHEREAS, on February 1, 2012, in accordance with the provisions of California Health and Safety Code Section 34179(a)(1) the Oceanside Redevelopment Agency was dissolved; and

WHEREAS, the Oversight Board to the Successor Agency of the former Oceanside Redevelopment Agency (Successor Agency) has been appointed pursuant to the provisions of Health and Safety Code Section 34179; and

WHEREAS, on May 10, 2013 and May 15, 2013, the California Department of Finance issued to the Successor Agency a Finding of Completion pursuant to Health and Safety Code Section 34179.7; and

WHEREAS, staff for the Oceanside Successor Agency prepared a Long-Range Property Management Plan in accordance with Health and Safety Code Section 34191.5 and the Oversight Board approved the Long-Range Property Management Plan on June 11, 2013; and

WHEREAS, on October 30, 2013, the Department of Finance issued a letter to the City of Oceanside making certain findings concerning the Long-Range Property Management Plan (LRPMP) previously approved by the Oversight Board; and

WHEREAS, the Oversight Board approved a Revised LRPMP on November 19, 2013; and

WHEREAS, the Department of Finance approved the Revised LRPMP on November 22, 2013; and

WHEREAS, the Revised LRPMP provides that the Successor Agency-owned property identified as the "Pacific Street Lots" (APNs 147-076-01,02,03,10,11,&12 and APN 147-261-01 through 12) will be sold to S.D. Malkin Properties Inc. for a use consistent with the 2008 Entitlements and Final EIR; and

1 WHEREAS, consistent with the Revised LRPMP, staff has negotiated a Real Property
2 Disposition Agreement and Escrow Instructions (“Agreement”) to sell the “Pacific Street Lots”
3 (APN s147-076-01,02,03,10,11,&12 and APN 147-261-01 through 12) (“the Property”), to
4 S.D. Malkin Properties Inc. for the total purchase price of \$1,500,000.00; and

5 WHEREAS, based upon the Agency’s bond counsel advice letter dated May 29, 2014, a
6 copy of which is attached to the staff report for this item, the purchase price for the Property is
7 the maximum consideration the Agency can lawfully receive under Section 141 of the Internal
8 Revenue Code of 1986 as the Property was purchased with tax-exempt proceeds; and

9 NOW, THEREFORE, the Oversight Board to the Successor Agency of the City
10 Oceanside does resolve as follows:

11 1. The foregoing Oversight Board recitals are true and correct and are a substantive
12 part of this Resolution.

13 2. The Oversight Board hereby approves the Disposition Agreement and Escrow
14 Instructions, a copy of which is attached to the staff report dated July 22, 2014. The Chairman
15 of the Oversight Board is authorized to execute the Disposition Agreement and Escrow
16 Instructions upon receipt of all supporting documents.

17 3. Proceeds from the sale of the Property shall be used to redeem the outstanding
18 bonds as required by the Revised Long Range Property Management Plan.

19 4. Staff is authorized to take all actions necessary to implement said Agreement.

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BE IT FURTHER RESOLVED that, a copy of this resolution will be transmitted to the California State Department of Finance.

PASSED AND ADOPTED by the Oversight Board to the Successor Agency of the City of Oceanside, California, this _____ day of _____, 2014, by the following vote:

- AYES:
- NAYS:
- ABSENT:
- ABSTAIN:

CHAIRMAN

ATTEST:

SECRETARY



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NEWPORT BEACH
RENO
SAN DIEGO
SACRAMENTO
SAN FRANCISCO
SANTA BARBARA
SANTA MONICA

May 29, 2014

Ms. Michele Lund
Office of the City Treasurer
City of Oceanside
300 N. Coast Highway
Oceanside CA 92054

Re: \$22,030,000 Community Development Commission of the City of Oceanside
Downtown Redevelopment Project Subordinate 2002 Tax Allocation Bonds

Dear Ms. Lund:

INTRODUCTION

We understand that the City of Oceanside (the "City") has requested advice regarding compliance with respect to the private activity bond restrictions (the "Private Activity Restrictions") of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code") applicable to the above-captioned bonds (the "Bonds") with respect to the sale of certain property (the "Sale") owned by the Successor Agency (the "Successor Agency") to the Community Development Commission of the City of Oceanside (the "Agency"). We understand that the Sale is proposed to be to a private developer that will utilize the property to achieve the community development purposes of the Successor Agency.

APPLICABLE LAW - FEDERAL TAX RESTRICTIONS

The Bonds were issued as governmental bonds under the Code and are subject to the private activity bond restrictions of Section 141 of the Code which include not satisfying the "private security or payment test" of Section 141(b)(2) of the Code (the "Payment Test"). Under the Payment Test, the present value of all "private payments" ("Private Payments") received directly or indirectly with respect to the Bonds cannot exceed ten percent (five percent for unrelated use) of the present value of debt service on the Bonds.

For purposes of the Payment Test, Private Payments include (but are not limited to) amounts received (from persons or entities engaged in a trade or business) from the sale (including from the

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Sale) or leasing of Bond financed property. Present value is calculated using the arbitrage yield on the Bonds as the discount rate for this purpose. For purposes of this test, Private Payments may be adjusted for operation and maintenance expenses of the applicable Bond financed property.

In the present situation, the Bond proceeds (\$19,683,150.71) financed the property described in Exhibit A (the "Projects"), which includes the property potentially subject to the Sale. To ensure post issuance compliance with the Payment Test, the Successor Agency and City must monitor the receipt of all Private Payments with respect to the Bonds, including any payments received with respect to the Sale.

Generally, in our view, the maximum amount of Private Payments that the Successor Agency and City may receive with respect to the Projects is approximately \$2,100,000 with respect to related usage (\$21,000,000 (issue price of Bonds (\$21,681,641.65 adjusted down for a cushion) times 10%) and \$1,050,000 with respect to unrelated usage (\$21,000,000 (issue price of Bonds (\$21,681,641.65 adjusted down for a cushion) times 5%), allowing for a prudent cushion for unexpected payments.

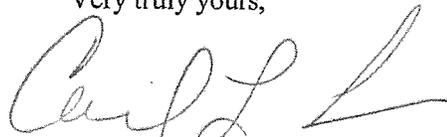
The City (or Successor Agency) has already received some Private Payments with respect to the Projects financed by the Bonds. The City received \$375,000, on March 10, 2014, from a private buyer for the 801 North Coast Highway property. The City also received \$183,000, on January 28, 2014, from a private party for the 900 Block North Coast Highway property. We understand that both of the above-described land sales were not necessarily to achieve the governmental purposes of the Successor Agency and were not for "related use." The City (Successor Agency) also receives a de minimis amount of Private Payments with respect to the 312-314 Pier View Acquisition (rental of \$100 per month). Consequently, the overall approximately \$2,100,000 cap of Private Payments for related use (and the \$1,050,000 cap for Private Payments for unrelated use) must take into account such previously received Private Payments in computing any additional Private Payments that may be received. Given that the City or Successor Agency has already received approximately \$600,000 (without discounting) of Private Payments, the maximum prudent amount the City or Successor Agency should collect (to ensure compliance with Code restrictions) is approximately \$450,000 if the usage is unrelated and \$1,500,000 if the usage relates to fulfilling the governmental purpose of the City or Successor Agency. Consequently, the City and Successor Agency must monitor any

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payments to be received with respect to the Sale of the Pier Area Acquisition land to ensure compliance with the Payment Test.

We note that the City and Successor Agency cannot be free of the Payment Test restrictions by merely defeasing Bonds (including with proceeds received from the Sale) as the "change in use" provisions of Treasury Regulation § 1.141-12, which apply to certain Code restrictions, are not applicable to the Payment Test.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Carol L. Lew".

Carol L. Lew

STRADLING YOCCA CARLSON & RAUTH, P.C.

CLL:nc

EXHIBIT A
PROJECTS FINANCED

**2002 Oceanside Tax Allocation Bonds
Use of Proceeds**

Bond Proceeds (Received 02/20/2002)		\$ 19,527,101.05
Project Name		
1.	Pier Area Acquisition and Relocation	\$ 11,352,982.54
	Property Purchases	8,397,377.60
	Consulting/Legal Expenses - Acquisition	410,055.97
	Legal Expenses - Manchester Litigation	108,570.30
	Legal Expenses - Manchester Litigation Settlement	2,200,000.00
	Relocation Expenses	236,978.67
2.	312-314 Pier View Acquisition	1,503,839.10
	801 North Coast Highway (Bode Property) Acquisition	331,376.82
	Property Purchase	314,784.04
	Demolition	15,520.00
	Taxes	1,072.78
3.	900 Block North Coast Highway Acquisition	250,600.75
4.	Capital Improvement Project - Downtown Streetscape	693,189.34
5.	Capital Improvement Project - North Coast Highway Gateway	1,562,690.86
6.	Capital Improvement Project - Beach Resort Hotel	1,122,471.30
7.	Capital Improvement Project - Downtown Parking Garage	2,400,000.00
8.	Oceanside Museum of Art Expansion Grant	466,000.00
		<u>\$ 19,683,150.71</u>

WORKSHEET 1 - SOUTH BLOCK

ILLUSTRATION OF POTENTIAL TOT REVENUE PAYMENTS TO DEVELOPER - SOUTH BLOCK - MAIN HOTEL
OCEANSIDE PIER RESORT HOTEL
CITY OF OCEANSIDE

Construction Begins:	January 2016
Construction Completed:	July 2017
TOT Target Contribution 3 Years 100% to Developer	\$9,075,250

Fiscal Year	Operating Year	Hotel Room Revenue ⁽¹⁾	TOT @ 10.0%	To City				To Developer			Cumulative Payments to Developer - Net Present Value in 2016 12.0%	
				Tier 1 after 3 years up to \$200,000 to City @ 75.0% / Year 3.0%	Tier 2 after 3 years up to \$400,000 to City @ 50.0% / Year 3.0%	Tier 3 after 3 years up to \$600,000 to City @ 20.0% / Year 3.0%	Tier 4 after 3 years greater than \$600,000 to City @ 0.0% / Year 3.0%	Grand Total Net TOT to City	Add: Transfer of TOT to Developer from North Block	TOT to Developer from South Block		Grand Total Net TOT to Developer
2016	1	---	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2017	2	---	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2018	3	1	\$11,711,025	\$0	\$0	\$0	\$0	\$1,171,103	\$0	\$0	\$1,171,103	\$988,000
2019	4	2	\$12,823,476	\$0	\$0	\$0	\$0	\$1,282,348	\$0	\$0	\$1,282,348	\$1,954,000
2020	5	3	\$13,831,976	\$0	\$0	\$0	\$0	\$1,383,198	\$0	\$0	\$1,383,198	\$2,884,000
2021	6	4	\$14,674,343	\$163,909	\$109,273	\$43,709	\$0	\$1,150,543	\$363,551	\$0	\$1,514,094	\$3,794,000
2022	7	5	\$15,416,865	\$168,826	\$112,551	\$45,020	\$0	\$1,215,289	\$562,050	\$0	\$1,777,339	\$4,746,000
2023	8	6	\$15,922,876	\$173,891	\$115,927	\$46,371	\$0	\$1,256,098	\$198,499	\$0	\$1,454,597	\$5,443,000
2024	9	7	\$16,355,752	\$179,108	\$119,405	\$47,762	\$0	\$1,289,300	\$0	\$0	\$1,289,300	\$5,994,000
2025	10	8	\$16,846,425	\$184,481	\$122,987	\$49,195	\$0	\$1,327,979	\$0	\$0	\$1,327,979	\$6,501,000
2026	11	9	\$17,351,817	\$190,016	\$126,677	\$50,671	\$0	\$1,367,818	\$0	\$0	\$1,367,818	\$6,967,000
2027	12	10	\$17,872,372	\$195,716	\$130,477	\$52,191	\$0	\$1,408,853	\$0	\$0	\$1,408,853	\$7,395,000
2028	13	11	\$18,408,543	\$201,587	\$134,392	\$53,757	\$0	\$1,451,119	\$0	\$0	\$1,451,119	\$7,790,000
2029	14	12	\$18,960,799	\$207,635	\$138,423	\$55,369	\$0	\$1,494,652	\$0	\$0	\$1,494,652	\$8,152,000
2030	15	13	\$19,529,623	\$213,864	\$142,576	\$57,030	\$0	\$1,539,492	\$0	\$0	\$1,539,492	\$8,485,000
2031	16	14	\$20,115,512	\$220,280	\$146,853	\$58,741	\$0	\$1,585,676	\$0	\$0	\$1,585,676	\$8,792,000
2032	17	15	\$20,718,977	\$226,888	\$151,259	\$60,504	\$0	\$1,633,247	\$0	\$0	\$1,633,247	\$9,074,000

(1) Assumes occupancy as follows:

Year 1	62%
Year 2	64%
Year 3	67%
Year 4	69%
Years 5-15	70%

WORKSHEET 2 - NORTH BLOCK

ILLUSTRATION OF POTENTIAL TOT REVENUE PAYMENTS TO DEVELOPER - NORTH BLOCK - BOUTIQUE HOTEL
OCEANSIDE PIER RESORT HOTEL
CITY OF OCEANSIDE

Construction Begins:	July 2019
Construction Completed:	January 2021

TOT Target Contribution	\$2,260,000
3 Years 100% to Developer	

Calendar Year	Operating Year	Hotel Room Revenue (1)	TOT @ 10.0%	To City				To Developer			Cumulative Payments to Developer - Net Present Value in 2019 12.0%	
				Tier 1 after 3 years up to \$250,000 100.0% to City @ 3.0% / Year	Tier 2 after 3 years up to \$500,000 50.0% to City @ 3.0% / Year	Tier 3 after 3 years up to \$750,000 15.0% to City @ 3.0% / Year	Tier 4 after 3 years greater than \$750,000 0.0% to City @ 3.0% / Year	TOT to Developer from North Block	Less: Transfer of TOT to South Block	Grand Total Net TOT to Developer		
2019	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2020	2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2021	3	\$7,271,019	\$727,102	\$0	\$0	\$0	\$0	\$0	\$727,102	(\$727,102)	\$0	\$0
2022	4	\$7,939,953	\$793,995	\$0	\$0	\$0	\$0	\$0	\$793,995	(\$396,998)	\$396,998	\$299,000
2023	5	\$8,587,853	\$858,785	\$0	\$0	\$0	\$0	\$0	\$858,785	\$0	\$858,785	\$877,000
2024	6	\$9,135,814	\$913,581	\$273,182	\$136,591	\$40,977	\$0	\$450,750	\$462,832	\$0	\$462,832	\$1,155,000
2025	7	\$9,571,862	\$957,186	\$281,377	\$140,689	\$42,207	\$0	\$464,272	\$492,914	\$0	\$492,914	\$1,419,000
2026	8	\$9,859,018	\$985,902	\$289,819	\$144,909	\$43,473	\$0	\$478,201	\$507,701	\$0	\$507,701	\$1,662,000
2027	9	\$10,154,789	\$1,015,479	\$298,513	\$149,257	\$44,777	\$0	\$492,547	\$522,932	\$0	\$522,932	\$1,885,000
2028	10	\$10,459,432	\$1,045,943	\$307,468	\$153,734	\$46,120	\$0	\$507,323	\$538,620	\$0	\$538,620	\$2,091,000
2029	11	\$10,773,215	\$1,077,322	\$316,693	\$158,346	\$47,504	\$57,779	\$580,322	\$497,000	\$0	\$497,000	\$2,260,000
2030	12	\$11,096,412	\$1,109,641	\$0	\$0	\$0	\$0	\$1,109,641	\$0	\$0	\$0	\$0
2031	13	\$11,429,304	\$1,142,930	\$0	\$0	\$0	\$0	\$1,142,930	\$0	\$0	\$0	\$0
2032	14	\$11,772,183	\$1,177,218	\$0	\$0	\$0	\$0	\$1,177,218	\$0	\$0	\$0	\$0
2033	15	\$12,125,349	\$1,212,535	\$0	\$0	\$0	\$0	\$1,212,535	\$0	\$0	\$0	\$0
2034	16	\$12,489,109	\$1,248,911	\$0	\$0	\$0	\$0	\$1,248,911	\$0	\$0	\$0	\$0
2035	17	\$12,863,783	\$1,286,378	\$0	\$0	\$0	\$0	\$1,286,378	\$0	\$0	\$0	\$0

(1) Assumes occupancy as follows:

Year 1	62%
Year 2	64%
Year 3	67%
Year 4	69%
Years 5-15	70%

DISPOSITION AGREEMENT AND ESCROW INSTRUCTIONS

THIS DISPOSITION AGREEMENT AND ESCROW INSTRUCTIONS (“**Agreement**”) is made and entered into as of _____, 2014 (“**Effective Date**”), by and between Successor Agency of the City of Oceanside in accordance with California Health and Safety Code Section 34180 *et seq.*, (“**Successor Agency**”) acting pursuant to ABx1 26 and AB 1484, and S.D. Malkin Properties, Inc., a Delaware corporation (“**Developer**”), who agree as follows:

This Agreement constitutes: (a) a contract of purchase and sale between the parties, and (b) escrow instructions to Escrow Holder, the consent of which appears at the end of this Agreement. Developer and Successor Agency shall deliver to Escrow Holder consideration in the amount and in the manner hereinafter provided, and any additional funds and instruments required from Developer or Successor Agency in order to enable Escrow Holder to comply with these instructions which Escrow Holder is to use on or before each Closing Date.

ARTICLE 1 Recitals

1.1 Property. Successor Agency is the fee title owner of certain real property generally located between Pier View Way, Myers Street, Seagaze Drive and Pacific Street, in Oceanside, California, and as more particularly described on Exhibit 1.1(a) attached hereto (the “**Real Property**”). A site plan showing the division of the Real Property into Phase I and Phase II is attached hereto as Exhibit 1.1(b). As used in this Agreement, the term “**Property**” shall mean the Real Property, the Improvements, the Intangible Property, the Appurtenant Rights and the Mission Avenue Easement.

1.2 Disposition Agreement. Developer and the Community Development Commission of the City of Oceanside (“**CDC**”) executed that certain Disposition Agreement (Beach Front Resort Ground Lease), dated May 6, 2009, which is City Document No. 09-D0393-3 (“**Disposition Agreement**”)

1.3 Dissolution Act. By reason of the Dissolution Act, it is the intention of the Parties to replace the transaction set forth in the Disposition Agreement with this Agreement and to terminate the Disposition Agreement, as herein provided, on the Approval Date.

1.4 Agreement of Sale. Successor Agency desires to sell and convey and Developer desires to purchase and acquire the Property, separately as Phase I and Phase II, upon and subject to the provisions and conditions set forth herein.

ARTICLE 2 Definitions

2.1 Definitions. Unless the context otherwise indicates, whenever used in this Agreement:

“**Affiliate**” means any other entity Controlling or Controlled by or under common Control with a specified entity. “**Affiliated**” shall have the correlative meaning.

“**Agreement**” is as defined in the first paragraph hereof.

“**Allocation Payment**” is as defined in Section 15.5.

“**Appeal Resolution**” means, with respect to any entitlement, permit or approval, the expiration of all appeal and protest periods with respect to the same, or if there is an appeal or protest, including judicial, administrative or political action, then the resolution the same upon provisions and conditions acceptable to Developer, in Developer’s sole and reasonable discretion. The foregoing shall include, without limitation, the Substantial Conformance Review.

“**Applicable Law**” or “**Applicable Laws**” means all applicable provisions of any statute, law, regulation, or decree or judgment enacted or issued by any Governmental Authority.

“**Approval Date**” means the date upon which the Oversight Board and DOF have each approved (or, in the case of the DOF, are deemed to have approved) the Transaction and the Substantial Conformance Review have been completed so as to conclude that the Resort Development, as contemplated in Section 8.3 hereof and the Restrictive Covenant Agreement, is in compliance with the Entitlements and the Appeal Resolution has occurred with respect to each of the same.

“**Approved Hotel Operator**” means a hotel operator reasonably approved by Successor Agency pursuant to the provisions and conditions hereof.

“**Appurtenant Assignment**” is as defined in Section 10.1.4.

“**Appurtenant Rights**” shall mean: (a) all easements and licenses appurtenant to the applicable Phase; and (b) all right, title and interest of the Successor Agency to the extent that the same exist, by reversion or otherwise, in and to any roads, streets, and ways, public or private, serving the applicable phase.

“**Architectural Agreement**” means the agreement executed by Developer for the design, the preparation of plans and specifications and the performance of architectural services for the Phase I Hotel and(or) the Phase II Hotel.

“**Bill of Sale**” is as defined in Section 10.2.2.

“**Business Days**” means any day when Escrow Holder and the County are both open for business and, in the case of the County, documents may be placed of record.

“**Cash**” means: (a) currency; (b) a cashier’s check or certified check drawn on a Bank; or (c) funds wire-transferred or otherwise deposited into Escrow Holder’s general escrow account(s).

“**CDC**” is as defined in Section 1.2.

“**CEQA**” means the California Environmental Quality Act, as codified at California Public Resources Code Section 21000 *et seq.*

“**Certificate of Occupancy**” means a document issued by the City allowing the lawful occupancy and use of Improvements.

“**City**” means the City of Oceanside, California.

“**City Council**” means the City Council of the City of Oceanside, California.

“**Claim**” or “**Claims**” means all claims, obligations, liabilities, causes of action, suits, debts, liens, damages, judgments, losses, demands, penalties, settlements, costs and expenses (including, without limitation, attorney’s fees and costs) made by or otherwise owed to third parties (meaning, an individual or entity not a Party to this Agreement).

“**Closing**” is as defined in Section 11.1.

“**Closing Date**” is as defined in Section 11.1.

“**Closing Statement**” is as defined in Section 11.2.

“**Coastal Development Permit**” means Regular Coastal Permit (RC-215-06), which constitutes one of the Entitlements.

“**Construction**” means the development and construction work related to building the Phase I Hotel and the Phase II Hotel, as the case may be.

“**Construction Contract**” means a guaranteed maximum price construction contract executed by Developer with a general contractor for the construction of the Phase I Hotel and(or) the Phase II Hotel.

“**Construction Financing**” means the financing obtained by the Developer to fund all or a portion of the hard and soft costs associated with developing and constructing the Phase I Hotel and the Phase II Hotel, as the case may be. It is anticipated, but not required, that there shall be separate Construction Financing for the Phase I Hotel and the Phase II Hotel.

“**Construction Lender**” means the lender(s) providing the Construction Financing.

“**Control**” regarding a specified entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether the ownership of an Equity Interest, by contract, or otherwise, inclusive of Management Control.

“Controlling” and **“Controlled”** means exercising or having Control.

“County” means the San Diego County, California.

“Days” is as defined in Section 21.5.

“Deed” is as defined in Section 10.2.1.

“Developer” is as defined in the first paragraph hereof, subject to the provisions and conditions of Section 21.9 hereof.

“Developer Certificate” is as defined in Section 9.2.

“Developer Investment” means any and all amounts heretofore, now or hereafter paid by Developer to Successor Agency, third persons related to the proposed development of the Property (including consultants, architects or designers), CDC (including the \$175,000.00 paid by Developer to the CDC under the Negotiation Agreement), or to Developer’s attorneys for services directly related to the proposed development of the Property (including the negotiation of the Negotiation Agreement, the Disposition Agreement and this Agreement), together with interest at the rate of eight percent (8%) per annum from the date paid by Developer to the date reimbursed by Successor Agency, but exclusive of amounts paid or allocated directly or indirectly to internal costs of Developer or the Developer Parties.

“Developer Parties” means Developer’s successors, assigns, officers, directors, shareholders, members, managers, parent companies, sister companies, affiliates, subsidiaries, employees, representatives and agents.

“Developer Processing Schedule” means the schedule of dates following the Approval Date and prior to the Close of Escrow during which Developer shall prepare and process Schematic Design Drawings and submit to the City: 1. the Franchise Agreement; 2. the contingent financing commitment; 3. grading and building permits application; and 4 all remaining documents necessary to close the construction financing and obtain grading and building permits, a copy of which is set forth in Exhibit 15.6

“Disposition Agreement” is as defined in Section 1.2.

“Dissolution Act” refers to ABx1 26, as enacted in June of 2011, as part of the FY 2011-12 State budget package, as modified by AB 1484, passed by the California State Legislature on June 27, 2012.

“DOF” means the California Department of Finance.

“Effective Date” is as defined in the first paragraph hereof.

“**EIR**” refers to the Certified Environmental Impact Report, dated December 19, 2007, which constitutes one of the Entitlements.

“**Encumbrances**” is as defined in Section 5.1.

“**Entitlements**” means those entitlements, permits and approvals in effect as of the Effective Date and described on Exhibit 2.1(a) attached hereto.

“**Equity Interest**” means an ownership interest, such as a membership interest in a limited liability company, a partnership interest in a general or limited partnership or shares in a corporation.

“**Equity Interest Transfer**” means any sale, transfer, conveyance, pledge or hypothecation of an Equity Interest in Developer.

“**Equity Investment**” means an Equity Interest in Developer.

“**Equity Investor**” or “**Equity Investors**” means the investors providing the funding for the Equity Investment.

“**Escrow**” means the escrow created under this Agreement.

“**Escrow Holder**” means Chicago Title Insurance Company, located at the address set forth in Section 19.1 hereof.

“**Event of Default**” is defined as a breach by a Party of a material obligation under this Agreement, which breach is not cured within thirty (30) days after the date written notice is given to the (alleged) breaching Party by non-breaching Party of the (alleged) breach; provided, however, if the nature of the breach is such that the same cannot be reasonably cured in thirty (30) days and reasonable good faith efforts are being made to satisfy the conditions that are case of the claim of breach, then an Event of Default shall not exist so long as such reasonable good faith efforts continue.

“**Extended Coverage Policy**” is as defined in Section 11.2.

“**Financing Plan**” means the schedule of sources and uses prepared by Developer which indicates the applicable hard and soft cost budget for Phase I Hotel and the Phase II Hotel and the sources of funding for the same.

“**Form 593-C**” is as defined in Section 10.2.7.

“**Franchise Agreement**” means an agreement between Developer and a hotel flag franchisor (“**Franchisor**”) regarding the operation of the Phase I Hotel and(or) the Phase II Hotel, as may be approved by Successor Agency from time to time pursuant to the terms hereof and the terms of the Restrictive Covenant Agreement. Notwithstanding the foregoing, to the extent that the Management Agreement for either the Phase I Hotel and(or) the Phase II Hotel incorporates, among other things,

licensing, branding, management and operation requirements typically covered in a Franchise Agreement and(or) Management Agreement, then such Management Agreement shall satisfy the requirement for a Franchise Agreement for either the Phase I Hotel or the Phase II Hotel, as applicable, and while such Management Agreement is in effect, all references in this Agreement or the Restrictive Covenant Agreement to a Franchise Agreement for the Phase I Hotel and(or) the Phase II Hotel, as applicable, shall refer to such Management Agreement.

“General and Special Real Estate Taxes” means all charges, levies and assessments evidenced by the secured tax bill(s) issued by the County and(or) City, including, without limitation, amounts allocated to: (a) County or City general governmental purposes; (b) bonded indebtedness of the County or City; (c) bonded or other indebtedness and operating expenses of any school, college, sewer, water, irrigation, hospital, library, utility, county service or other district; and (d) any other lawful purpose.

“Governmental Authority” and **“Governmental Authorities”** mean the United States of America, the State, the County, and City and any other political subdivision in which the Real Property is located or that exercises jurisdiction over the Property or of Construction upon the Real Property, and any agency, department, commission, board, bureau, property owners association, utility district, flood control district, improvement district, or similar district, or other instrumentality of any of them.

“Grading Permit” means the permit issued by the City for the demolition and grading of Phase I.

“Grading Permit Application” means the Grading Permit Application filed by Developer in order to obtain the Grading Permit.

“Grading Permit Application Approval Date” means the date that Developer is issued the Grading Permit.

“Grading Permit Application Filing Date” means the date that Developer files its initial, substantially complete Grading Permit Application with the City.

“Graves House” means the structure located at 102 North Pacific Street, Oceanside, California.

“Guarantor” is as defined in Section 15.3.1.

“Guest Room” means a rentable unit constituting of a room or a suite of rooms generally used for overnight guest accommodation, entrance to which is controlled by the same key, and which is not rented to or used by an individual or entity for more than twenty-nine (29) consecutive nights. Adjacent rooms with connecting doors that can be locked and rented as separate units shall be deemed to be separate Guest Rooms.

“Hazardous Materials” shall mean any chemical, substance, material, controlled substance, object, condition, waste from living organisms, or any combination thereof, which is or may be hazardous to human health or safety or to the environment due to its toxicity, explosivity, corrosivity, reactivity, flammability, infectiousness, radioactivity, ignitability, carcinogenicity, phytotoxicity, mutagenicity, or otherwise hazardous, harmful, or potentially harmful properties or effects, and which are now or in the future become listed, defined or regulated in any manner by any Applicable Laws based upon, directly or indirectly, such properties or effects, including, without limitation, petroleum hydrocarbons and petroleum products, lead, asbestos, radon, and polychlorinated biphenyls (PCBS).

“Improvements” shall mean all improvements and fixtures now or hereafter located on, in, over or under the Real Property, including, without limitation, the buildings, structures, facilities and installations situated therein and all affixed apparatus, equipment and appliances used in connection with the operation, use or occupancy thereof.

“Indemnify” means, where this Agreement so states that any Indemnitor shall “indemnify” any Indemnitee from, against, or for particular Claims, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all identified Claims. **“Indemnified”** shall have the correlative meaning. The provisions and conditions that set forth in the obligations with respect to indemnification, including, particularly the defense of any claim, are set forth in Section 14.4 hereof.

“Indemnitee” means any Person entitled to be Indemnified pursuant to the provisions and conditions of this Agreement.

“Indemnitor” means any Person that agrees to Indemnify any other Person under the terms of this Agreement.

“Independent Consideration” is as defined in Section **Error! Reference source not found.**

“Insurable Amount” means the amount of title insurance coverage under the Title Policies for Phase I and Phase II, as determined by Developer in its reasonable judgment.

“Intangible Property” means all intangible personal property owned by Successor Agency and used in the ownership, use and(or) operation of the Property, if any and including, without limitation: (a) vendor and contractor warranties; and (b) to the extent that the same do not already run with the land, all permits, licenses, approvals and entitlements with respect to the Property.

“Interstate” means Interstate Hotels & Resorts and its Affiliates.

“Leases” means any leases, subleases, license agreements and any other agreements that contractually allow any individual or entity to occupy or have possession of all or any portion of the Real Property.

“Liability Policy” is as defined in Section 7.3.

“License Agreement” is as defined in Section 15.6.

“Limitation Period” is as defined in Section 9.3.

“Lot 26” is as defined in Section 15.5.

“Malkin Entity” means S.D. Malkin Properties, Inc. a Delaware corporation, or one or more of its Affiliates.

“Management Agreement” means an agreement between Developer and a management company (**“Management Company”**) for the operation and management of the Phase I Hotel and(or) the Phase II Hotel, as the case may be. Each Management Agreement shall consist of commercially reasonable terms and conditions.

“Management Control” shall mean as to a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management of such Person, whether by ownership of Equity Interests, by contract or otherwise; subject, however, to consent or approval rights as to major decisions (which, for purposes hereof shall mean those outside of the scope of day-to-day management) of such Person.

“Market” means to directly or indirectly solicit, make, accept, negotiate or otherwise pursue and obtain any proposals, expressions of interest, letters of intent, term sheets, memorandum of understanding or offers for the purchase and sale of the Property.

“Memorandum of Agreement” is as defined in Section 3.2.

“Mezzanine Financing” shall mean a loan to Developer by one or more Mezzanine Lender(s), secured by: (a) a pledge of Equity Interests in Developer; or (b) a security interest in Phase I and(or) Phase II and the Improvements to be constructed thereon (e.g. the Phase I Hotel and(or) the Phase II Hotel).

“Mezzanine Financing Instrument” means the documents evidencing a Mezzanine Financing or providing security for a Mezzanine Financing.

“Mezzanine Lender” or **“Mezzanine Lenders”** means the lenders funding the Mezzanine Financing.

“Mission Avenue Easement” is as defined in Section 10.1.5.

“Negotiation Agreement” means that certain Negotiation Agreement between Developer and the CDC, dated as of September 7, 2005, as amended.

“NFS Certificate” is as defined in Section 10.2.6.

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

“Oversight Board” means the oversight board created by the Successor Agency to approve specified actions and direct specified activities of the Successor Agency.

“Party” or **“Parties”** means either or both of Successor Agency and Developer, as the case may be.

“Permitted Property Exceptions” is as defined in Section 5.2.

“Person” means any individual or entity.

“Phase” or **“Phases”** refers to the one or both of the two (2) portions of the Real Property, as identified and defined herein.

“Phase I” means that portion of the Real Property described on Exhibit 2.1(b) attached hereto, which shall be conveyed to Developer together with the applicable Improvements, Intangible Property (if any), Appurtenant Rights and the Mission Avenue Easement.

“Phase I Closing Date” means no later than (18) eighteen months after the occurrence of the following events: (a) the execution of this Agreement; and (b) the Approval Date. .

“Phase I Commencement Date” means the date that Developer commences physical Construction of the Resort Development or any part thereof.

“Phase I Competitive Set” shall mean a full service hotel of a type generally associated with four (4) star quality, consistent in quality and with amenities substantially comparable to the Sheraton Carlsbad, Marriott Del Mar, Hilton Huntington Beach and Marriott Coronado.

“Phase I Completion Date” means the date that (a) Construction has been completed for the Phase I Hotel (except minor punch list items); (b) a Certificate of Occupancy has been issued for the Phase I Hotel; and (c) the Phase I Hotel is open for business to the general public.

“Phase I Hotel” means the approximately two hundred twenty five (225) Guest Room, full service Westin Resort (or its equivalent) to be developed by Developer on Phase I in compliance with: (a) the Entitlements; (b) the Restrictive Covenant Agreement; and (c) the Substantial Conformance Review

“Phase II” means that portion of the Real Property described on Exhibit 2.1(d) attached hereto, which shall be conveyed to Developer together with the applicable Improvements, Intangible Property and Appurtenant Rights.

“Phase II Closing Date” means a date no later than twenty-four (24) months after the Phase I Completion Date; subject to Developer’s right, as herein provided, to have the Phase II Closing Date occur concurrently with the Phase I Closing Date.

“Phase II Competitive Set” shall mean a hotel consistent in quality and with amenities substantially comparable to the Indigo Hotel in San Diego, the Shorebreak Hotel in Huntington Beach and the Pacific Terrace Hotel in San Diego.

“Phase II Completion Date” means the date that: (a) Construction has been completed for the Phase II Hotel (except minor punch list items); (b) a Certificate of Occupancy has been issued for the Phase II Hotel; and (c) the Phase II Hotel is open for business to the general public.

“Phase II Hotel” shall mean a minimum one hundred and thirty five (135) Guest Room hotel to be developed on Phase II in compliance with: (a) the Entitlements; (b) the Restrictive Covenant Agreement; and (c) the Substantial Conformance Review. . Nothing herein shall prevent Developer from seeking approval of more than 135 Guest Rooms to be developed through a Substantial Conformity process provided the total number of Guest Rooms, including both the Phase I and Phase II hotels, is permitted under the Environmental Impact Report and the Entitlements.

“Prevailing Wage Determination” means regarding any Construction: (a) any determination by the State Department of Industrial Relations or its successor that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations or its successor for enforcement of State prevailing wage laws that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code Sections 1720 through 1781, as amended from time to time, regarding prevailing wages, including the obligation to maintain certified payroll records pursuant to California Labor Code Section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts, at law or in equity, including pursuant to California Labor Code Section 1781.

“Prohibited Transferee” shall mean any individual or entity: (a) with whom Successor Agency is in litigation at the time the Transfer of this Agreement or Equity Interest Transfer to such individual or entity is made or is to be made by Developer; exclusive of defendants in eminent domain litigation commenced by Successor Agency or City where the right of Successor Agency or City to take the subject property is not challenged; (b) that Successor Agency reasonably determines has any connection with any terrorist organization, including any foreign governmental entity identified as a

“State Sponsor of Terrorism” by the United States Department of State or subject to economic or political sanctions by the United States or any individual or entity identified as a specially designated national or blocked person by the United States Department of the Treasury listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by laws, rules, regulations or executive orders, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (c) that is a non-profit entity, (d) that is entitled to claim diplomatic immunity; (e) that is a domestic or foreign governmental entity that is exempt from payment of General and Special Real Estate Taxes, Transient Occupancy Tax, State or local sales or use taxes or any other State or local taxes applicable to Developer or the use or operation of the Property and whose exemption causes or shall cause the prospective Developer to be partially or wholly exempt from payment of General and Special Real Estate Taxes, Transient Occupancy Tax, State or local sales or use taxes or any other State or local taxes applicable to Developer or the use or operation of the Property, unless such entity or the prospective Developer enters into a written agreement with Successor Agency requiring such entity or the prospective Developer to pay all General and Special Real Estate Taxes, Transient Occupancy Tax, State or local sales or use taxes and all other State or local taxes applicable to Developer or the use or operation of the Premises (but specifically excepting all income taxes) as if such entity or prospective Developer were not tax-exempt; or (f) that is immune or may elect to be immune from suit under State or Federal law.

“**Property**” is as defined in Section 1.1.

“**Property Information**” means any and all studies and reports prepared by or on behalf of Developer regarding the physical condition of or to the Property, including, without limitation, soils reports, geotechnical reports and surveys (not to include architectural plans and specifications, proprietary information, internal communications, feasibility studies, financial analyses, proformas, tax returns or any attorney client privileged communications or documents).

“**Public Facilities**” means any meeting rooms, conference rooms, convention or banquet facilities, restaurants, bars, spas, lounges, patios, related hallways, walkways and corridors and all other similar public facilities associated with the Resort Development.

“**Purchase Price**” means Seven Hundred and Fifty Thousand dollars (\$750,000.00) for Phase I and Seven Hundred and Fifty Thousand dollars (\$750,000) for Phase II.

“**Real Property**” is as defined in Section 1.1.

“**Resort Development**” means the Phase I Hotel and the Phase II Hotel.

“**Restrictive Covenant Agreement**” is as defined in Section 10.1.2.

“Service Contracts” means all operational, maintenance, supply and service contracts relating to the ownership, operation and use of the Real Property.

“Standard Coverage Policy” is as defined in Section 11.2.

“State” means the State of California.

“Subdivision Map” means the subdivision map for the Real Property which is being recorded incident to and in accordance with the Tentative Map.

“Substantial Conformance Review” means the review process that Developer has or shall undertake with the CDC in order to determine that the Resort Development, as contemplated in Section 8.3 hereof and the Restrictive Covenant Agreement, is in compliance with the Entitlements. In this regard, Developer’s **“Substantial Conformance Review Application”** for Phase I shall be consistent with the Restrictive Covenant, maintaining a quality level reflecting the same architectural style as the prior design, incorporating articulation and quality materials substantially equivalent to the previously approved project pursuant to the Entitlements.

“Successor Agency” is as defined in the first paragraph hereof.

“Successor Agency Certificate” is as defined in Section 9.1.

“Successor Agency Completion Guaranty” shall mean, separately as to the Phase I Hotel and the Phase II Hotel, an agreement pursuant to which Guarantor guarantees to Successor Agency the lien-free completion of the Phase I Hotel or the Phase II Hotel, as applicable.

“Successor Agency Investment” means any and all amounts heretofore, now or hereafter paid by Successor Agency or the CDC to third persons related to the proposed development of the Property (including consultants, architects or designers), Developer or to the CDC’s and the Successor Agency’s attorneys for services directly related to the proposed development of the Property (including the negotiation of the Negotiation Agreement, the Disposition Agreement and this Agreement), together with interest at the rate of eight percent (8%) per annum from the date paid by the CDC or Successor Agency to the date reimbursed by Developer, but exclusive of amounts paid or allocated directly or indirectly to internal costs of Successor Agency or the CDC or their respective employees or agents.

“Successor Agency Parties” means Successor Agency’s successors, assigns, officers, directors, affiliates, subsidiaries, elected officials, employees, representatives and agents.

“Tentative Map” means Tentative Map (T-204-06), which constitutes one of the Entitlements.

“Term Sheets” collectively means the various written summaries of the Transaction circulated between the parties.

“Title Insurer” means Chicago Title Insurance Company.

“Title Policies” is as defined in Section 11.2.

“TOT Covenant Agreement” is as defined in Section 10.1.3.

“Transaction” means the transaction set forth in this Agreement.

“Transaction Documents” means this Agreement, the Restrictive Covenant Agreement, the TOT Covenant Agreement, the Appurtenant Assignment, the Mission Avenue Easement, the Deed, the Bill of Sale, the NFS Certificate, the Form 593-C, and the License Agreement.

“Transfer” means to delegate, transfer and assign a particular interest in real or personal property.

“Transfer Fees” means all City, County, and State transfer, recording taxes, and recording fees.

“Transferee” means an individual or entity who accepts a Transfer.

“Transferor” means an individual or entity making a Transfer.

“Transient Occupancy Tax” means the tax imposed on transient occupancy of hotels located in the City as a percentage of rent charged, pursuant to City Municipal Code Sections 34.13, et seq., and any successor Code Sections. The City Tourism Marketing District special assessment is excluded from the definition of Transient Occupancy Tax for purposes of this Agreement.

“Unavoidable Delay or Unavoidable Delays” shall mean a delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond that Party’s reasonable control, including, without limitation, strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation (including, without limitation, legal actions of the type described in Section 21.11 hereof), Governmental Authority action or inaction, regional natural disasters, or inability to obtain materials, except for the payment of money, unless the delay in the payment of money is due to one of the causes described above that prevents or materially limits the ability to transfer funds by or between financial institutions. Developer’s inability to obtain financing for the Resort Development, or any portion thereof and including Construction Financing, by reason of there being no financing market or a determination by financing sources that the Resort Development does not meet its underwriting criteria shall not constitute Unavoidable Delay; however, Developer’s inability to obtain any such financing (including Construction Financing) by reason of any of the causes listed above shall constitute an Unavoidable Delay.

“Utilities Projects” means the following projects: (a) the dry utilities project for the new trench on Myers Street and referred to as San Diego Gas & Electric Project Number 636543-030 (12KV); and (b) the undergrounding of utilities on Pacific Street, referred to as San Diego Gas & Electric Project Number 636543-010, and the removal of overhead facilities from the Property, referred to as San Diego Gas & Electric Project Number 636543-020 (4KV).

“Visitor Serving Commercial Space” means all of those areas and facilities used as a restaurant, bar, lounge, coffee shop and other food service areas, gift shops, spas, salons, retail sales, fitness facilities, bicycle and other rentals and commercial services and the Graves House, all as permitted by Applicable Law.

“Work” is as defined in Section 7.1.

ARTICLE 3 Agreement of Sale

3.1 Purchase and Sale. Successor Agency agrees to sell and convey and Developer agrees to purchase and acquire the Property, upon and subject to the provisions and conditions set forth in this Agreement.

3.2 Memorandum of Agreement. Concurrently with the execution hereof, the Parties shall execute, acknowledge and cause the recordation in the Official Records of a Memorandum of Agreement in the form of Exhibit 3.2 attached hereto.

ARTICLE 4 Purchase Price and Deposits

4.1 Purchase Price. The Purchase Price for the Property shall be paid in Cash, respectively, on the Phase I Closing Date and the Phase II Closing Date.

ARTICLE 5 Title

5.1 Conveyance Documents. Title to Phase I and Phase II, in each case together with the applicable Improvements, Intangible Property and Appurtenant Rights, shall be conveyed to Developer at each Closing in fee simple by Deed, Appurtenant Assignment and Bill of Sale, free and clear of any and all liens, claims, encumbrances, mortgages, deeds of trust and security interests (collectively, the **“Encumbrances”**), but subject to all Permitted Property Exceptions. In addition to the foregoing, Developer shall additionally receive the grant of the Mission Avenue Easement upon the Phase I Closing Date.

5.2 Permitted Property Exceptions. The term **“Permitted Property Exceptions,”** as used herein, shall mean:

5.2.1 a lien to secure the payment of General and Special Real Estate Taxes, not due and payable as of Closing (but excluding any supplemental taxes levied against Phase I and(or) Phase II, as the case may be, and assessed after Closing but relating to any period prior to Closing);

5.2.2 a lien to secure the payment of supplemental and escape taxes assessed solely as a result of the conveyance of Phase I and(or) Phase II, as the case may be, to Developer;

5.2.3 matters of record created by, caused by or otherwise in accordance with the written consent of Developer, including the Mission Avenue Easement, the Restrictive Covenant Agreement and the TOT Covenant Agreement;

5.2.4 the Subdivision Map;

5.2.5 all Applicable Laws affecting the development, use, occupancy and(or) enjoyment, as the case may be, of Phase I and(or) Phase II; and

5.2.6 those title exceptions described in Exhibit 5.2.6 attached hereto.

ARTICLE 6 Successor Agency Disclosure

6.1 Disclosure Statement. Prior to the Effective Date, Successor Agency disclosed to Developer, consistent with the Natural Hazard Disclosure Act (as set forth in California Civil Code Section 1103-1103.14), whether the Real Property is situated in a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wild land fire area. Purchaser acknowledges that Successor Agency retained the services of Escrow Holder or its selected third party provider to examine the maps and other information made available to the public by government agencies for the purpose of enabling Successor Agency to fulfill its disclosure obligations with respect to the Natural Hazard Disclosure Act and to prepare a written report of the results of its examination ("**Report**"). Developer acknowledges that the delivery of the Report to Developer, as so provided, has discharged Successor Agency from its obligations under the Natural Hazard Disclosure Act.

6.2 Assignment of Property Information. In addition to any other remedy available to Successor Agency, if this Agreement is terminated due to an Event of Default by Developer, then Developer shall deliver or cause to be delivered to Successor Agency, within twenty (20) days after Successor Agency's written request and at no cost to Successor Agency, the Property Information. Developer shall, if requested by Successor Agency, execute such documents as Successor Agency reasonably requests to document the assignment of the Property Information to Successor Agency. Developer shall deliver the Property Information to Successor Agency, pursuant to this Section 6.2, without representation or warranty of any kind. Developer shall take such reasonable actions and make such payments as may be reasonably necessary to

preclude any Claim against Successor Agency or the Property for any amounts owing by Developer prior to the effective date of the termination of this Agreement regarding the Property Information. Developer shall Indemnify Successor Agency and the Successor Agency Parties against all Claims arising from any actual or alleged failure of Developer to pay any amount regarding any Property Information assigned to the Successor Agency as provided in this Section 6.2 for the period prior to the effective date of the termination of the Agreement.

ARTICLE 7 Inspections

7.1 Inspection Rights. Prior to each applicable Closing Date and subject to applicable permit requirements, if any Developer shall have the right to enter upon the Real Property (utilizing Developer's consultants, engineers, contractors, agents, employees and/or designees, as applicable), to undertake physical inspection(s) and/or testing of the Real Property, and, in so doing, to undertake engineering, environmental, soils, structural and/or other studies of the Real Property (the "**Work**"), provided that Developer gives Successor Agency not less than twenty-four (24) hours prior written notice of its intended Work (which notice may be by e-mail). Developer shall only be required to so provide one (1) notice for any multi-day period of entry. Developer's physical inspection of and/or testing on the Real Property shall be conducted during normal business hours. Successor Agency or its representatives shall have the right (but not the obligation) to be present during any Work on the Real Property. Promptly following completion of Work, Developer shall reasonably remove from the Real Property all wastes or drill cuttings generated from its activities and shall repair any damage to the Real Property directly caused by its testing and inspections thereof. Developer shall not be responsible for the remediation of any Hazardous Materials discovered on the Real Property incident to its inspection and testing activities.

7.2 Indemnity. Developer shall Indemnify Successor Agency, CDC and the City from and against any and all Claims directly arising from the Work, except any Claims arising out of: (a) the negligence or intentional misconduct of Successor Agency, the CDC and/or the City; or (b) pre-existing conditions upon the Real Property.

7.3 Insurance. Prior to any entry upon the Real Property pursuant to Section 7.1 above, Developer shall deliver to Successor Agency a certificate of insurance which evidences that Developer has obtained a commercial general liability insurance policy covering the activities of Developer, and Developer's consultants, engineers, contractors, subcontractors, agents, employees and/or designees on or upon the Real Property ("**Liability Policy**"). The certificate of insurance evidencing the Liability Policy shall have a per occurrence limit of \$1,000,000.00 and an aggregate limit of \$2,000,000.00, and shall name Successor Agency as an additional insured.

ARTICLE 8 Entitlement Effort

8.1 Entitlements. Subject to the limitations below, Developer has or shall devote commercially reasonable diligent efforts to complete the Substantial Conformance Review for the Resort Development in compliance with the Development Services Department's Substantial Conformity Guidelines. Incident to the foregoing, Developer has or shall prepare, submit and process those applications and documents necessary for the Substantial Conformance Review process. The Substantial Conformation Review shall ensure that the Resort Development satisfies the requirements set forth in Section 8.3 hereof, the Restrictive Covenant Agreement, and the Substantial Conformity Guidelines. Without waiving the City's police powers, it is anticipated by the Parties that the Substantial Conformance Review shall not require the discretionary approval of the CDC and that additional review under CEQA, other than an Addendum, shall not be required. Until the Substantial Conformance Review is completed for a particular Phase, the Entitlements, unmodified, shall continue to apply to the same in accordance with applicable law.

8.2 Substantial Conformance Review Application. The application and other documentation previously, now or hereafter submitted by Developer to CDC in connection with the Substantial Conformance Review shall provide that the use of Phase I and Phase II by Developer or its successor shall be limited to the Phase I Hotel and the Phase II Hotel. Consistent therewith, the documents submitted by Developer to CDC in connection with the Substantial Conformance Review:

8.2.1 shall provide that the Resort Development may be developed at one time or in Phases, with the Phase I Hotel being developed first.

8.2.2 shall incorporate at least 36,000 square feet of open space between the two (2) Phases, which includes interior public amenities, all as shown in the Concept Plans.

8.2.3 shall initially be, with respect to the Phase I Hotel, at least consistent in quality and provide amenities substantially comparable to the resort hotels in the Phase I Competitive Set, and, with respect to the Phase II Hotel, at least consistent in quality and provide amenities substantially comparable to the resort hotels in the Phase II Competitive Set.

8.2.4 shall be built pursuant to a code compliant construction type.

8.2.5 shall comply with the applicable requirements for parking set forth in the EIR, specifically including a 20% shared parking reduction and with valet parking spaces calculated as set forth in the EIR. In this regard, the Phase I Hotel shall

include two (2) levels of underground parking and the Phase II Hotel shall include one (1) level of underground parking.

8.2.6 shall include 18,500 square feet of Visitor Serving Commercial Space consistent with the EIR.

8.2.7 shall include at least a 6,400 square foot ballroom in the Phase I Hotel and a total of approximately 20,000 square feet of pre-function, function and meeting space in both Phases inclusive of the ballroom in the Phase I Hotel.

8.2.8 shall include 30% of the site as a “public space amenity,” with a maximum of 15% to be interior public space, as defined in the EIR.

ARTICLE 9

Successor Agency Representations and Warranties

9.1 Representations and Warranties of Successor Agency. Successor Agency hereby represents and warrants as of the Effective Date, and agrees to reaffirm to Developer as of each Closing Date pursuant to the Successor Agency Bring-Down Certificate attached hereto as Exhibit 9.1 (“**Successor Agency Certificate**”), the following to Developer:

9.1.1 Successor Agency possesses all requisite power and authority to enter into and to carry out the Transaction subject to review and approval by the Department of Finance.

9.1.2 No suit, action or other proceedings is pending or has been threatened against the Property or against the Successor Agency which would have a material adverse effect on: (a) the entitlement, development, Construction, operation and(or) use of the Property; or (b) the Transaction.

9.1.3 To Successor Agency’s knowledge, there is no existing, pending or threatened eminent domain proceeding affecting all or any portion of the Property.

9.1.4 Other than the Disposition Agreement, there are no existing or pending contracts of sale, leases and(or) options to purchase or rights of first refusal (or the like) with respect to all or any portion of the Property.

9.1.5 The execution and delivery of this Agreement and the consummation of the Transaction shall not result in a breach of or conflict with any agreement, instrument or decree to which Successor Agency is a party or by which Successor Agency or the Property is bound.

9.1.6 There are no Service Contracts that effect the Property and(or) which shall bind Developer.

9.1.7 The Property is free and clear of all Leases and claims of possession or use.

9.1.8 To Successor Agency's actual knowledge, the City and(or) Successor Agency have fully completed the Utilities Projects.

9.2 Representations and Warranties of Developer. Developer hereby represents and warrants as of the Effective Date, and agrees to reaffirm to Successor Agency as of each Closing Date, pursuant to the Developer Bring-Down Certificate attached hereto as Exhibit 9.2 ("**Developer Certificate**"), the following to Successor Agency:

9.2.1 Developer possesses all requisite power and authority to enter into and to carry out the Transaction.

9.2.2 No bankruptcy, insolvency, or similar action or proceedings, whether voluntary or involuntary, is pending or threatened against Developer and Developer has no intention of filing or commencing any such action or proceedings.

9.3 Limitation Period. The representations and warranties set forth in Sections 9.1 and 9.2 above shall survive the Phase I Closing and the Phase II Closing, as applicable, for a period of one (1) year each ("**Limitation Period**").

9.4 As-Is Condition. Except to the extent of the express representations and warranties of Successor Agency specifically set forth in the Transaction Documents, Developer shall accept the Property in the Property's "as is/where is" condition, without warranty of any kind, express or implied, including any warranty as to physical condition, soil conditions, the presence or absence of fill, ocean or tidal impacts, shoring or bluff stability or support, sub-surface support, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Property (active, inactive or abandoned), the suitability of the Property for any use or the existence or absence of Hazardous Materials (excepting any discharge of Hazardous Materials by Successor Agency) and with full knowledge of the physical condition of the Property, the nature of Successor Agency's interest in and use of the Property, all Applicable Laws relating to the Property, and the Permitted Property Exceptions. Developer acknowledges, agrees and represents to Successor Agency all of the following: (a) Developer has had ample opportunity to inspect and evaluate the Property and the feasibility of the uses and activities Developer is entitled to conduct on the Property; (b) Developer is experienced in real estate development; (c) Developer has relied and shall rely on Developer's experience, expertise and its own inspection of the Property, in the Property' current state, in entering into this Agreement; (d) subject to the provisions and conditions of this Agreement, Developer accepts the Property in the Property's condition as of the Phase I Closing Date and the Phase II Closing Date; and (e) to the extent that Developer's own expertise with respect to any matter regarding the Property is insufficient to enable Developer to reach an informed conclusion regarding such matter, Developer has engaged the services of persons qualified to advise Developer with respect to such matters. Developer's execution of this

Agreement constitutes Developer's acknowledgment, agreement, representation and warranty to Successor Agency that Developer has received assurances acceptable to Developer, by means independent of the Successor Agency and the Successor Agency Parties, of the truth of all facts material to Developer entering into this Agreement and that Developer is entering into this Agreement as a result of its own knowledge, inspection and investigation of the Property and not as a result of any representation made by Successor Agency or any Successor Agency Party relating to the condition of the Property, except as expressly set forth in the Transaction Documents. Developer has not relied and is not relying on any express or implied, oral or written representations or warranties made by Successor Agency or the Successor Agency Parties, except as expressly set forth in the Transaction Documents. Successor Agency specifically disclaims any representation or warranty, express or implied, regarding the condition of the Property, as of the Effective Date and each Closing Date, except as expressly set forth the Transaction Documents.

ARTICLE 10 Deliveries to Escrow Holder

10.1 Deliveries Before Closing Date. On or before the Phase I Closing Date and the Phase II Closing Date, as applicable, Developer shall deliver to Escrow Holder each of the following:

10.1.1 In Cash, the Purchase Price and the charges to Developer pursuant to Section 12.2;

10.1.2 Upon the Phase I Closing Date, a duly executed and acknowledged Agreement regarding Real Property (Use Restrictions) in the form of Exhibit 10.1.2 attached hereto ("**Restrictive Covenant Agreement**");

10.1.3 Upon the Phase I Closing Date, a duly executed and acknowledged Agreement regarding Real Property (TOT) in the form of Exhibit 10.1.3 attached hereto ("**TOT Covenant Agreement**");

10.1.4 A duly executed Assignment and Assumption of Appurtenant Rights in the form of Exhibit 10.1.4 attached hereto ("**Appurtenant Assignment**");

10.1.5 Upon the Phase I Closing Date, a duly executed and acknowledged Easement Agreement in the form of Exhibit 10.1.5 attached hereto ("**Mission Avenue Easement**");

10.1.6 The Successor Agency Completion Guaranty, duly executed by Guarantor.

10.1.7 Upon the Phase I Closing, a duly executed and acknowledged License Agreement;

10.1.8 A duly executed Developer Certificate;

10.1.9 A duly executed Developer Processing Schedule; and

10.1.10 Such other instruments and documents as may be requested by Escrow Holder to effectuate the subject conveyance in accordance with the provisions and conditions of this Agreement.

10.2 Deliveries Before Closing Date. On or before each Closing Date, Successor Agency shall deliver to Escrow Holder each of the following:

10.2.1 A duly executed and acknowledged Grant Deed, in the form of Exhibit 10.2.1 attached hereto ("**Deed**");

10.2.2 A duly executed Bill of Sale in the form of Exhibit 10.2.2 attached hereto ("**Bill of Sale**");

10.2.3 A duly executed and acknowledged Appurtenant Assignment;

10.2.4 Upon the Phase I Closing Date, a TOT Covenant Agreement, duly executed and acknowledged by the City;

10.2.5 Upon the Phase I Closing Date, a Restrictive Covenant Agreement, duly executed and acknowledged by the City;

10.2.6 A duly executed Certificate of Non-Foreign Status in the form of Exhibit 10.2.6 attached hereto ("**NFS Certificate**");

10.2.7 A duly executed California Real Estate Withholding Certificate (Form 593-C) in the form of Exhibit 10.2.7 attached hereto ("**Form 593-C**");

10.2.8 Upon the Phase I Closing Date, a Mission Avenue Easement, duly executed and acknowledged by the City;

10.2.9 Upon the Phase I Closing Date, a License Agreement, duly executed and acknowledged by the City;

10.2.10 A duly executed Successor Agency Certificate;

10.2.11 Such other instruments and documents as may be requested by Escrow Holder to effectuate the subject conveyance in accordance with the provisions and conditions of this Agreement;

10.2.12 Sufficient funds and instruments to discharge and pay any Encumbrances and charges and to pay said fees and costs relating to the Closing; and

10.2.13 The material, records and documents, if any, constituting the applicable Intangible Property; and

10.2.14 A duly executed Developer Processing Schedule.

ARTICLE 11
The Closing; Title Insurance

11.1 Closing. The consummation of the Transaction (each, a “**Closing**”) shall be held at the offices of Escrow Holder. The parties shall cooperate in executing and delivering any escrow instructions that may be prepared from time to time to consummate the Transaction; provided, however, in the event of any inconsistency between the provisions and conditions of this Agreement and any such escrow instructions, the provisions and conditions of this Agreement shall prevail. Phase I will close on the Phase I Closing Date and Phase II will close on the Phase II Closing Date. For purposes hereof, the “**Closing Date**” shall mean the date upon each of the Phase I Closing Date and the Phase II Closing Date. Provided the applicable conditions precedent are satisfied or waived, Developer reserves the right to have the Phase II Closing Date be on the same date as the Phase I Closing Date, which in all cases shall occur first. If any Closing Date falls on a date that is not a Business Day, then the Closing Date shall be extended to the second Business Day thereafter. Subject to the provisions and conditions hereof, the exact sale date and time of the Closing shall be designated by Developer upon notice to Successor Agency. Escrow Holder shall be responsible at the Closing for preparing the settlement statement, causing all documents to be recorded, disbursing all closing proceeds, and otherwise conducting settlement.

11.2 Closing Costs; Actions of Escrow Holder. At each Closing, Developer shall pay the Transfer Fees and the escrow fees. Developer shall also pay at each Closing the premium for a standard coverage ALTA owner’s policy of title insurance issued by Title Insurer in form and substance satisfactory to Developer (the “**Standard Coverage Policy**”), with coverage in the amount of the Insurable Amount, to be issued to Developer for the applicable Phase; it being acknowledged and agreed that Developer shall have the right to request extended coverage ALTA owners policy of title insurance (the “**Extended Coverage Policy**”), in which case Developer shall pay the additional premium for the same over the cost of the Standard Coverage Policy. Developer shall also have the right to have the Title Policies combined with joint protection coverage provided to Construction Lender, provided such coverage is at no additional cost to Successor Agency. The title policies ultimately issued to Developer are referred to herein as the “**Title Policies**”. The premium for any loan policy (with respect to Construction Financing or Mezzanine Financing) shall be paid for by Developer. The delivery of the documents and the payment of the sums to be delivered and paid at the Closing shall be accomplished through an escrow with Escrow Holder. Upon each Closing, Escrow Holder shall do the following:

11.2.1 Pay the charges provided for herein;

11.2.2 Deliver the Purchase Price to Successor Agency;

11.2.3 Satisfy all Encumbrances, as provided in Section 13.2;

11.2.4 Record the Deed, the Restrictive Covenant Agreement (only upon the Phase I Closing), the TOT Covenant Agreement (only upon the Phase I Closing), and the Mission Avenue Easement (only upon the Phase I Closing Date) in the Official Records, and deliver conformed copies to Developer and Successor Agency;

11.2.5 Cause the issuance to Developer of the Title Policy;

11.2.6 Deliver executed copies of the Bill of Sale, Appurtenant Assignment and License Agreement (at the Phase I Closing) to Successor Agency and Developer;

11.2.7 Deliver the NFS Certificate and Form 593-C to Developer, with a conformed copy to Successor Agency;

11.2.8 Deliver the Successor Agency Completion Guaranty to Successor Agency; and

11.2.9 Deliver a closing statement for that Closing detailing all of the prorrations, disbursements, and costs ("**Closing Statement**") to Developer and Successor Agency.

11.3 Developer's Title Policy. Upon each Closing Date, Title Insurer shall issue to Developer the Title Policy (in the form of the Standard Coverage Policy), with liability in the amount of the applicable Insurable Amount, insuring that fee title to the Phase I or Phase II, as the case may be, is vested in Developer, subject only to the Permitted Property Exceptions. Developer may, at Developer's election and as a replacement to the Standard Coverage Policy, direct Title Insurer to issue an Extended Coverage Policy, with liability in the amount of the applicable Insurable Amount, in which case:

11.3.1 The Extended Coverage Policy shall insure that fee title to Phase I or Phase II, as the case may be, vests in Developer.

11.3.2 Developer shall be responsible to timely supply to Title Insurer, at Developer's sole cost, any ALTA survey required by Title Insurer as a condition to the issuance of the Extended Coverage Policy for Phase I or Phase II, as the case may be.

11.4 Charges to be Prorated. Escrow Holder shall prorate (i.e., apportion) between the parties, in Cash, to the Close of Escrow, General and Special Real Estate Taxes. There shall be no proration of insurance, or interest on debt, operating expenses or income.

11.5 Basis of Proration. All prorrations called for in this Agreement shall be made on the basis of a thirty (30) day month.

ARTICLE 12
Risk of Loss

12.1 Closing with Damage or Destruction. If the Property is damaged and(or) destroyed by fire or other casualty prior to each Closing, this Agreement shall not be terminated and the applicable Closing shall occur as scheduled notwithstanding such damage; provided, however, that Successor Agency's interest in all proceeds of insurance payable by reason of such casualty, if any, shall be assigned to Developer as of the Closing or credited to Developer if previously received by Successor Agency. In this regard, it is acknowledged and agreed that Successor Agency has no obligation to provide any such casualty insurance.

12.2 Eminent Domain. If a Government Authority commences or threatens to commence eminent domain proceedings prior to each Closing to take all or a material portion of the Property, or otherwise impairs ingress or egress to the Property, then Developer shall have the option to terminate this Agreement by written notice to Successor Agency within thirty (30) days after Developer receives written notice of such commencement or threat of commencement from Successor Agency. In the event of any such termination, Developer nonetheless reserves the right to pursue recovery from the applicable Governmental Authority of all of its damages, including the Developer Investment and the value to Developer of this Agreement, subject to Applicable Laws.

12.3 Closing with Eminent Domain. If a Government Authority commences or threatens to commence eminent domain proceedings prior to a Closing to take all or any portion of the Property and this Agreement is not terminated by Developer, then that Closing shall occur as scheduled notwithstanding such proceeding; provided, however, that Successor Agency's interest in all awards arising out of such proceedings shall be assigned to Developer as of the Closing or credited to Developer if previously received by Successor Agency.

ARTICLE 13
Distribution of Funds and Documents

13.1 Disbursements. All disbursements by Escrow Holder shall be made by checks of Escrow Holder or by wire-transfer if instructed by the party to receive such funds prior to the Closing Date.

13.2 Payment of Successor Agency's Encumbrances. Escrow Holder shall, upon each Closing Date, pay, from funds deposited by Successor Agency with Escrow Holder, to the appropriate obligees, all Encumbrances required to be paid by Successor Agency pursuant to this Agreement.

13.3 Return to Successor Agency After Recording. Escrow Holder shall cause the Deed (and each other instrument which is herein expressed to be, or by general usage is, recorded) after recordation, to be mailed to the grantee, beneficiary or person:

(a) acquiring rights under said document; or (b) for whose benefit the instrument was acquired.

13.4 Delivery of Instruments. Escrow Holder shall, upon each Closing Date, deliver by United States mail (or shall hold for personal pickup, if requested) each non-recorded instrument received by Escrow Holder to the payee or person: (a) acquiring rights under the instrument; or (b) for whose benefit the instrument was acquired.

ARTICLE 14

Remedies and Indemnity

14.1 Remedies.

14.1.1 Developer Remedies. If a Closing fails to occur due to an Event of Default by Successor Agency, then Developer shall be limited to one of the following remedies: (a) an action against Successor Agency for specific performance of this Agreement; or (b) termination of this Agreement and an action to recover the Developer Investment. Developer reserves all rights and remedies with respect to any other type of Event of Default by Successor Agency. It is acknowledged and agreed that the failure to achieve the Approval Date shall not constitute an Event of Default by Successor Agency.

14.1.2 Successor Agency Remedies. If a Closing fails to occur due to an Event of Default by Developer, then Successor Agency shall be limited to the remedy of termination of this Agreement, an action to recover the Successor Agency Investment and obtaining the Property Information, as provided in Section 6.2. Successor Agency shall not have the right, under said circumstances, to bring any action for specific performance. Successor Agency reserves all rights and remedies with respect to any other type of Event of Default by Developer.

14.2 Legal Actions. Under no circumstances shall Successor Agency be liable to Developer or Developer be liable to Successor Agency under this Agreement for any speculative, consequential, collateral, special, punitive or indirect damages or for any loss of profits suffered or claimed to have been suffered.

14.3 Indemnification.

14.3.1 Successor Agency Indemnity Obligations. On and after the Effective Date, Successor Agency shall indemnify Developer and the Developer Parties against any Claim to the extent such Claim arises from: (a) any wrongful intentional act or negligence of Successor Agency, but only to the extent that Successor Agency may be held liable under applicable law for such wrongful intentional act or negligence; (b) any agreements that Successor Agency made or makes with a third person regarding this Agreement, the Property or the development of the Property; and (c) any of Successor Agency's other Indemnity obligations under the Transaction Documents. Nothing in the Transaction Documents is intended nor shall be interpreted to waive any

limitation on Successor Agency's liability, any immunity or exemption from liability in favor of Successor Agency, any Claim presentment requirement for bringing an action regarding any liability of Successor Agency or any limitations' period applicable to liability of Successor Agency, as set forth in Government Code Sections 800, et seq., Sections 900, et seq., or in any other Applicable Laws or require Successor Agency to Indemnify any person beyond such limitations on Successor Agency's liability. Nothing in this Section is intended to operate or act as a waiver of the provisions of the Health and Safety Code Section 3417 3(e).

14.3.2 Developer Indemnity Obligations. On and after the Effective Date, Developer shall Indemnify Successor Agency, CDC and/or City, its agents, officers, employees, elected officials, and its successors and/or assigns against any Claim to the extent such Claim arises from: (a) any wrongful intentional act or negligence of Developer; (b) any of Developer's other Indemnity obligation under this Agreement; (c) any agreements that Developer (or anyone claiming by or through Developer) makes with a third person regarding this Agreement, the Property or the development of the Property; (d) any workers' compensation Claim arising from employees or contractors of Developer; (e) any Prevailing Wage Determination; (f) any discharge of Hazardous Substances occurring on or after each Closing Date as to the Phase which is the subject of that Closing Date; (g) any legal challenges to the approval of this Agreement; and(or) the decision made by the CDC with regard to the Substantial Conformance Review; (h) any of Developer's other Indemnity obligations under the Transaction Documents, and (i) any Claim that arises out of the Construction and(or) the use and operation of the Resort Development, except when arising out of the negligent or intentional misconduct of the Successor Agency, CDC, City or their respective successors, assigns, officers, directors, affiliates, subsidiaries, elected officials, employees, representatives and agents.

14.3.3 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations of the Parties under this Agreement shall survive the Close of Escrow or earlier termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to an indemnity obligation under this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

14.4 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

14.4.1 Prompt Notice. The Indemnitee shall promptly notify the Indemnitor of any Claim.

14.4.2 Selection of Counsel. The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a Claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such counsel proves to be incompetent regarding such

representation. Even though the Indemnitor shall defend the Claim, Indemnitee may engage separate counsel to advise it regarding the Claim and its defense, at Indemnitee's expense, unless Indemnitor has made a reservation of rights with respect to the indemnity, in which case Indemnitor shall be responsible for legal cost for the separate counsel directly related to the matter. Such counsel may attend all proceedings and meetings. Indemnitor's counsel shall actively consult with Indemnitee's counsel.

14.4.3 Control. Subject to Section 14.4.5, Indemnitor shall control the defense of the Claim. In undertaking the Indemnity, Indemnitor shall be entitled to reserve its rights with regard to the indemnity, such that if it is determined that Indemnitee is not entitled to all or any portion of the indemnity, then Indemnitor shall not be obligated to Indemnify Indemnitee to the extent of such determination and Indemnitor shall be entitled to recover legal cost incurred by Indemnitor directly related to defending Indemnitee to the extent of such determination.

14.4.4 Cooperation. The Indemnitee shall reasonably cooperate with the Indemnitor's defense of the Indemnitee.

14.4.5 Settlement. The Indemnitor may only settle a Claim with the Indemnitee's consent, not to be unreasonably withheld. Each settlement shall include a release of all Claims against the Indemnitee arising from the same facts or circumstances as the subject Claim.

14.4.6 Insurance Proceeds. The Indemnitor's obligations shall be reduced by net insurance proceeds Indemnitee actually receives for the matter giving rise to indemnification.

ARTICLE 15 Covenants

15.1 Successor Agency Obligations. Until the earlier of the Closing Date for both Phases, or the termination of this Agreement, Successor Agency shall:

15.1.1 Not place any matters of record against the Property (other than Permitted Property Exceptions and any matters arising from the CDC's issuance or exercise of any authority related to the Substantial Conformance Review), including monetary encumbrances grants of easement, license agreements, restrictive covenants, without the prior approval of Developer, which may be withheld in Developer's sole and absolute discretion;

15.1.2 Continue to manage, operate and maintain the Property in substantially the same manner in which the Property is currently managed, operated and maintained;

15.1.3 Not lease or license the use of the Property, or any portion thereof, without the prior approval of Developer, which may be withheld in Developer's sole and absolute discretion;

15.1.4 Except for Property dedications mandated by conditions of approval as set forth in the Entitlements, not dedicate the Property or any portion thereof, without the prior approval of Developer, which may be withheld in Developer's sole and absolute discretion. The Successor Agency shall not dedicate any property to satisfy conditions of approval unless the Developer has been provided 30 days calendar notice; and

15.1.5 Promptly give written notice to Developer of the occurrence of any event which affects the truth or accuracy of any representations or warranties made or to be made by Successor Agency under or pursuant to this Agreement and promptly provide Developer with a copy of any written notices or orders issued to or by Successor Agency with respect to the Property.

15.2 Marketing. Subject to Applicable Laws, Successor Agency, the CDC and the City shall not Market the Property so long as this Agreement is in effect and not null and void.

15.3 Successor Agency Completion Guaranty.

15.3.1 Designation of Guarantor. At any time prior to each of the Phase I Closing Date and the Phase II Closing Date, but at least thirty (30) days prior to the scheduled date thereof, Developer shall notify Successor Agency of the identity of the individual or entity that Developer proposes as the guarantor to provide the Successor Agency Completion Guaranty ("**Guarantor**"). At the same time, Developer shall provide Successor Agency with a current financial statement for the such proposed Guarantor reflecting their then-current financial condition. Successor Agency may request any other information regarding the proposed Guarantor that is reasonably relevant to Successor Agency reasonably approving such Guarantor and Developer shall promptly provide such information to Successor Agency. Within thirty (30) days after receipt of all information to be provided to Successor Agency regarding the proposed Guarantor pursuant to this Section 15.3.1, Successor Agency shall notify Developer as to whether or not Successor Agency reasonably approves the individual or entity proposed by Developer as Guarantor; in all cases, such approval shall not be unreasonably withheld. If Successor Agency reasonably disapproves any individual or entity proposed by Developer as Guarantor, Developer shall promptly propose a different individual or entity as Guarantor and the process described in this Section 15.3.1 shall begin again. Any individual or entity providing such a guaranty of completion to the Construction Lender shall be deemed reasonably acceptable to Successor Agency as the Guarantor.

15.3.2 Negotiation of Successor Agency Completion Guaranty. After Successor Agency has approved the Guarantor, Successor Agency, Developer

and such Guarantor shall negotiate in good faith the provisions and conditions of the Successor Agency Completion Guaranty. The Successor Agency Completion Guaranty may be a single obligation of the Guarantor to both Successor Agency and the Construction Lender. The Successor Agency Completion Guaranty shall contain all of the following terms and conditions: (a) Guarantor shall be required to complete the original Construction of the Phase I Hotel and(or) Phase II Hotel, as the case may be, free of liens, without alternative performance options; (b) the Construction Lender shall have the first right to enforce the Successor Agency Completion Guaranty, but if the Construction Lender does not promptly commence enforcement of the Successor Agency Completion Guaranty or diligently continue enforcement of the Successor Agency Completion Guaranty, once commenced, Successor Agency may pursue enforcement of the Successor Agency Completion Guaranty; (c) Guarantor's obligations under the Successor Agency Completion Guaranty shall be conditioned on the Construction Lender continuing to fund the remaining portion of the Construction Financing to Guarantor (Developer shall cause such Construction Lender to agree in writing with Successor Agency and Guarantor to provide such funding) and Successor Agency continuing to make any remaining payments owed by Successor Agency to Developer pursuant to the Transaction Documents; (d) a provision stating that if Guarantor performs its obligations in favor of Successor Agency, then Developer shall be deemed to have cured any of Developer's obligations relating to the completion of the initial Construction of the Phase I Hotel and(or) Phase II Hotel, as the case may be; and (e) a provision stating that the Successor Agency Completion Guaranty shall automatically terminate upon completion of the initial Construction of the Phase I Hotel or the Phase II Hotel, as the case may be, by the Developer, the Guarantor, or the Construction Lender. The Successor Agency Completion Guaranty shall be subject to agreement among Successor Agency, Developer, the Construction Lender and the Guarantor on all of the terms and conditions of the Successor Agency Completion Guaranty, including the text of the Successor Agency Completion Guaranty setting forth the business terms generally described in this Section 15.3.2. Agreement on the form and substance of the Successor Agency Completion Guaranty among Successor Agency, Developer, the Construction Lender and Guarantor and Guarantor signing the Successor Agency Completion Guaranty and delivering it into the Escrow for delivery to Successor Agency shall be express conditions precedent to the Phase I Closing Date and the Phase II Closing Date for the benefit of Successor Agency.

15.4 Staging Area. Upon the Phase I Closing Date City shall grant to Developer a license to use a portion of Lot 26 as a Construction staging area in the form of Exhibit 15.5 attached hereto ("**License Agreement**"). Developer's use and occupation of the Premises shall not obstruct or unreasonably impair ingress or egress to the adjacent Marriot Springhill Suites hotel.. During the period of construction of the Resort Development, neither Successor Agency nor City shall unreasonably restrict Developer's access to public streets, subject to (a) the City's ability to use the public streets for special events; and (b) Developer's compliance with its applicable hauling permit and staging permit.

ARTICLE 16
Additional Covenants

16.1 Possession. Upon the Phase I Closing Date and the Phase II Closing Date, as the case may be, Successor Agency shall deliver to Developer possession of Phase I or Phase II and the applicable Improvements, Intangible Property and Appurtenant Rights free and clear of all rights and claims of possession other than the Permitted Property Exceptions.

16.2 Post-Closing Covenant. After the Closing Date each Party shall execute and deliver to the other any and all further documents and instruments which such Party may request and which are reasonably necessary or proper to affect the transfer and conveyance of the Property.

ARTICLE 17
Conditions Precedent

17.1 Developer's Conditions to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to an Event of Default under this Agreement by Developer, Developer's obligation to acquire Phase I and(or) Phase II on each applicable Closing Date shall be subject to the satisfaction of each of the following conditions precedent, each of which can only be waived in writing by Developer:

17.1.1 Document Approval. Developer shall have all of the following described documents completed and executed by all of the individuals and entities required to make such documents operative and Successor Agency shall have approved such documents pursuant to Section 17.3.1:

17.1.1.1 All of the applicable documents set forth in Section 10.1 hereof;

17.1.1.2 The Franchise Agreement(s) for the applicable Phase I Hotel and(or) the Phase II Hotel (as applicable);

17.1.1.3 The Management Agreement(s) for the applicable Phase I Hotel and(or) the Phase II Hotel;

17.1.1.4 The Successor Agency Completion Guaranty; and

17.1.1.5 The Financing Plan.

17.1.2 The Title Company is, upon payment of the Title Company's premium for the Title Policy, irrevocably and unconditionally committed to issue the Title Policy to Developer at closing;

17.1.3 The recordation of the Subdivision Map;

17.1.4 The Approval Date;

17.1.5 The issuance of a grading permit from the applicable Governmental Authority in order to commence Construction of the Phase I Hotel and(or) the Phase II Hotel, as the case may be, on terms and conditions reasonably acceptable to Developer;

17.1.6 Developer approves the Closing Statement;

17.1.7 No building moratorium exists that prevents Construction;

17.1.8 Successor Agency has approved, or is deemed to have approved, Guarantor and Successor Agency, Developer and Guarantor have agreed on the terms of the Successor Agency Completion Guaranty;

17.1.9 The representations and warranties of Successor Agency specifically set forth in Section 9.1 are true and correct, as of the applicable Closing Date;

17.1.10 There being no Event of Default by Successor Agency;

17.1.11 The closing of the Construction Financing; and

17.1.12 The closing of the Mezzanine Financing and(or) the Equity Investment, as applicable.

17.2 Failure of Conditions Not Default. Notwithstanding any provision of this Agreement to the contrary, Developer's failure to satisfy any of the conditions set forth in Section 17.1 shall not constitute an Event of Default by Developer.

17.3 Successor Agency's Conditions to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to an Event of Default by Successor Agency, Successor Agency's obligation to sell Phase I and(or) Phase II to Developer on each applicable Closing Date shall be subject to the satisfaction of each of the following conditions precedent, each of which can only be waived in writing by the Successor Agency:

17.3.1 Successor Agency approves those documents referenced to in Sections 10.1 and 17.1.1, which approval shall not be unreasonably withheld or delayed; the foregoing approval process shall include Successor Agency's review and reasonable approval of Franchisor and Management Company. To the extent that any of the foregoing documents are attached hereto as Exhibits, pursuant to Article, then Successor Agency shall be deemed to have approved the content of the same.

17.3.2 The issuance of a grading or building permit from the applicable Governmental Authority in order to commence Construction of the Phase I Hotel and(or)

the Phase II Hotel on the Property, as the case may be, on terms and conditions reasonably acceptable to Developer;

17.3.3 The recordation of the Subdivision Map;

17.3.4 The Approval Date;

17.3.5 The closing of the Construction Financing;

17.3.6 The closing of the Mezzanine Financing and(or) the Equity Investment, as applicable.

17.3.7 Successor Agency has approved, or is deemed to have approved, Guarantor and Successor Agency, Developer and Guarantor have agreed on the terms of the Successor Agency Completion Guaranty;

17.3.8 The representations and warranties of Developer specifically set forth in Section 9.2 are true and correct as of the applicable Closing Date;

17.3.9 The delivery to Successor Agency of copies (certified by Developer to be accurate and complete) of the Architectural Agreement and the Construction Contract; in this regard, Successor Agency shall not be empowered to review and approve the content of these documents except to the extent necessary to ensure that the same are in existence and that the amount stated as the guaranteed maximum price under the Construction Contract is consistent with the Financing Plan;

17.3.10 As to Phase I Closing Date, the Successor Agency's reasonable determination that the Phase I Hotel is substantially consistent to the Phase I Competitive Set;

17.3.11 As to the Phase II Closing Date, the Successor Agency's reasonable determination that the Phase II Hotel is substantially consistent to the Phase II Competitive Set; and

17.3.12 There being no Event of Default by Developer.

17.4 Failure of Conditions Not Default. Notwithstanding any provision of this Agreement to the contrary, the Successor Agency's failure to satisfy any of the conditions set forth in Section 17.3 shall not constitute an Event of Default by Successor Agency.

17.5 Termination of Agreement. The failure to achieve the Phase I Closing Date or the Phase II Closing Date in the time period specified by this Agreement that is not caused by an Event of Default, shall allow either Party to terminate this Agreement upon written notice to the other Party. In this event, this Agreement shall be terminated upon the sending of the notice in accordance with Article 19 and neither Party shall have any liability to the other Party. In the event the Phase II Closing Date is not achieved in the

time period specified by this Agreement that is not caused by an Event of Default, either Party may terminate this Agreement as it relates to Phase II by the sending of the notice in accordance with Article 19 and neither Party shall have any liability to other Party for obligations related to the Phase II hotel, including but not limited to, any sharing of TOT revenue related to Phase II, but the Parties will remain bound by all obligations related to the Phase I Hotel. The Developer's failure to achieve a milestone set forth in Developer's Processing Schedule shall not constitute an Event of Default, but shall allow either Party to terminate this Agreement. Any written notice of termination for violation of the Developer Processing Schedule sent by the Successor Agency shall provide thirty calendar days (30) to cure the violation. The Phase I and/or Phase II Closing Dates shall not be extended during any cure period. Should the violation of the Developer Processing Schedule not be timely cured, this Agreement shall be terminated following written notice from the Successor Agency or the Developer. In this event, the Agreement shall be terminated and neither Party shall have any liability to the other Party.

ARTICLE 18 Brokerage Commissions

18.1 Commissions. Each Party hereto represents and warrants to the other that to the extent such party has dealt with or engaged any broker, finder or other person in connection with the Transaction herein, then such Party shall be solely obligated for any and all commissions claimed by such person, and such Party shall Indemnify the other Party on account of any Claims incurred by reason of a demand for payment by such broker, finder or other person.

ARTICLE 19 Notices

19.1 Time of Delivery: Addresses. Any notice required or permitted hereunder shall be deemed to have been received either: (a) when delivered by hand and the party giving such notice has received a signed receipt thereof; or (b) one (1) day following the date deposited with Federal Express or other recognized overnight courier; or (c) when sent by telecopy machine; or (d) on the day following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party) for:

Successor Agency:

Successor Agency of the City of Oceanside
300 Coast Hwy
Oceanside, CA 92054
Attn: _____
Phone: (____) _____
Facsimile: (____) _____

With a copy to:

City of Oceanside
300 North Coast Hwy
Oceanside, CA 92054
Attn: John Mullen, City Attorney
Phone: (760) 435-3979
Facsimile: (750) 439-3877

Developer:

S.D. Malkin Properties, Inc.
835 Fifth Avenue, Suite 401
San Diego, CA 92101
Attention: Jeremy Z. Cohen
Phone: (619) 239-6716
Facsimile: (619) 239-2444

S.D. Malkin Properties, Inc.
35 Mason Street
Greenwich, Connecticut 06830
Attention: N. George Host
Phone: (203) 622-1800
Facsimile: (203) 622-3001

With a copy to:

Seltzer Caplan McMahon Vitek
750 B Street, Suite 2100
San Diego, CA 92101
Attention: Brian T. Seltzer, Esq.
Phone: (619) 685-3025
Facsimile: (619) 702-6808

Escrow Holder:

Chicago Title Insurance Company
701 B Street
San Diego, CA 92101
Attn: Della DuCharme
Phone: (619) 230-6363
Facsimile: (619) 230-6368

**ARTICLE 20
Disposition Agreement**

Following the Approval Date neither Party shall have any rights, claims, defenses or remedies under the Disposition Agreement. If the Approval Date does not occur, after the expiration of all applicable appeal and protest periods, without the determination of a successful appeal or protest affirming this Agreement, then either Party hereto shall have the right, but not the obligation and upon written notice to the other, to terminate this Agreement. In the event the Agreement is terminated because the Approval Date does not occur, each party reserves all rights, claims, defenses and remedies under the Disposition Agreement.

**ARTICLE 21
General Provisions**

21.1 Successors. Subject to the restrictions on Transfer set forth herein, the provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, assigns, and legal representatives.

21.2 Survival. All representations, warranties, and indemnities contained in this Agreement or in any instrument, document or agreement delivered pursuant hereto shall survive the delivery of each Deed and the Transfer of Phase I and(or) Phase II to Developer.

21.3 Captions. Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement.

21.4 Exhibits. Each of the following Exhibits are attached hereto and incorporated herein by this reference:

<u>Exhibits:</u>	<u>Description:</u>
1.1(a)	Description of Real Property
1.1(b)	Phased Site Plan
2.1(a)	Entitlements
2.1(b)	Description of Phase I
2.1(c)	Description of Phase II

<u>Exhibits:</u>	<u>Description:</u>
3.2	Memorandum of Agreement
5.2.5	Title Exceptions
9.1	Successor Agency Bring-Down Certificate
9.2	Developer Bring-Down Certificate
10.1.2	Restrictive Covenant Agreement
10.1.3	TOT Covenant Agreement
10.1.4	Appurtenant Assignment
10.1.5	Mission Avenue Easement
10.2.1	Deed
10.2.2	Bill of Sale
10.2.6	NFS Certificate
10.2.7	Form 593-C
15.4	Legal Description for Lot 26
15.5	License Agreement
15.6	Developer Processing Schedule

21.5 Days. Whenever used herein, unless expressly provided otherwise, the term “**Days**” shall mean consecutive calendar days, except that if the expiration of any time period measured in days occurs on a Saturday, Sunday, legal holiday or other day when federal offices are closed in San Diego County, California, such expiration shall automatically be extended to the next business day.

21.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the Transaction and supersedes all prior agreements or undertakings including, without limitation, the Term Sheets.

21.7 Modification. This Agreement may not be modified except by the written agreement of the Parties. No modification may be made to this Agreement without the approval of the Oversight Board and the City Council, provided, however, modifications made be made to this Agreement without Oversight Board or City Council Approval which are required by a Construction Lender as a condition to Developer obtaining Construction Financing and which do not materially modify or reduce Successor Agency or City’s rights and remedies hereunder.

21.8 Severability. In the event any one or more of the provisions or conditions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

21.9 Restrictions on Transfers. Developer shall not have any right to Transfer its interest in this Agreement or make or allow any Equity Interest Transfer, except as expressly set forth in this Section 21.9. No Transfer of this Agreement shall be effective absent a duly executed assignment and assumption agreement pursuant to which the

applicable Transferee becomes bound by the provisions and conditions of this Agreement. Upon the occurrence of any such Transfer, the applicable Transferee shall thereafter be deemed the Developer for purposes hereof. Developer acknowledges and agrees that the specific identity of Developer is of material importance to Successor Agency in entering into this Agreement with Developer and that, as a result and under the circumstances regarding which this Agreement is entered into by Successor Agency and Developer, that the restrictions in this Agreement on Transfer of Developer's interest in this Agreement or Equity Interest Transfers are reasonable under the circumstances.

21.9.1 Equity Interest Transfers.

21.9.1.1 Subject to Section 21.9.1.3, if a Malkin Entity is in Control or Management Control of Developer both before and after the Equity Interest Transfer in Developer and such Transferee is not a Prohibited Transferee, then an Equity Interest Transfer in Developer may be made to a Transferee (other than a Prohibited Transferee), without Successor Agency's prior approval. Developer shall provide notice to Successor Agency of each Equity Interest Transfer in Developer and the name of the Transferee, within fifteen (15) days after the Equity Interest Transfer in Developer.

21.9.1.2 Subject to Section 21.9.1.3, if a Malkin Entity is not in Control or Management Control of Developer both before and after the Equity Interest Transfer in Developer, then the Equity Interest Transfer in Developer to a Transferee may only be made with the Successor Agency's prior written consent, in the Successor Agency's sole and absolute discretion.

21.9.1.3 Notwithstanding Sections 21.9.1.1 and 21.9.1.2, at any time, an Equity Interest Transfer in Developer may be made to: (a) a Mezzanine Lender or its Affiliate assigned such Equity Interests as collateral, or through any exercise of remedies under a Mezzanine Financing Instrument, without Successor Agency's consent; (b) a Transferee who obtains such Equity Interest(s) through an exercise of remedies under a Mezzanine Financing Instrument, without Successor Agency's consent; or (c) to Interstate, without Successor Agency's consent. Without limiting the foregoing, an individual or entity potentially obtaining an Equity Interest in Developer pursuant to Section 21.9.1.3(b) may request the Successor Agency's determination that such Person qualifies as a Transferee, in accordance with Section 21.9.2.4.

21.9.2 Transfers of this Agreement.

21.9.2.1 Subject to Section 21.9.2.3, if a Malkin Entity is in Control or Management Control of Developer both before and after the Transfer, then Developer may Transfer this Agreement to a Transferee without Successor Agency's consent, provided the Transferee has executed an assignment and assumption agreement as a condition of the Transfer. Developer shall provide Notice to Successor

Agency of the Transfer and the name of the Transferee within fifteen (15) days after the Transfer.

21.9.2.2 Subject to Section 21.9.2.3, if a Malkin Entity is not in Control or Management Control of Developer both before and after the Transfer, then a Transfer of this Agreement to a Transferee shall require Successor Agency's consent in its sole discretion.

21.9.2.3 Notwithstanding Sections 21.9.2.1 and 21.9.2.2, at any time, Developer shall have the right to Transfer this Agreement to: (a) a Mezzanine Lender or its Affiliate as security under a Mezzanine Financing Instrument without Successor Agency's consent, provided the Transferee has executed an assignment and assumption agreement as a condition of the Transfer; or (b) a Person who obtains such interest through a foreclosure event under a Mezzanine Financing Instrument without Successor Agency's consent, provided the Transferee has executed an assignment and assumption agreement as a condition of the Transfer.

21.9.2.4 Upon any Transfer of this Agreement, any Transferee of Developer shall assume all obligations and liabilities of Developer then existing or thereafter arising under this Agreement by the execution of any assignment and assumption agreement.

21.9.2.5 Upon any Transfer of this Agreement in compliance with this Agreement, the Developer making the Transfer shall be released from all liability (excluding liability arising before such Transfer) for performance of any covenants or obligations to be performed by the Developer after the effective date of the Transfer. This Agreement shall bind the Developer only while the Developer is a party to this Agreement, except as to any liabilities and obligations arising before the effective date of the Transfer.

21.9.3 No Equity Interest Transfers or Transfers of this Agreement to Prohibited Transferees. Notwithstanding Sections 21.9.1, 21.9.2 or any other provision of this Agreement, no Equity Interest Transfer in Developer or a Transfer of this Agreement shall be made to a Prohibited Transferee.

21.9.4 Delivery of Transfer Documents. All instruments and other legal documents proposed to effect any proposed Transfer of this Agreement or Equity Interest Transfer in Developer requiring the Successor Agency's consent shall be submitted to the Successor Agency for review, at least twenty (20) days prior to the proposed date of the Transfer of this Agreement or Equity Interest Transfer, and the written approval, disapproval or conditions of the Successor Agency regarding the proposed Transfer of this Agreement or Equity Interest Transfer in Developer shall be provided to the Developer (or the proposed Transferee under Section 21.9.1 or 21.9.2, as the case may be), within twenty (20) days following the Successor Agency's receipt of all proposed Transfer of this Agreement or Equity Interest Transfer documents.

21.10 Restrictions on Transfer, Conveyance or Assignment by Successor Agency. Except as provided in this Agreement, the Successor Agency may not Transfer, pledge, hypothecate, or encumber in any other mode or form all or any portion of the Successor Agency's interest in this Agreement or the Property during the term of this Agreement; provided, however, that upon the legal expiration of the term of Successor Agency, the City shall expressly succeed to and assume all of the rights, duties and obligations of the Successor Agency under this Agreement.

21.11 Developer Assumption of Risks of Legal Challenges. Subject to the provisions and conditions set forth in this Section 21.11, Developer assumes the risk of delays and damages that may result to Developer from any third party legal actions related to Successor Agency's approval of this Agreement or any associated entitlements, permits and approvals. If a third party files a legal action regarding Successor Agency and(or) the City's approval of this Agreement or any associated entitlements, permits and approvals (excluding a legal action alleging violation of Government Code Sections 1090 through 1099 and 81000 through 91014 by Successor Agency Parties who are "public officials" of Successor Agency, whether elected or appointed, within the meanings of such code sections, as applicable), Developer shall Indemnify Successor Agency and City against such legal action, including all monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Successor Agency and(or) shall reasonably cooperate in its defense in any legal action subject to this Section 21.11, subject to Developer's Indemnity obligations for such legal action. Nothing contained in this Section 21.11 shall be deemed or construed to be an express or implied admission that the Successor Agency may be liable to the Developer or any other Person for damages or other relief alleged regarding any alleged or established failure of the Successor Agency to comply with any Law.

21.12 Warranty Against Payment of Consideration for Agreement. Developer represents and warrants that: (a) Developer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of the Developer and third parties to whom fees are paid for professional services related to planning, design or Construction of the Resort Development or documentation of this Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by the Developer or any of its agents, employees or representatives to any elected or appointed official or employee of either the City or the Successor Agency in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 21.12 shall entitle the Successor Agency to terminate this Agreement, in the Successor Agency's sole discretion, by notice to the Developer. Upon any such termination of this Agreement, the Developer shall immediately refund any payments made to or on behalf of the Developer by the City or the Successor Agency pursuant to this Agreement or otherwise related to the Resort Development or the Property, prior to the date of any such termination.

21.13 Non-liability of Officials, Employees and Agents. No public official, employee or agent of the Oversight Board, the CDC or the City, shall be personally liable to the Developer, or any successor in interest of the Developer, in the event of any Event of Default by Successor Agency or for any amount that may be or become due to Developer or any successor in interest of Developer, on any obligations under the provisions and conditions of this Agreement. No Developer Party (other than Developer itself) shall be personally liable to Successor Agency, or any successor-in-interest of the Successor Agency, in the event of any Event of Default by Developer or for any amount that may be or may become due to Successor Agency or any successor-in-interest of Successor Agency on any obligations under the provisions or conditions of this Agreement.

21.14 Unavoidable Delay; Extension of Time of Performance.

21.14.1 Notice. The failure by either Party to perform pursuant to this Agreement shall not be deemed or considered to be an Event of Default, where any such Event of Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall notify the other Party: (a) within thirty (30) days after such Party knows of any such Unavoidable Delay; and (b) within ten (10) days after such Unavoidable Delay ceases to exist. To be effective, any notice of an Unavoidable Delay shall describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay (provided that notice is timely given under this Section 21.14.1) shall commence on the date on which the condition causing the Unavoidable Delay commences (if Notice is not timely given under this Section 21.14.1, then the extension of time for the Unavoidable Delay shall commence on the effective date of the notice of the Unavoidable Delay under this Section 21.14.1) and shall continue until the end of the condition causing the Unavoidable Delay. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise its commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

21.14.2 Assumption of Economic Risks. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET CONDITIONS OR DEMANDS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE

CHANGES IN ECONOMIC CONDITIONS, AFFECTING EITHER OF THE PARTIES SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Initials of Authorized Representative(s)
of Successor Agency

Initials of Authorized Representative(s)
of Developer

21.15 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the California.

21.16 Attorney's Fees. If an action is commenced to enforce or interpret this Agreement, the prevailing Party shall be entitled to recover its fees and costs.

21.17 Time of the Essence. Time is expressly made of the essence with respect to the performance hereof.

21.18 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Handwritten signatures to this Agreement transmitted by telecopy or electronic transmission (for example, through use of a Portable Document Format or "PDF" file) shall be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver to the other party an executed original of this Agreement with its actual signature, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each Party to this Agreement shall be bound by its own telecopied or electronically transmitted handwritten signature and shall accept the telecopied or electronically transmitted handwritten signature of the other Party to this Agreement.

21.19 No Third Party Rights. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties thereto, to any person or entity other than the Parties hereto. Notwithstanding the foregoing, the City shall be deemed an express third party beneficiary of this Agreement, with the full right and authority to enforce the provisions and conditions of this Agreement.

21.20 Counsel to Each Party. Developer and Successor Agency each acknowledge that: (a) they have been represented by independent counsel in connection with this Agreement; (b) they have executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of negotiations between the Parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was

prepared by Developer's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against Developer because Developer's counsel prepared this Agreement in its final form.

21.21 Arbitration. Except for claims arising from the actions of the Department of Finance review of this Agreement and except for claims arising from Exhibit 10.1.2, and claims arising from Section 6.6.7 of the Agreement Regarding Real Property (TOT), the parties acknowledge that any dispute or controversy concerning this Agreement or the rights of the parties under this Agreement, including (i) whether or not any such dispute or controversy is arbitrable and/or subject to this Section 21, or (ii) any breach of this Agreement, shall be determined in accordance with the following provisions:

21.21.1 Upon the occurrence of any dispute or controversy that cannot be settled through direct discussions, the Parties will endeavor to settle the dispute by nonbinding mediation administered by JAMS, before resorting to arbitration. The Parties shall agree to a mediator and if they are unable to agree, the San Diego office of JAMS shall select a mediator who may be rejected by the Parties only for bias. The Parties shall notify the mediator in writing of the existence of a dispute and the mediator shall have thirty (30) days from receipt of notification to meet with the Parties and help them resolve the dispute, unless the Parties mutually agree to an extension of the deadline. The cost of mediation (but not the attorneys' fees of the respective Parties) shall be borne equally between the Parties. No party hereto can compel arbitration before the end of the thirty (30) day period.

21.21.2 Any remaining unresolved controversy or claim arising out of or relating to this Agreement shall be settled by binding arbitration, which shall constitute the sole and exclusive remedy. Any Party desiring to institute an arbitration proceeding hereunder shall send written notice thereof, briefly describing the nature of the matter to be arbitrated, to the JAMS (San Diego Office) with a copy to the other Parties. Any such arbitration proceeding shall be carried out in accordance with the following provisions:

21.21.3 The arbitration proceeding shall be conducted under the JAMS rules, in effect at the time a demand for arbitration is made. To the extent that there is any conflict between the JAMS rules and these arbitration provisions, these provisions shall govern and determine the rights of the Parties.

21.21.4 The arbitration will take place in San Diego, California before a single arbitrator. The San Diego Office of JAMS shall provide a list of the available qualified arbitrators to arbitrate such dispute following the demand for arbitration. The Parties shall each rank the arbitrators in their respective order of preference (numbered one through the end of the list presented) and present the rankings to the San Diego Office of JAMS. The highest ranking arbitrator (as determined by the sum of the numeric rankings given by the Parties) shall serve as the single arbitrator.

21.21.5 The decision of the arbitrator, including a determination of the amount of any damages suffered, shall be conclusive, final and binding on the Parties, their successors and assigns, as applicable and not subject to appeal. In all cases, the arbitration shall apply and follow California law.

21.21.6 The costs of arbitration, including attorneys' fees, administrative fees, fees for a record and transcript, and the arbitrator's fees shall be borne by the Party(ies) not prevailing in such action as determined by the arbitrator.

Remainder of page intentionally left blank.

21.22 Termination Costs. In the event of the termination of this Agreement by reason of the breach by any party hereto of its obligations hereunder, that party shall pay all escrow and title cancellation charges and fees. Otherwise, in the event of termination, such escrow and title cancellation charges and fees shall be divided equally (50/50) and paid by Successor Agency and Developer.

Successor Agency:

Successor Agency City of Oceanside

By: _____
Name: _____
Title: _____

Approved as to Form:

City Attorney's Office

By: _____
Name: _____
Title: City Attorney

Developer:

S.D. Malkin Properties, Inc.
a Delaware Corporation

By: _____
Name: _____
Title: _____

Joinder

The City of Oceanside hereby acknowledges, accepts and agrees to the provisions and conditions of Section 21.10 hereof.

The City of Oceanside

By: _____

Name: _____

Title: _____

Approved as to Form:

City Attorney's Office:

By: _____

Name: _____

Title: City Attorney

CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to: (a) accept the foregoing Agreement, (b) be escrow holder under said Agreement for the fees therein specified, and (c) be bound by said Agreement in the performance of its duties as escrow holder; provided, however, the undersigned shall have no obligations, liability or responsibility under (i) this Consent or otherwise, unless and until said Agreement, fully signed by the parties, has been delivered to the undersigned, or (ii) any amendment to said Agreement unless and until the same is accepted by the undersigned in writing.

Dated: _____, 201__

CHICAGO TITLE INSURANCE COMPANY

By: _____
Name: _____
Title: _____

EXHIBIT 1.1(a)

Description of Real Property

LEGAL DESCRIPTION

PARCEL A: (APN: 147-261-01, 02, 03, 04, 09, 10, 11 AND 12)

LOTS 1, 2, 3, 4, 9, 10, 11 AND 12 IN BLOCK 16 OF OCEANSIDE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 344, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 1, 1885.

TOGETHER WITH THAT PORTION OF THE SOUTHEASTERLY HALF OF MISSION AVENUE, (FORMERLY 2ND STREET) THE SOUTHWESTERLY HALF OF MYERS STREET AND THE NORTHEASTERLY HALF OF PACIFIC STREET WHICH UPON VACATION WOULD REVERT TO SAID LAND BY OPERATION OF LAW.

PARCEL B: (APN: 147-076-11, 12 AND 10)

LOTS 4, 5, 6, 7, 8, 9, 10, 11 AND 12 IN BLOCK 17 OF OCEANSIDE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 344, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 1, 1885.

TOGETHER WITH THAT PORTION OF THE SOUTHEASTERLY HALF OF PIER VIEW WAY, (FORMERLY THIRD STREET) THE NORTHWESTERLY HALF OF MISSION AVENUE, (FORMERLY 2ND STREET) THE SOUTHWESTERLY HALF OF MYERS STREET, AND THE NORTHEASTERLY HALF OF PACIFIC STREET WHICH UPON VACATION WOULD REVERT TO SAID LAND BY OPERATION OF LAW.

PARCEL C: (APN: 147-076-01, 02 AND 03)

LOTS 1, 2 AND 3 OF BLOCK 17, OF OCEANSIDE, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 344, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 1, 1885.

EXCEPTING AND RESERVING TO THE DEFENDANTS AS SET FORTH IN A FINAL ORDER OF CONDEMNATION RECORDED APRIL 18, 2003 AS FILE NUMBER 2003-447702 OF OFFICIAL RECORDS ALL OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN 500 FEET BELOW THE SURFACE OF SAID PROPERTY, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH, AND TO USE AND OCCUPY ALL PARTS OF SAID PROPERTY LYING MORE THAN 500 FEET BELOW THE SURFACE THEREOF FOR ANY PURPOSES INCIDENTAL TO THE EXPLORATION FOR AND PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FOR SAID PROPERTY OR OTHER LANDS, BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER.

TOGETHER WITH THAT PORTION OF THE SOUTHEASTERLY HALF OF PIER VIEW WAY (FORMERLY THIRD STREET) AND THE SOUTHWESTERLY HALF OF MYERS STREET WHICH UPON VACATION WOULD REVERT TO SAID LAND BY OPERATION OF LAW.

PARCEL D: {APN: 147-261-05, 06, 07 AND 08}

LOTS 5, 6, 7 AND 8 IN BLOCK 16 OF OCEANSIDE TOWNSITE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 344, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 1, 1885.

LEGAL DESCRIPTION

(continued)

EXCEPTING AND RESERVING ALL OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER TOGETHER WITH THE RIGHT TO EXPLORE FOR AND EXTRACT SUCH SUBSTANCES; PROVIDED THAT ANY SURFACE OPENING, HOLE, SHAFT OR OTHER MEANS OF EXPLORING FOR, REACHING OR EXTRACTING SUCH SUBSTANCES SHALL NOT BE LOCATED WITHIN THE DOWNTOWN REDEVELOPMENT PROJECT AREA, AND SHALL NOT PENETRATE ANY PART OR PORTION OF SAID PROJECT AREA WITHIN 500 FEET OF THE SURFACE THEREOF.

TOGETHER WITH THAT PORTION OF THE SOUTHWESTERLY HALF OF MYERS STREET, THE NORTHWESTERLY HALF OF SEAGAZE DRIVE (FORMERLY FIRST STREET) AND THE NORTHEASTERLY HALF OF PACIFIC STREET WHICH UPON VACATION WOULD REVERT TO SAID LAND BY OPERATION OF LAW.

END OF LEGAL DESCRIPTION

EXHIBIT 1.1(b)

Phased Site Plan

EXHIBIT 2.1(a)

Description of Entitlements

1. Tentative Map (T-204-06)
2. Development Plan (D-213-06)
3. Conditional Use Permit (C-208-06)
4. Regular Coastal Permit (RC-215-06)
5. Certified Final Environmental Impact Report
6. Mitigation Monitoring and Report Program for the Oceanside Beach Resort Development Project
7. Statement of Overriding Considerations

EXHIBIT 2.1(b)

Description of Phase I

EXHIBIT 2.1(c)

Description of Phase II

EXHIBIT 3.2

Memorandum of Agreement

RECORDING REQUESTED BY:

Chicago Title Insurance Company

AND WHEN RECORDED MAIL TO:

Brian T. Seltzer, Esq.
Seltzer Caplan McMahon Vitek
A Law Corporation
750 B Street, Suite 2100
San Diego, California 92101

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF DISPOSITION AGREEMENT AND ESCROW INSTRUCTIONS

THIS MEMORANDUM OF DISPOSITION AGREEMENT AND ESCROW INSTRUCTIONS ("**Memorandum**") is made and entered into as of _____, 20__, by and between Successor Agency City of Oceanside ("**Successor Agency**") acting pursuant to ABx1 26 and AB 1484, and S.D. Malkin Properties, Inc., a Delaware corporation ("**Developer**"), who agree as follows:

1. Successor Agency is the fee owner of that certain real property in Oceanside, California more particularly described on Exhibit 1, attached hereto ("**Property**").

2. Pursuant to the provisions and conditions of that certain Disposition Agreement and Escrow Instructions between Successor Agency and Developer, dated _____, 2013, as the same may be amended from time to time (collectively, the "**Disposition Agreement**"), the provisions and conditions of which are hereby incorporated herein by this reference, Successor Agency has agreed to sell to Developer the Property upon and subject to the provisions and conditions set forth in the Disposition Agreement.

3. This Memorandum is being recorded to give notice to the public that the Property is subject to the provisions and conditions of the Disposition Agreement.

4. This document may be executed in counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.

Successor Agency:

Successor Agency City of Oceanside

By: _____
Name: _____
Title: _____

Approved as to Form
City Attorney's Office

By: _____
Name: _____
Title: City Attorney

Developer:

S.D. Malkin Properties, Inc.
a Delaware Corporation

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.

Notary Public in and for said
County and State

Exhibit 1

Legal Description of Property

Exhibit 5.2.5

Title Exceptions

SCHEDULE B

At the date hereof, items to be considered and exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. Taxes not on Rolls.
2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the revenue and taxation code of the State of California
3. Any adverse claim based upon the assertion that some portion of said land is tide or submerged lands, or has been created by artificial means or has accreted to such portion so created.
4. An unrecorded easement and right of way for sewer pipe line across said land as disclosed by a notice in writing from the City engineer of the City of Oceanside, received January 10, 1953.

Affects: Lots 1 through 4 in Block 16

5. The fact that said land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the Redevelopment Plan) as disclosed by a document.

Redevelopment Agency: Downtown Redevelopment Project
Recorded: November 21, 1975 as Document No. 75-328187 and August 12, 1982 as Document No. 82-248561

6. Intentionally deleted
7. Intentionally deleted
8. Rights of parties in possession of said land.
Matters affecting the rights of said parties are not shown herein.
9. Matters which may be disclosed by an inspection or survey of said land or by inquiry of the parties of possession thereof.
10. The rights of the public in and to that portion of the herein described land lying within Mission Avenue formerly 2nd Street, Myers Street, Seagaze Drive formerly First Street, Pacific Street and Pier View Way formerly Third Street
11. Any private easements or lesser rights in, to, or over the street, highway, or public service easement vacated as referred to below, that were not affected by the proceedings vacating said easement referred to below, including but not limited to private easements for ingress and egress over said land, such easements having been acquired by owners of other lots under conveyances which were made by reference to the Map shown below.

Map of: 344
Recorded: July 1, 1885

SCHEDULE B
(continued)

Affects: Mission Avenue formerly 2nd Street, Myers Street, Seagaze Drive
formerly First Street, Pacific Street, and Pier View Way formerly
Third Street

12. Any rights, interests, or claims which may exist or arise by reason of the following facts shown on a Survey Plat entitled "Oceanside Beach Resort, Oceanside, CA" dated December 8, 2008 prepared by Project Design Consultants:
- a. The fact that various underground sewer, water, gas, power and storm drain facilities are located throughout said land and are not within recorded easements.
 - b. the fact that overhead electric lines and utility poles exist on said land not within a recorded easement.
 - c. The fact that several wood and chain link fences encroach into the street right of ways.
 - d. The fact that a Pay Station is situated within Parcel B.
 - e. The fact that a concrete drive encroaches onto Seagaze Drive.
 - f. The fact that an improvement designated "Existing Wood House Possible Historic Structure" is situated within Parcel D.
 - g. the fact that concrete sidewalk improvements and street lights encroach onto said land

END OF SCHEDULE B

EXHIBIT 9.1

Successor Agency “Bring-Down” Certificate

CERTIFICATION

The undersigned Successor Agency City of Oceanside (“**Successor Agency**”), acting pursuant to ABx1 26 and AB 1484 hereby represents and warrants to S.D. Malkin Properties, Inc., a Delaware corporation (“**Developer**”), pursuant to Section 9.1 of that certain Disposition Agreement and Escrow Instructions, dated _____, 2013 (“**Agreement**”), by and between Developer and Successor Agency, that each of the representations and warranties of Successor Agency set forth in Section 9.1 of the Agreement are true, complete and correct in all material respects as of the date of the Agreement and are true, complete and correct in all material respects on and as of the date hereof.

Successor Agency:

Successor Agency City of Oceanside

By: _____

Name: _____

Title: _____

Date: _____, 20__

Approved as to Form

City Attorney’s Office

By: _____

Name: _____

Title: City Attorney

Date: _____, 20__

EXHIBIT 9.2

Developer “Bring-Down” Certificate

CERTIFICATION

The undersigned S.D. Malkin Properties, Inc., a Delaware corporation (“**Developer**”), hereby represents and warrants to Successor Agency City of Oceanside (“**Successor Agency**”), acting pursuant to ABx1 26 and AB 1484, and pursuant to Section 9.2 of that certain Disposition Agreement and Escrow Instructions, dated _____, 2013 (“**Agreement**”), by and between Developer and Successor Agency, that each of the representations and warranties of Developer set forth in Section 9.2 of the Agreement are true, complete and correct in all material respects as of the date of the Agreement and are true, complete and correct in all material respects on and as of the date hereof.

Developer:

S.D. Malkin Properties, Inc.
a Delaware Corporation

By: _____

Name: _____

Title: _____

Date: _____, 20__

EXHIBIT 10.1.2

RECORDING REQUESTED BY:

Chicago Title Insurance Company

AND WHEN RECORDED RETURN TO:

Brian T. Seltzer, Esq.
Seltzer Caplan McMahon Vitek
A Law Corporation
750 B Street, Suite 2100
San Diego, California 92101

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**AGREEMENT REGARDING REAL PROPERTY
(Use Restrictions)**

THIS AGREEMENT REGARDING REAL PROPERTY ("**Agreement**") is made and entered into as of _____, 20__, by and among Successor Agency City of Oceanside ("**Successor Agency**") acting pursuant to ABx1 26 and AB 1484, the City of Oceanside (the "**City**") and S.D. Malkin Properties, Inc., a Delaware corporation ("**Developer**"), who agree as follows.

**ARTICLE 1
Recitals**

1.1. This Agreement is being executed by Successor Agency, City and Developer in accordance with the provisions and conditions of that certain Disposition Agreement and Escrow Instructions, dated _____, 2014 ("**Disposition Agreement**"). Capitalized terms utilized herein shall have the same meanings as set forth in the Disposition Agreement.

1.2. Successor Agency is currently the owner of certain real property located in Oceanside, California, and more particularly described on Exhibit 1.1 attached hereto (the "**Property**").

1.3. The Property is divided into two separate "**Phases**," which are identified and referred to herein as "**Phase 1**" and "**Phase II**."

1.4. A separate legal description for Phase I is attached hereto as Exhibit 1.3.

1.5. A separate legal description to Phase II is attached hereto as Exhibit 1.4.

1.6. The parties intend, by this Agreement, to create covenants running with the Property, as contemplated by California Civil Code §1468 and California Health and Safety Code section 33438

ARTICLE 2 Consideration

2.1. Successor Agency agreed to sell, transfer and convey Phase I and Phase II to Developer in express reliance and in consideration of the Developer's execution of this Agreement and the understanding that each successive owner of Phase I and(or) Phase II (upon the acquisition of Phase II) shall be bound by this Agreement. Furthermore, the City has agreed to the Agreement Regarding Real Property ("**TOT**") with Developer in express reliance and in consideration of the Developer's execution of this Agreement and the understanding that each successive owner of Phase I and(or) Phase II shall be bound by the provisions and conditions of this Agreement.

2.2. This Agreement shall initially only bind and encumber Phase I; upon Developer's acquisition of Phase II, then this Agreement shall bind and encumber Phase II and the grant deed for Phase II shall so provide.

ARTICLE 3 Restriction on Use and Covenants Running With the Land

3.1. Developer, on behalf of itself and each successor owner of Phase I, and when Developer or its successor acquires Phase II, then Phase II, hereby covenants and agrees that the use of Phase I and Phase II by Developer and each successor shall be limited to one or more hotels (individually a "**Hotel**" and collectively the "**Hotels**"), with the Hotel to be initially situated on Phase I containing an approximately two hundred twenty five (225) "Guest Room" (as herein defined), full service Westin Hotel (or its equivalent) ("**Phase I Hotel**") and the Hotel to be initially situated on Phase II containing a minimum of one hundred thirty five (135) Guest Rooms ("**Phase II Hotel**"). For purposes hereof, a "**Guest Room**" shall mean a rentable unit consisting of a room or suite of rooms generally used for overnight guest accommodation, entrance to which is controlled by the same key; adjacent rooms with connecting doors that can be locked and entered as separate units shall be deemed separate Guest Rooms. It is agreed that the Hotels:

3.1.1 Shall be developed at one (1) time or in Phases, with the Phase I Hotel being developed first if the Property is developed in Phases.

3.1.2 Shall incorporate at least 36,000 square feet of open space between the two (2) Phases, which includes interior public amenities, all as shown in the Concept Plans.

3.1.3 Shall be, with respect to the Phase 1 Hotel, a full service hotel of a type substantially equivalent with four (4) star quality, at least consistent in quality and with amenities substantially comparable to the Sheraton Carlsbad Marriott

Del Mar, Hilton Huntington Beach and Marriott Coronado (“**Phase I Competitive Set**”) and, with respect to the Phase II Hotel, at least consistent in quality and with amenities substantially comparable to the Indigo Hotel in San Diego, the Shorebreak Hotel in Huntington Beach and the Pacific Terrace Hotel in San Diego (“**Phase II Competitive Set**”). The Phase I Competitive Set and the Phase II Competitive Set are sometimes referred to herein as a “**Competitive Set**” and each hotel listed in each Competitive Set is individually referred to as a “**Comparable Hotel**.”

3.1.4 Shall be build pursuant to a code compliant construction type.

3.1.5 Shall comply with applicable requirements for parking calculated in the EIR, specifically including a 20% shared parking reduction and with valet parking spaces calculated as set forth in the EIR. In this regard, the Phase I Hotel shall include two (2) levels of underground parking and the Phase II Hotel shall include one (1) level of underground parking. Any change in the scope and use of any restaurant in the Hotels shall comply with the EIR.

3.1.6 Shall include on those portions of the Property described on Exhibit 3.1.6 attached hereto, 18,500 square feet of visitor serving commercial space, which shall all be used for those uses permitted by Applicable Laws.

3.1.7 Shall include at least a 6,400 square foot ballroom in the Phase I Hotel and a total of approximately 20,000 square feet of pre-function, function and meeting space in both Phases inclusive of the ballroom in the Phase I Hotel.

3.1.8 Shall include 30% of the site as a “public space amenity” with a maximum of 15% to be interior public space, as defined in the EIR.

3.2. No Discrimination or Segregation. Developer, on behalf of itself and each successive owner of Phase I, and when Developer or its successor acquires Phase II, then Phase II, herein covenants and agrees that the use of Phase I and Phase II by Developer and each successor shall subject to the following conditions:

3.2.1 That there shall be no discrimination against or segregation of any individual or entity or group of individuals or entities, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (l) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Hotels nor shall Developer or any successor to Developer 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 Hotels.

3.2.2 Section 3.2.1 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 3.2.1 shall be construed to affect Section 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to Section 3.2.1.

ARTICLE 4 Changes in Competitive Set

4.1. Developer shall operate the Phase I Hotel at a quality level substantially consistent with the Phase I Competitive Set. Developer shall operate the Phase II Hotel at a quality level substantially consistent with the Phase II Competitive Set.

4.2. Either City or Developer may, upon written notice to the other, from time to time, request the removal of any Comparable Hotel from either Competitive Set, if any of the following events occur with respect to such Comparable Hotel:

4.2.1 The Comparable Hotel changes operators or brand/flag affiliation to an operator or brand/flag affiliation that occupies a materially different market position other than the other Comparable Hotels of the Competitive Set;

4.2.2 The Comparable Hotel ceases operation;

4.2.3 The Comparable Hotel substantially changes its market position from that which existed at the time such Comparable Hotel was placed in the Competitive Set, such that the Comparable Hotel then has a substantially higher or lower "RevPar" (as herein defined) in comparison to the average RevPar for the other Comparable Hotels of the Competitive Set;

4.2.4 Unless Developer and City otherwise agree, the Comparable Hotel contains 40% less or 40% more Guest Rooms; or

4.2.5 The Comparable Hotel can be demonstrated to be charging for Guest Rooms in a manner different from the other Comparable Hotels of the Competitive Set (e.g., the inclusion of services other than the rental of Guest Rooms for which guests are typically separately charged, such as food and beverage of relative significant value, Guest Rooms are sold as condominium interests, etc.).

4.3. Whenever City or Developer requests the removal of any Comparable Hotel from a Competitive Set, the requesting party shall also propose, for mutual agreement between City and Developer, a replacement Comparable Hotel to be placed in the approved Competitive Set, in place of the Comparable Hotel requested to be removed. To the extent that a commercially reasonable replacement Comparable Hotel is not available, then the party requesting removal of a Comparable Hotel from the Competitive Set shall state such belief in its request for removal of the

Comparable Hotel. The party that is not requesting a change in the Competitive Set may also propose replacement Comparable Hotels for agreement between City and Developer to replace any Comparable Hotel requested to be removed. Any replacement Comparable Hotel that either Successor Agency or Developer requests to be added to the Competitive Set must satisfy all of the following criteria:

4.3.1 Be within one hundred (100) miles of the Property or, if there is no Comparable Hotel within one hundred (100) miles of the Property that meets the criteria for a replacement Comparable Hotel, then: (a) within two hundred (200) miles of the Property; and (b) a participant in the Star Report of Smith Travel Research (or its successor that is generally recognized as such by the United States hotel industry), so that Developer is able to provide City with the data necessary to calculate the RevPar of the proposed Comparable Hotel; provided that a hotel shall not be eligible as a replacement Comparable Hotel unless City and Developer are each able to calculate the RevPar from data from a source independent of the other party (including any data provided by the other party from a source that the party receiving such data reasonably determines is independent of the party providing such data); and

4.3.2 Unless Developer and City otherwise agree, have no less than 50% nor more than 50% of the number of Guest Rooms; and

4.3.3 Have a RevPar that is within fifteen percent (15%) of the average RevPar for the other Comparable Hotels in the Competitive Set (exclusive of the Comparable Hotel proposed to be removed from the Competitive Set and any hotel undergoing any major construction or major restoration or renovation), at the time such replacement Comparable Hotel is recommended for inclusion in the Competitive Set.

4.4. If Developer and City cannot agree as to whether a Comparable Hotel should be removed from the Competitive Set, or whether any replacement Comparable Hotel should be added to the Competitive Set, either party may submit such disagreement to "Arbitration" (as herein defined), solely with respect to whether or not: (a) the criteria for removal of the subject Comparable Hotel from the Competitive Set have been satisfied; and (b) any replacement Comparable Hotel meets the criteria for inclusion in the Competitive Set. The arbitrator(s) shall have no power to alter the criteria for removal or replacement of a Comparable Hotel with reference to the Competitive Set, as set forth above. If the Arbitrator(s) agree that a Comparable Hotel satisfies the criteria of this Agreement for removal from the Competitive Set, but do not agree that any of the proposed replacement hotels satisfy the criteria of this Agreement for inclusion in the Competitive Set, the Comparable Hotel may be removed from the Competitive Set without being replaced, as long as at least three (3) other Comparable Hotels exist for each Competitive Set. If at any time during the term hereof the number of hotels satisfying the criteria for inclusion in the Competitive Set hereunder is less than three (3) for each Competitive Set, then City and Developer shall negotiate in good-faith to add hotels to the Competitive Set without reference to the criteria specified in 4.3.1 above.

4.5. For purposes hereof, “**RevPav**” means the gross revenues derived from Guest Room rentals (including, without limitation, Guest Room rentals, food and beverage revenue, meeting room rental revenue and parking revenue) divided by the number of Guest Rooms available, each during the same specified time period.

4.6. For purposes hereof, “**Arbitration**” means a proceeding under the Comprehensive Arbitration Rules and Procedures of JAMS, as modified and replaced from time to time.

ARTICLE 5

Termination of Operator

5.1. Developer may, from time to time, terminate the management company (“**Operator**”) operating either the Phase 1 Hotel or the Phase II Hotel and replace the same, subject to the prior approval of the City, which approval shall not be unreasonably withheld or delayed. Developer shall provide City information regarding the proposed Operator (“**Replacement Operator**”) so that City shall be in position to consider Developer’s request for approval based upon the following criteria:

5.1.1 The management experience of the Replacement Operator in managing a hotel similar in size and quality to the Hotel.

5.1.2 The management experience of the Replacement Operator in managing a hotel substantially equivalent to the hotels in the applicable Competitive Set.

5.1.3 The financial stability and capacity of the Replacement Operator.

5.1.4 The industry reputation of the Replacement Operator.

5.2. City shall approve or disapprove by written notice the Replacement Operator within thirty (30) days following its receipt of the request by Developer. If City fails to approve or disapprove the Replacement Operator within thirty (30) days after receipt of the request, then the City shall be deemed to have approved the Replacement Operator.

5.3. If City and Developer cannot agree as to a proposed Replacement Operator, Developer may submit such disagreement to Arbitration, solely with respect to whether or not the Replacement Operator should be approved based on the criteria set forth in Section 6.1. The Arbitrator(s) shall have no power to alter the criteria set forth in Section 5.1.

ARTICLE 6
Change in Franchise

6.1. Developer may change the franchise (“**Franchise**”) for the Phase I Hotel or the Phase II Hotel and replace the same (“**Replacement Franchise**”), subject to the approval of City, which shall not be unreasonably withheld or delayed, based on whether that Franchise is consistent with the applicable Competitive Set. Developer shall provide City information as to the Replacement Franchise so that the City shall be in position to consider the Developer’s proposal based on the foregoing criteria.

6.2. City shall approve or disapprove by notice the proposed Franchise within thirty (30) days following its receipt of the request by Developer. If City fails to approve or disapprove the Replacement Franchise within thirty (30) days after receipt of request, then City shall be deemed to have approved the Replacement Franchise.

6.3. If City and Developer cannot agree as to a proposed Replacement Franchise, Developer may submit such disagreement to Arbitration, solely with respect to whether or not the Replacement Franchise should be approved. The Arbitrator(s) shall have no power to alter the criteria set forth in Section 6.1

ARTICLE 7
Covenants Running with the Land

7.1. Consistent with California Civil Code §1468, each of the provisions, conditions and obligations set forth in this Agreement shall constitute covenants running with the land, which covenants touch and concern the land. Developer and each successor of Developer, during its ownership of any portion of the Property (as to Phase I and Phase II, after Developer or its successor acquires title to the same), shall be bound hereby for the benefit of Successor Agency, the City, and each successor or assign of Successor Agency and City.

ARTICLE 8
Further Assurances

8.1. Each party to this Agreement shall execute all instruments and documents and take all actions as may be reasonably required Successor Agency, City and Developer or to effectuate this Agreement.

ARTICLE 9
The Agreement

9.1. The Agreement and the covenants and conditions set forth herein has a term of seventy-five (75) years from the Effective Date, after which it shall automatically expire.

ARTICLE 10

General Provisions

10.1. This Agreement may only be amended by a written document signed by Successor Agency, City and Developer that refers specifically to this Agreement. This Agreement (and the Exhibits attached hereto) contains the entire agreement between the parties relating to the transaction contemplated by this Agreement and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded.

10.2. If either party commences litigation for the judicial interpretation reformation, enforcement or rescission hereof, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and court and other costs incurred.

10.3. All provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective administrators or executors, successors and assigns. No individual or entity not a party to this Agreement shall have the right to enforce this Agreement or be considered a third party beneficiary of any covenants or conditions hereunder.

10.4. This Agreement will be construed and enforced in accordance with the laws of the State of California.

10.5. The parties acknowledge that any dispute or controversy concerning this Agreement or the rights of the parties under this Agreement, including (i) whether or not any such dispute or controversy is arbitrable and/or subject to this Section 21, or (ii) any breach of this Agreement, shall be determined in accordance with the following provisions:

10.5.1 Upon the occurrence of any dispute or controversy that cannot be settled through direct discussions, the parties will endeavor to settle the dispute by nonbinding mediation administered by JAMS, before resorting to litigation. The parties shall agree to a mediator and if they are unable to agree, the San Diego office of JAMS shall select a mediator who may be rejected by the parties only for bias. The parties shall notify the mediator in writing of the existence of a dispute and the mediator shall have thirty (30) days from receipt of notification to meet with the parties and help them resolve the dispute, unless the parties mutually agree to an extension of the deadline. The cost of mediation (but not the attorneys' fees of the respective parties) shall be borne equally between the parties. No party hereto can compel arbitration before the end of the thirty (30) day period.

10.5.2 In the event that the Parties are unable to resolve any dispute or controversy submitted to nonbinding mediation pursuant to Section 10.5.1, subject to any applicable claims presentation requirements required under the California Government Code, if any, any Party may initiate litigation in the Superior Court of the State of California to enforce the terms of this Agreement. In any such action, either

party may seek appropriate equitable relief, including specific performance, to compel compliance with this Agreement and/or seek recovery of all applicable damages for breach. Venue shall be in the North County Civil Branch. This Agreement shall be construed in accordance with California law. The Prevailing Party in any litigation shall be entitled to an award of reasonable attorney fees. For purposes of this Agreement, the term Prevailing Party shall be the Party that secures a final judgment granting injunctive or other equitable relief, and/or awarding damages for the breach of this Agreement.

Remainder of page intentionally left blank.

10.6. Time is of the essence of each covenant and condition in this Agreement for which a date of performance is specified.

Successor Agency:

Successor Agency City of Oceanside

By: _____
Name: _____
Title: _____

City of Oceanside

By: _____
Name: _____
Title: _____

Approved as to Form
City Attorney's Office

By: _____
Name: _____
Title: City Attorney

Developer:

S.D. Malkin Properties, Inc.
a Delaware Corporation

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.

Notary Public in and for said
County and State

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.

Notary Public in and for said
County and State

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.

Notary Public in and for said
County and State

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.

Notary Public in and for said
County and State

Exhibit 1.1

Legal Description of Property

Exhibit 1.3

Legal Description of Phase I

Exhibit 1.4

Legal Description of Phase II

EXHIBIT 10.1.3

RECORDING REQUESTED BY:

Chicago Title Insurance Company

AND WHEN RECORDED RETURN TO:

Brian T. Seltzer, Esq.
Seltzer Caplan McMahon Vitek
A Law Corporation
750 B Street, Suite 2100
San Diego, California 92101

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**AGREEMENT REGARDING REAL PROPERTY
(TOT)**

THIS AGREEMENT REGARDING REAL PROPERTY ("**Agreement**") is made and entered into as of _____, 20__, by and between S.D. Malkin Properties, Inc., a Delaware corporation ("**Developer**") and the City of Oceanside ("**City**"), who agree as follows.

**ARTICLE 1
RECITALS**

1.1. Successor Agency of the City Oceanside in accordance with California Health and Safety Code Section 34180 et. seq. ("**Successor Agency**") acting pursuant to ABx1 26 and AB 1484 is currently the owner of that certain real property in Oceanside, California, described on Exhibit 1.1 attached hereto (the "**Property**").

1.2. The Property is divided into "**Phase I**" and "**Phase II**".

1.3. A legal description for Phase I is attached hereto as Exhibit 1.3.

1.4. A legal description of Phase II is attached hereto as Exhibit 1.4.

1.5. It is the intention of Developer to develop and operate a 225 "Guest Room" (as herein defined) hotel on Phase I (the "**Phase I Hotel**"). A "**Guest Room**" is defined to mean a rentable unit constituting of a room or a suite of rooms generally used for overnight guest accommodation, entrance to which is controlled by the same key, and which is not rented to or used by an individual or entity for more than twenty-nine (29) consecutive nights. Adjacent rooms with connecting doors that can be locked and rented as separate units shall be deemed to be separate Guest Rooms.

1.6. It is the intention of Developer to develop and operate a 135 Guest Room hotel on Phase II (the “**Phase II Hotel**”).

1.7. The Phase I Hotel and the Phase II Hotel are collectively referred to herein as the “**Hotels**”.

It is anticipated that, once built, the Hotels, and each of them, shall generate “TOT Revenues” (as herein defined). For purposes hereof: (a) “**TOT**” shall mean the tax imposed on transient occupancy of hotels located in the City as a percentage of the rent charged, pursuant to City Municipal Code Sections 34.13, et seq., and any successor Sections; and (b) “**TOT Revenues**” shall mean all revenues received by the City for TOT arising from the operation of the Hotels. The City currently has an approved Tourism Marketing District (“**TMD**”), a special benefits district permitted by Streets and Highways Code Section 36600, which applies to all hotels within the City. Hotels subject to the TMD pay an assessment of 1.5 percent of room rental revenue to the City. For purposes of this Agreement, the TMD assessment is excluded from the definition of TOT Revenues. It is expressly understood by the Parties that the City’s obligation to make payments in accordance with this Agreement shall be solely and exclusively from the TOT Revenues generated by the operation of the Phase I and Phase II hotels as provided below, and that the City shall have no obligation to pay the sums required under this Agreement from any other source. Should the Phase I and Phase II hotels not generate sufficient revenues, the City shall have no obligation to make the payments described below.

1.8. The parties intend, by this Agreement, to create covenants running with the Property, as contemplated by California Civil Code Section 1468.

ARTICLE 2 CONSIDERATION

2.1. Developer has agreed to acquire Phase I and(or) Phase II from Agency in express reliance and in consideration of the City’s execution of this Agreement and the understanding that the City shall be bound by this Agreement.

ARTICLE 3 USE

3.1. Subject to the provisions and conditions below, City shall pay to Developer a total of \$ \$11,335,250 (“Net Present Value,” as herein defined) payable solely from those TOT Revenues paid to the City from the operation of the Phase I and Phase II Hotels , as follows:

3.1.1 \$9,075,250 (Net Present Value) of this amount shall be attributed to the Phase I Hotel and \$2,260,000 (Net Present Value) to the Phase II Hotel.

3.1.2 For the Phase I Hotel, Developer shall be paid by City 100% of the TOT Revenues for the first three (3) years of operation after the Phase I Hotel opens for business to the general public (the "Phase I Opening Date"). Beginning in year four (4) after the Phase I Opening Date, the TOT Revenues for the Phase I Hotel shall be allocated and paid by City to Developer as follows:

<u>TOT Revenue Thresholds</u>	<u>City Share</u>	<u>Developer Share</u>
\$1.00 - \$200,000.00	75%	25%
\$200,001.00 - \$400,000.00	50%	50%
\$400,001.00 - \$600,000.00	20%	80%
\$600,001.00 and above	0%	100%

Beginning in the 2nd year after the Phase I Opening Date and for each subsequent year, the associated Thresholds shall be increased by 3% per annum.

3.1.3 The TOT Revenue for the Phase I Hotel shall continue to be paid to Developer by City in accordance with Section 3.1(b) above until the earlier of: (a) the payment of \$9,075,250 of TOT Revenue (Net Present Value); or (b) fifteen (15) years from the Phase I Opening Date.

3.1.4 For the Phase II Hotel, Developer shall be paid by City 100% of the TOT Revenues for the first three (3) years of operation after the Phase II Hotel opens for business to the general public (the "Phase II Opening Date"). The TOT Revenues for the first \$1,124,100 in TOT generated after the Phase II Opening Date shall be "transferred to the Phase I Hotel" and shall be (totally) allocated toward the \$9,075,250 (Net Present Value) (the "TOT Transfer"). Beginning in year four (4) after the Phase II Opening Date, TOT Revenues for the Phase II Hotel shall be allocated and paid by City to Developer as follows:

<u>TOT Revenue Thresholds</u>	<u>City Share</u>	<u>Developer Share</u>
\$0 - \$250,000.00	100%	0%
\$250,001.00 - \$500,000.00	50%	50%
\$500,001.00 - \$750,000.00	15%	85%
\$750,001.00 and above	0%	100%

Beginning in the 2nd year after the Phase II Opening Date and for each subsequent year, the foregoing thresholds shall be increased by 3% per annum.

3.1.5 The TOT Revenue shall continue to be paid to Developer by City in accordance with the formula set forth in Section 3.1(d) until the earlier of: (a) the payment of \$2,260,000 of TOT Revenue (Net Present Value) (any amounts "transferred to the Phase I Hotel" pursuant to the TOT Transfer shall be excluded from the calculation of the \$2,260,000 (Net Present Value) for the Phase II Hotel); or (b) fourteen (14) years from the Phase II Opening Date.

3.1.6 **“Net Present Value”** shall be determined as of the Close of Escrow for each respective Phase, calculated at a discount rate of twelve percent (12%) per annum.

3.1.7 Developer’s share of TOT Revenues, as so provided, shall be paid to Developer quarterly, in arrears, within sixty (60) days after the end of each “Calendar Quarter” (as herein defined). **Calendar Quarter** shall mean those three (3) calendar month periods, ending the last day of March, June, September and December of each year., Developer shall present the City with a statement within thirty (30) days after the of each Calendar Quarter identifying the amount of the payment owed to the Developer along with any documents reasonably required by the City to verify the amount of the payment required under this Agreement.

3.1.8 By way of illustration only, the Parties have prepared worksheets, attached hereto as Exhibit 1.5, identifying the potential for TOT payments to the Developer for the South Block and North Block hotels. The worksheets model the potential generation of TOT for both the City and the Developer and are not intended to amend the formula or the time period for TOT sharing set forth in this Article 3. Rather, the worksheets are intended by the Parties as a guide in the implementation of this Article 3. In the event of an inconsistency between the worksheets and Article 3, the text of Article 3 shall control.

ARTICLE 4 ALLOCATION PAYMENT FOR LOT 26 AND OFFSITE IMPROVEMENTS

4.1 Under the project EIR, Developer is required to pay \$180,000 as mitigation payment for forty (40) parking spaces in Lot 26. Lot 26 construction has been competed and paid for with Successor Agency funding. The \$180,000 mitigation payment condition of approval is hereby considered satisfied..

4.2 On January 21, 2014, the Oversight Board took action approving the expenditure of former Redevelopment tax-exempt bond proceeds previously set aside for hotel off-site improvements for other qualifying public improvement is the downtown area. These expenditures were in the amount of \$1,743,267 and are a direct credit against the specific Development Impact Fees for the hotel project for the following specific Development Impact Fees:\$19,400 Drainage; \$402,000 in Public Facilities Fees; \$75,911 in Traffic Signal Fees; \$308,400 in Thoroughfare Fees; \$684,444 in Water Connection Fees and \$253,472 in Sewer Buy-In Fees.

4.3 Exhibit K to the 2009 Disposition Agreement and Ground Lease identified \$609,750 worth of project related mitigation infrastructure associated with the project. The specific Traffic Mitigation Infrastructure identified in Exhibit K will be the responsibility of the City and the condition is deemed satisfied.

**ARTICLE 5
COVENANTS RUNNING WITH THE LAND**

5.1. Consistent with California Civil Code §1468, each of the provisions, conditions and obligations set forth in this Agreement, including, particularly, the provisions and conditions of Section 3.1 hereof, shall constitute covenants running with the land, which covenants touch and concern the land. Each such provision, condition or obligation, including, particularly, the provisions and conditions of Section 3.1 hereof, shall run in favor of Property. Any violation or breach of the provisions and conditions of this covenant, including, particularly, the provisions and conditions of Section 3.1 hereof, may be enjoined, abated or remedied by appropriate proceedings at the instance of any present or subsequent owner of the Property.

5.2. For purposes hereof, this covenant constitutes property for which Developer and each successor or assign of Developer, during its ownership of any portion of the Property, shall be entitled to recover compensation for damages from the applicable condemning authority in the event this Agreement is terminated incident to and otherwise arising out of a condemnation action.

**ARTICLE 6
FURTHER ASSURANCES**

6.1. Each party to this Agreement shall execute all instruments and documents and take all actions as may be reasonably required by City (and their respective successors and assigns) and Developer (and their respective successors and assigns) to effectuate this Agreement.

**ARTICLE 7
GENERAL PROVISIONS**

7.1. This Agreement may only be amended by a written document signed by Developer and City that refers specifically to this Agreement. Any amendment to this Agreement shall require approval by the City Council of the City at a duly noticed public meeting. This Agreement (and the Exhibits attached hereto) contains the entire agreement between the parties relating to the transactions contemplated by this Agreement and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded.

7.2. If either party commences litigation for the judicial interpretation reformation, enforcement or rescission hereof, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and court and other costs incurred.

7.3. All provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective administrators or executors, successors and assigns. No individual or entity not a party to this

Agreement shall have the right to enforce this Agreement or be considered a third party beneficiary of any covenants or conditions hereunder.

7.4. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

7.5. Time is of the essence of each covenant and condition in this Agreement for which a date of performance is specified.

7.6. The parties acknowledge that any dispute or controversy concerning this Agreement or the rights of the parties under this Agreement, including (i) whether or not any such dispute or controversy is arbitrable and/or subject to this Section 21, or (ii) any breach of this Agreement, shall be determined in accordance with the following provisions:

7.6.1 Upon the occurrence of any dispute or controversy that cannot be settled through direct discussions, the parties will endeavor to settle the dispute by nonbinding mediation administered by JAMS, before resorting to arbitration. The parties shall agree to a mediator and if they are unable to agree, the San Diego office of JAMS shall select a mediator who may be rejected by the parties only for bias. The parties shall notify the mediator in writing of the existence of a dispute and the mediator shall have thirty (30) days from receipt of notification to meet with the parties and help them resolve the dispute, unless the parties mutually agree to an extension of the deadline. The cost of mediation (but not the attorneys' fees of the respective parties) shall be borne equally between the parties. No party hereto can compel arbitration before the end of the thirty (30) day period.

7.6.2 Except for claims identified in Section 6.6.7 of this Agreement, any remaining unresolved controversy or claim arising out of or relating to this Agreement shall be settled by binding arbitration, which shall constitute the sole and exclusive remedy. Any Party desiring to institute an arbitration proceeding hereunder shall send written notice thereof, briefly describing the nature of the matter to be arbitrated, to the JAMS (San Diego Office) with a copy to the other parties. Any such arbitration proceeding shall be carried out in accordance with the following provisions:

7.6.3 The arbitration proceeding shall be conducted under the JAMS rules, in effect at the time a demand for arbitration is made. To the extent that there is any conflict between the JAMS rules and these arbitration provisions, these provisions shall govern and determine the rights of the parties.

7.6.4 The arbitration will take place in San Diego, California before a single arbitrator. The San Diego Office of JAMS shall provide a list of the available qualified arbitrators to arbitrate such dispute following the demand for arbitration. The parties shall each rank the arbitrators in their respective order of preference (numbered one through the end of the list presented) and present the rankings to the San Diego Office of JAMS. The highest ranking arbitrator (as determined by the sum of the numeric rankings given by the parties) shall serve as the single arbitrator.

7.6.5 The decision of the arbitrator, including a determination of the amount of any damages suffered, shall be conclusive, final and binding on the parties, their successors and assigns, as applicable and not subject to appeal. In all cases, the arbitration shall apply and follow California law.

7.6.6 The costs of arbitration, including attorneys' fees, administrative fees, fees for a record and transcript, and the arbitrator's fees shall be borne by the Party(ies) not prevailing in such action as determined by the arbitrator.

7.6.7 In the event either Party initiates litigation to enforce or seek damages for the breach of the Agreement Regarding Real Property (Use Restrictions) , Exhibit 10.1.2, any related dispute over the payment of TOT as a remedy for said breach shall not be subject to the binding arbitration provisions of this section, but shall instead be resolved in accordance with Section 10.5.2.

City:

City of Oceanside

By: _____
Name: _____
Title: _____

Approved as to Form

City Attorney's Office

By: _____
Name: _____
Title: City Attorney

Developer:

S.D. Malkin Properties, Inc.
a Delaware Corporation

By: _____
Name: _____
Title: _____

Exhibit 1.1

Legal Description of Property

Exhibit 1.3

Legal Description of Phase I

Exhibit 1.4

Legal Description of Phase II

EXHIBIT 10.1.4

ASSIGNMENT AND ASSUMPTION OF APPURTENANT RIGHTS

THIS ASSIGNMENT AND ASSUMPTION OF APPURTENANT RIGHTS (“**Assignment**”) is made and entered into as of _____, _____ (“**Effective Date**”), by and between Successor Agency City of Oceanside ., (“**Assignor**”), and S.D. Malkin Properties, Inc., a Delaware corporation (“**Assignee**”), who agree as follows:

ARTICLE 1 Recitals

1.1. Assignor and Assignee are parties to that certain Disposition Agreement and Escrow Instructions, dated _____, 201__ (“**Disposition Agreement**”).

1.2. Assignor is the owner of that certain real property located in Oceanside, California, described on Exhibit 1.2 attached hereto (“**Real Property**”).

1.3. Assignor is conveying to Assignee and Assignee is acquiring from Assignor all of Assignor’s right, title, and interest in and to that portion of the Real Property described on Exhibit 1.3 attached hereto (“**Phase** ___”) and all “Appurtenant Rights” appurtenant thereto (as defined in the Disposition Agreement) (collectively defined in the Disposition Agreement as the “**Property**”).

1.4. The Disposition Agreement provides for the division of the Project into “**Phases**” (as defined in the Disposition Agreement).

1.5. In connection with the transfer of the Property, and as part thereof, Assignor desires to assign to Assignee, and Assignee desires to accept the assignment of, all of Assignor’s right, title and interest as applicable in and to the Appurtenant Rights. The “**Appurtenant Rights**” specifically include and are hereby defined and in the Disposition Agreement to mean the following: (a) all easements and licenses appurtenant to the applicable Phase; and (b) all right, title and interest of the Successor Agency to the extent that the same exist, by reversion or otherwise, in and to any roads, streets, and ways, public or private, serving the applicable phase.

ARTICLE 2 Assignment and Assumption

2.1. Assignor hereby, grants, assigns and transfers to Assignee the Appurtenant Rights.

2.2. Assignee hereby accepts the assignment, grant and transfer set forth in Paragraph 2.1 above.

ARTICLE 3
General Provisions

3.1. This Assignment may only be amended by a written document signed by both Assignor and Assignee that refers specifically to this Assignment. This Assignment (and the Exhibit attached hereto) contains the entire agreement between the parties relating to the transactions contemplated by this Assignment and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded.

3.2. If either party commences litigation for the judicial interpretation reformation, enforcement or rescission hereof, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and court and other costs incurred.

3.3. All provisions and conditions of this Assignment will be binding upon and inure to the benefit of the parties and their respective administrators or executors, successors and assigns. No individual or entity not a party to this Assignment shall have the right to enforce this Assignment or be considered a third party beneficiary of any covenants or conditions hereunder.

3.4. This Assignment may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

3.5. This Assignment will be construed and enforced in accordance with the laws of the State of California.

Assignor:

Successor Agency City of Oceanside

By: _____
Name: _____
Title: _____

Approved as to Form
City Attorney's Office

By: _____
Name: _____
Title: City Attorney

Assignee:

S.D. Malkin Properties, Inc.
a Delaware Corporation

By: _____
Name: _____
Title: _____

Exhibit 1.2

Legal Description of the Real Property

Exhibit 1.3

Legal Description of Phase _____

EXHIBIT 10.1.5

RECORDING REQUESTED BY:

Chicago Title Insurance Company

AND WHEN RECORDED RETURN TO:

Brian T. Seltzer, Esq.
Seltzer Caplan McMahon Vitek
A Law Corporation
750 B Street, Suite 2100
San Diego, California 92101

(SPACE ABOVE THIS LINE IS FOR RECORDER'S USE)

GRANT OF EASEMENT

(Mission Avenue)

THIS GRANT OF EASEMENT is made as of _____. 20__, between the City of Oceanside (collectively "**Grantor**"), and S.D. Malkin Properties, Inc. a Delaware Corporation ("**Grantee**"), who agree as follows:

1. Recitals. This Grant of Easement is executed in contemplation of the following facts and circumstances:

1.1 Grantor is the owner of that certain real property in Oceanside, California, described on Exhibit 1.1 attached hereto ("**Affected Property**").

1.2 The surface of the Affected Property currently has a public street (Mission Avenue) situated thereon (the "**Public Street**").

1.3 Grantee is the owner of that certain real property in Oceanside, California, described on Exhibit 1.3 attached hereto ("**Phase I**").

1.4 Grantee intends to develop a hotel on Phase I and certain real property in Oceanside, California, adjacent to the Phase I ("**Phase II**"). A legal description of Phase II is attached hereto as Exhibit 1.4. The hotels to be developed on Phase I and Phase II are individually referenced to herein as a "**Hotel**" and collectively as "**Hotels**."

1.5 It is the intent of the parties, by this Grant of Easement, to have Grantor grant to Grantee an easement to construct, maintain and use an area below the surface of the Public Street on the Affected Property as a parking garage for the Hotel situated on Phase I as shown on Exhibit 1.5 attached hereto ("**Easement Area**"). It is the intent of the parties that upon such date as Grantee or its successor acquires Phase II (the "**Acquisition Date**"), then the Easement shall be deemed appurtenant to Phase II as well, for the benefit of the Hotel situated on Phase II.

2. Grant of Easement. For valuable consideration, receipt of which is hereby acknowledged, Grantor hereby grants to Grantee in perpetuity an easement to construct maintain and use the Easement Area as a parking garage to serve the Hotels.

3. Maintenance. Grantee shall maintain the Easement Area in a state of good repair and in a safe and sanitary condition. Grantee shall not be responsible for maintaining the Public Street.

4. Indemnity. Grantee shall indemnify, defend and hold the Grantor harmless from all claims, demands, liability and expenses (including attorney's fees and costs) arising out of the use of the Easement Area by Grantee and its contractors, subcontractors, licensees and invitees.

5. Appurtenant. The Easement shall be deemed appurtenant to the Phase I and, upon the Acquisition Date, Phase II.

6. Binding Effect. This Grant of Easement shall be binding upon and shall inure to the benefit of each of the parties hereto and their respective heirs, executors, successors-in-interest, grantees and assigns.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

7. Attorney's Fees. If an action is brought to enforce or interpret the provisions and conditions of this Grant of Easement, the prevailing party shall be entitled to recover its attorney's fees and costs.

Grantor:

City of Oceanside

By: _____
Name: _____
Title: _____

Approved as to Form

City Attorney's Office

By: _____
Name: _____
Title: City Attorney

Grantee:

S.D. Malkin Properties, Inc.
a Delaware Corporation

By: _____
Name: _____
Title: _____

Exhibit 1.1
Affected Property

Exhibit 1.3

Legal Description of Phase I

Exhibit 1.4

Legal Description of Phase II

Exhibit 1.5
Easement Area

EXHIBIT 10.2.1

Seller's Grant Deed

RECORDING REQUESTED BY:

Chicago Title Insurance Company

AND WHEN RECORDED MAIL TO:

Brian T. Seltzer, Esq.
Seltzer Caplan McMahon Vitek
A Law Corporation
750 B Street, Suite 2100
San Diego, California 92101

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Tax Parcel Number _____

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged Successor Agency City of Oceanside hereby grants to S.D. Malkin Properties, Inc., a Delaware corporation, the following described real property situated in the City of Oceanside, County of San Diego, State of California:

See Exhibit 1 attached hereto and by referenced made a part hereof.

Successor Agency:

Successor Agency City of Oceanside

By: _____
Name: _____
Title: _____
Date: _____

Approved as to Form

City Attorney's Office

By: _____
Name: _____
Title: City Attorney
Date: _____

Exhibit 1

Legal Description

EXHIBIT 10.2.2

BILL OF SALE

FOR VALUE RECEIVED, Successor Agency City of (“**Successor Agency**”), hereby sell, convey and assign to S.D. Malkin Properties, Inc., a Delaware corporation (“**Grantee**”), free and clear of all security interests and claims of third parties, all of the “Intangible Property” as defined in the “Disposition Agreement” (as defined below) which is used in the ownership, operation and management of that certain real property in Oceanside, California, described as “Phase ___” in the “Disposition Agreement” (as herein defined) on Exhibit 1 attached hereto and the improvements thereon.

This Bill of Sale is being delivered in accordance with the provisions and conditions of that certain Disposition Agreement and Escrow Instructions between Successor Agency and Grantee (the “**Disposition Agreement**”), the provisions and conditions of which are hereby incorporated herein by this reference.

Successor Agency represents and warrants to Grantee that it is fully empowered and authorized to execute and deliver this Bill of Sale, and the individual executing this Bill of Sale on behalf of Successor Agency is fully empowered and authorized to do so.

Successor Agency:

Successor Agency City of Oceanside

By: _____
Name: _____
Title: _____
Date: _____

Approved as to Form
City Attorney’s Office

By: _____
Name: _____
Title: City Attorney
Date: _____

Exhibit 1

Legal Description

EXHIBIT 10.2.6

CERTIFICATION OF NON-FOREIGN STATUS

To inform, S.D. Malkin Properties, Inc., a Delaware corporation (“**Transferee**”), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended (“**Code**”), shall not be required upon transfer of that certain real property to Transferee by Successor Agency City of Oceanside in accordance with California Health and Safety Code Section 34180 et seq., and acting pursuant to ABx1 26 and AB 1484 (“**Transferor**”), Transferor hereby certifies as follows:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);

2. Transferor’s U.S. employer or tax (social security) identification number is _____.

Transferor understands that this Certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both. Transferor understands that Transferee is relying on this Certification in determining whether withholding is required upon said transfer.

Transferor hereby agrees to indemnify, defend and hold harmless Transferee from and against any and all obligations, liabilities, claims, losses, actions, causes of action, rights, demands, damages, costs and expenses of every kind, nature or character whatsoever (including, without limitation, reasonable attorney’s fees and court costs) incurred by which Transferee as a result of (i) Transferor’s failure to pay U.S. Federal income tax which Transferor is required to pay under applicable U.S. law; or (ii) any false or misleading statement contained herein.

Transferor:

Successor Agency City of Oceanside

By: _____

Name: _____

Title: _____

Dated: _____

Approved as to Form

City Attorney’s Office

By: _____

Name: _____

Title: City Attorney

Dated: _____

EXHIBIT 10.2.7

FORM 593-C

YEAR

CALIFORNIA FORM

2012 Real Estate Withholding Certificate

593-C

Part I – Seller's Information			Return this form to your escrow company.	
Name		SSN or ITIN		
Spouse's/RDP's name (if jointly owned)		Spouse's/RDP's SSN or ITIN (if jointly owned)		
Address (suite, room, PO Box, or PMB no.)		<input type="checkbox"/> FEIN <input type="checkbox"/> CA Corp no. <input type="checkbox"/> SOS file no.		
City	State	ZIP Code	Ownership percentage %	
Property address (if no street address, provide parcel number and county)				

To determine whether you qualify for a full or partial withholding exemption, check all boxes that apply to the property being sold or transferred. (See line-by-line notes in the Instructions)

Part II – Certifications which fully exempt the sale from withholding:

1. The property qualifies as the seller's (or decedent's, if sold by the decedent's estate) principal residence within the meaning of Internal Revenue Code (IRC) Section 121.
2. The seller (or decedent, if sold by the decedent's estate) last used the property as the seller's (decedent's) principal residence within the meaning of IRC Section 121 without regard to the two-year time period.
3. The seller has a loss or zero gain for California income tax purposes on this sale. To check this box you must complete Form 593-E, Real Estate Withholding-Computation of Estimated Gain or Loss, and have a loss or zero gain on line 16.
4. The property is being compulsorily or involuntarily converted and the seller intends to acquire property that is similar or related in service or use to qualify for nonrecognition of gain for California income tax purposes under IRC Section 1033.
5. The transfer qualifies for nonrecognition treatment under IRC Section 351 (transfer to a corporation controlled by the transferor) or IRC Section 721 (contribution to a partnership in exchange for a partnership interest).
6. The seller is a corporation (or a limited liability company (LLC) classified as a corporation for federal and California income tax purposes) that is either qualified through the California Secretary of State (SOS) or has a permanent place of business in California.
7. The seller is a California partnership or a partnership qualified to do business in California (or an LLC that is classified as a partnership for federal and California income tax purposes and is not a single member LLC that is disregarded for federal and California income tax purposes). If this box is checked, the partnership or LLC must still withhold on nonresident partners or members.
8. The seller is a tax-exempt entity under California or federal law.
9. The seller is an insurance company, individual retirement account, qualified pension/profit sharing plan, or charitable remainder trust.

Part III – Certifications that may partially or fully exempt the sale from withholding:

Real Estate Escrow Person (REEP): See instructions for amounts to withhold.

10. The transfer qualifies as a simultaneous like-kind exchange within the meaning of IRC Section 1031.
11. The transfer qualifies as a deferred like-kind exchange within the meaning of IRC Section 1031.
12. The transfer of this property is an installment sale where the buyer is required to withhold on the principal portion of each installment payment. Copies of Form 593-I, Real Estate Withholding Installment Sale Acknowledgement, and the promissory note are attached.

Part IV – Seller's Signature

Under penalties of perjury, I hereby certify that the information provided above is, to the best of my knowledge, true and correct. If conditions change, I will promptly inform the withholding agent. I understand that the Franchise Tax Board may review relevant escrow documents to ensure withholding compliance and that completing this form does not exempt me from filing a California income or franchise tax return to report this sale.		
Seller's Name and Title _____	Seller's Signature _____	Date _____
Spouse's/RDP's Name _____	Spouse's/RDP's Signature _____	Date _____
Please verify that the SSN or ITIN listed above in Part I of this form is correct.		

Seller: If you checked any box in Part II, you are exempt from real estate withholding.
If you checked any box in Part III, you may qualify for a partial or complete withholding exemption.
If you did not check any box in Part II or Part III, the withholding will be 3 1/3% (.0333) of the total sales price or the optional gain on sale withholding amount certified by seller on Form 593, Real Estate Withholding Tax Statement.
If you are withheld upon, the withholding agent should give you one copy of Form 593. Attach a copy to the lower front of your California income tax return and make a copy for your records.

Keep Form 593-C for five years following the close of the transaction. You must furnish the form to the Franchise Tax Board upon request.

EXHIBIT 15.4

Legal Description for Lot 26

EXHIBIT 15.5

**CONSTRUCTION STAGING LICENSE FOR REAL PROPERTY AT
_____, OCEANSIDE, CA**

THIS PROPERTY USE AGREEMENT, hereinafter called (“**Agreement**”), dated as of _____, 2014, solely for identification purposes, is executed by and between the City of Oceanside (“**City**”), and S.D. Malkin Properties, Inc., a Delaware corporation hereinafter called (“**Developer**”). The effective date of this Agreement shall be the date this Agreement is approved and signed by City (the “**Effective Date**”).

R E C I T A L S

WHEREAS, City is owner of that certain real property situated in the City of Oceanside, County of San Diego, State of California, being _____, filed in the office of the County Recorder of San Diego County, _____ (the “**Premises**”); and

WHEREAS, Developer is the developer of the _____, a hotel project to be developed on that certain real property situated in the City of Oceanside, County of San Diego, State of California, being _____ (the “**Project**”); and

WHEREAS, Developer is desirous of temporarily utilizing a portion of the Premises to place a construction trailer, provide a construction crew parking area, and a construction yard and laydown/staging area thereon for the purpose of conducting business and material storage related to the construction of the Project, Developer has the right to grant access and storage to others in accordance with the terms of this Agreement; and

WHEREAS, City is willing to allow the Developer to use the Premises for the purposes set forth above under the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein, and for valuable consideration, the sufficiency of which is hereby acknowledged, in accordance with the covenants, conditions and provisions contained herein below, the parties hereto do hereby mutually agree as follows:

**ARTICLE 1
Uses**

1.1 **Premises.** City hereby authorizes Developer, in accordance with the terms, covenants, conditions and provisions of this Agreement, the nonexclusive use of a portion of that certain real property situated in the City of Oceanside, County of San Diego, State of California, being _____, as more particularly illustrated in Exhibit 1.1, attached hereto and by this reference incorporated herein and made part of

this Agreement. Said real property is hereinafter called the “**Premises**”. In return for this permission, Developer accepts the Premises in an “AS IS” “WHERE IS” condition and hereby agrees to act in accordance with and abide by the terms, covenants, conditions and provisions of this Agreement. Although the license granted in this Agreement is nonexclusive, Successor Agency agrees that for safety and security reasons, other parties’ access to the Premises shall be limited only to City staff or representatives, who shall give Developer reasonable notice of intent to enter the Premises, so that Developer can ensure property safety protocols are followed.

1.2 **Uses.** It is expressly agreed that Developer shall be allowed to place a construction trailer upon the Premises, and that the Premises shall be used solely and exclusively for the purpose as a construction staging site related to Developer’s [_____] project, including automobile parking related thereto, in accordance with the terms, covenants, conditions and provisions set forth herein, and for such other related purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

1.2.1 Developer covenants and agrees that no Developer permanent improvements or facilities shall be installed in, under or upon the Premises by reason of this Agreement.

1.2.2 Developer’s use and occupation of the Premises for the purposes set forth herein is for a definitive period of time and shall not create any other rights to the Premises other than for the uses stated in this Agreement, and shall not ripen into a fee interest nor run with the land.

1.2.3 Developer’s use and occupation of the Premises shall not obstruct or unreasonably impair ingress or egress to the adjacent Marriot Springhill Suites hotel.

1.3 **Use Covenant.** Developer covenants and agrees to use the Premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. In the event that Developer fails to continuously use the Premises for said purposes, or use the Premises for purposes not expressly authorized herein, the Developer shall be deemed in default under this Agreement.

ARTICLE 2 TERM

2.1 **Commencement.** The term of this Agreement shall be for a period of **eighteen (18) months** commencing on _____, 20__, and expiring on _____, 20__. **Extension of Term.** Provided Developer is not in default or breach of any term, condition or covenant of this Agreement, Developer may request not more than two (2) three-month extensions of the term of this Agreement by providing the City Manager or his designee with its written request to extend the term hereof no later than **sixty (60) days** prior to the expiration of the term hereof. Said written request shall state the reason for said requested extension and the nature of the

use Premises during the extension period of the term. The City Manager shall notify Developer not later than **thirty (30) days** after receipt of such request whether such request will be approved or denied. In the event either extension is approved by the City Manager, Developer shall continue to pay \$1 per month for use of the Premises. The City Manager in his capacity as the City's authorized representative, shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent to Developer no later than **thirty (30) days** from receipt of the request for extension. Developer may not request more than one, three-month extension.

2.2 **Business License**. Developer or its Contractor agrees to obtain and maintain, at its sole cost and expense, a current Business License issued from the City of Oceanside during the full term of this Agreement, provided such a license is required for Developer's operations under this Agreement.

ARTICLE 3 PROPERTY USE PAYMENT

3.1 **Time and Place of Payment**. The Developer shall make all payments **monthly** in advance on or before the **first (1st) day** of each **new month**. Checks should be made payable to the City of Oceanside and delivered to the City, attention "**Cashiers**" at the address set forth in Section 6.4 of this Agreement. City may change the place and time of payment, at any time upon **thirty (30) days** written notice to Developer. Developer assumes all risk of loss and responsibility for late payment charges.

3.2 **Property Use Payment**. Developer agrees to pay City, on or before the first (1st) day of each new month, the sum **\$1** per month for its use and occupation of the Premises in accordance with the terms, covenants, conditions and provisions of this Agreement.

3.3 **Delinquent Payment**. If Developer fails to pay the payment when due, Developer shall pay in addition to the unpaid payments, five percent (5%) of the delinquent payment. If the payment is still unpaid at the end of **fifteen (15) days**, Developer shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from payment delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

3.4 **Utilities and Other Services**. Developer agrees to be solely responsible to order, obtain, and pay for all utility, water and sewer services and any installation charges in connection with the use, development, occupation and operation of the Premises. City does not warrant or represent the availability or extend of utility, water or sewer services to the Premises.

ARTICLE 4 RECORDS

4.1 **Inspection of Records**. Developer agrees to make records and accounts related to the uses identified in Section 1.2 available to City for inspection at all reasonable

certificate(s) and/or endorsement(s). The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the City.

5.2.3 All insurance companies affording coverage to the Developer shall be insurance organizations acceptable to the City, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

5.2.4 All insurance companies affording coverage shall provide **thirty (30) days** written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

5.2.5 Developer shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

5.2.6 Developer shall provide a substitute certificate of insurance no later than **thirty (30) days** prior to the policy expiration date. Failure by the Developer to provide such a substitution and extend the policy expiration date shall be considered a default by Developer and may subject the Developer to an immediate termination of this Agreement.

5.2.7 Maintenance of insurance by the Developer as specified in this Agreement shall in no way be interpreted as relieving the Developer of any responsibility whatever and the Developer may carry, at its own expense, such additional insurance as it deems necessary.

5.2.8 If Developer fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Developer shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within **thirty (30) days** of payment stating the amount paid, name of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by Developer on the **first (1st) day** of the month following the notice of payment by City. Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Developer to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

5.2.9 City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving Developer **sixty (60) days** prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises.

5.3 **Accident Reports**. Developer shall, within **seventy-two (72) hours** after occurrence, report to City any accident causing material property damage or any serious injury to persons on the Premises. This report shall contain the names and

addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

ARTICLE 6 GENERAL PROVISIONS

6.1 **Maintenance**. With respect to Developer's operations at or on the Premises, Developer shall make all repairs and replacements necessary to maintain and preserve the Premises (and all public streets and improvements adjacent to the Premises) in a decent, safe, healthy, and sanitary condition reasonably satisfactory to City and in compliance with all applicable laws, ordinances or regulations, including clean water, health and environmental regulations and laws.

6.1.1 In the event that the Premises and adjacent public streets and improvements are not in a decent, safe, healthy, and sanitary condition, City shall notify the Developer and allow five (5) days for the condition to be corrected. If the condition is not corrected within five (5) days, the City shall have the right, upon written notice to Developer (except in times of emergency), to have any necessary maintenance work done at the expense of Developer, and Developer shall promptly pay any and all reasonable costs incurred by City in having such necessary maintenance work done, in order to keep said Premises and adjacent public streets and improvements in a decent, safe, healthy, and sanitary condition. Developer shall make payment no later than **thirty (30) days** after written notice from the City. Further, if at any time City determines that said Premises and adjacent public streets and improvements are not in a decent, safe, healthy, and sanitary condition, City may at its sole option, upon written notice, require Developer to file with City a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of City to correct the said unsatisfactory condition. Developer shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on City or increase obligations elsewhere in this Agreement imposed on City.

6.2 **Sign**. Developer shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of City, which will not be unreasonably withheld. If any such unauthorized item is found on the Premises, Developer shall remove the item at its expense within **twenty-four (24) hours** of written notice thereof by City, or City may thereupon remove the item at Developer's cost.

6.3 **Taxes**. Developer shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Developer or the Premises, including, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Developer or levied by reason of the business or other Developer activities related to the Premises, including any licenses or permits.

6.3.1 Developer recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that Developer may be subject to the payment of taxes levied on such interest, and that Developer shall pay all such possessory interest taxes.

6.4 **Notices.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

City of Oceanside
Attention: Property Management
300 North Coast Highway
Oceanside, CA 92054

With a Copy To:

City of the
City of Oceanside
Attention: City Attorney
300 North Coast Highway
Oceanside, CA 92054

To Developer:

With a Copy To:

Either party may change its address by notice to the other party as provided herein.

6.4.1 Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three (3) working days following the deposit in the United States Mail of certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.5 **City Approval.** The City Manager shall be the City's authorized representative in the interpretation and enforcement of all covenants, conditions, provisions and obligations in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing Developer in accordance with this Agreement, which does not result in a material change to this Agreement, the City Manager delegates authority to the Real Property Manager.

6.6 **Entire Agreement.** This Agreement comprises the entire integrated understanding between City and Developer concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each

party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

6.6.1 The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to City.

6.6.2 The Developer shall be responsible for complying with all local, state, and federal laws, ordinances, regulations and codes, whether or not said laws, ordinances, regulations and codes are expressly stated or referred to herein, including, but not limited to, the placement of a construction trailer upon the Premises and the uses associated therewith.

6.6.3 Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

6.6.4 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6.7 **Agreement Modification.** This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.8 **Assignment and Subletting-No Encumbrance.** This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Developer's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Agreement without the express written consent of City shall be void and of no force or effect. Consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

6.9 **Defaults and Termination.** If either party ("**demanding party**") has a good faith belief that the other party ("**defaulting party**") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within **fifteen (15) calendar days** of the notice.

6.9.1 If the defaulting party is in default of this Agreement and fails to cure the default within **fifteen (15) calendar days** of the notice, or, if more than **fifteen (15) calendar days** are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within **five (5) calendar days** of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

6.9.2 City may also terminate this Agreement upon written notice to Developer in the event that:

6.9.2.1 Developer has previously been notified by City of Developer's default under this Agreement and Developer, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or

6.9.2.2 Developer shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or

6.9.2.3 Developer shall be adjudicated a bankruptcy, or

6.9.2.4 Developer shall make a general assignment for the benefit of creditors.

6.9.3 Upon termination, City may immediately enter and take possession of the Premises.

6.10 **Other Regulations**. All use of the Premises under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicative rules and regulations and ordinances of the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by state or federal law.

6.11 **Surrender of Premises**. Developer shall surrender possession of the Premises upon the expiration or earlier termination of the term, in the same condition as it was prior to Construction Staging Activities authorized by this Agreement, clean, free of debris, and in good order and state of repair (ordinary wear and tear excepted). Developer shall be responsible for removing only toxic or hazardous substances (defined below) which Developer may have placed upon the Premises. Developer shall have no responsibility or liability for any toxic or hazardous substances on or in the Premises prior to Developer's occupancy of the Premises.

6.12 **Conflicts of Interest**. No member, official or employee of the City shall have any material personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee of City participate in any decision relating to this Agreement which affects his material personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. Conflicts under this Section 6.12 shall be defined in terms consistent with the Political Reform Act as interpreted by the Fair Political Practices Commission.

6.13 **Nonliability of Officials of the City and the Developer**. 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, for any amount which may become due to the Developer or its successors, or in any obligations under the terms of this Agreement.

ARTICLE 7 SPECIAL PROVISIONS

7.1 **Ancillary Uses and Services.** No additional uses or services, other than those provided for under Section 1.2 of this Agreement shall be provided by Developer from or at the demised Premises.

7.1.1 No retail food service operations shall be provided on or from the Premises.

7.2 **Developer's Employees.** Developer shall provide an experienced and well-qualified "on-site" supervisor to oversee all operations conducted by Developer on the Premises. Developer shall ensure that its employees, contractors, subcontractors, vendors, suppliers, their agents and employees, and all other persons entering upon the Premises shall at all times conduct themselves in a creditable manner, and they shall conform to all rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City and any other governmental City.

7.3 **Hazardous Substances.** No goods, merchandise or material shall be kept, stored or sold in or on the Premises, which are in any way explosive or hazardous, as defined under any applicable local, state or federal law, except that ordinary business materials that may be classified as hazardous may be kept in or on the Premises if such materials are stored and disposed of in accordance with all applicable laws; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the demised Premises or other premises and the improvements thereon; provided, however, that if anything done by Developer causes an increase in the rate of insurance on the Premises, Developer may, at its option, pay such increase and Developer shall not thereafter be considered in default under this Agreement.

7.3.1 No machinery or apparatus shall be used or operated on or about the Premises, which will in any way injure the Premises or improvements thereon, or adjacent or other Premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Developer from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

7.3.2 Open flame welding or burning, gasoline or other fuel storage is expressly prohibited without prior written consent of the City, which will not be unreasonably withheld. City acknowledges and consents to pre-fabrication welding and a small gas or diesel above-ground storage tank with appropriate spill prevention on the Premises during grading and excavation.

7.3.3 Developer shall not cause or allow any waste or damage to the Premises and hereby agrees not to service any equipment or vehicles on or about the Premises, unless the equipment service is minor and necessary to remove the equipment from the Premises. Developer agrees to store any and all materials brought onto and placed upon the Premises in such a manner to prevent any discharge or release of contaminants, hazardous waste or materials onto the Premises. In the event of any such discharge or release of such substances upon the Premises, Developer hereby agrees, at its sole cost and expense, to immediately, lawfully and properly cleanup and remove any and all such substances, waste or materials (including, but not limited to, contaminated soil, groundwater and storm water runoff), resulting from Developer's use of the Premises. Developer shall abide by all Federal, State and Local laws pertaining to its use of the Premises.

7.4 **Perimeter Fencing.** Developer shall enclose the Premises with screened fencing to block the interior from public view and situated in a manner as to not block or impede pedestrian or vehicular traffic. Said fencing shall be maintained in a neat and attractive condition, free and clear of dust, debris and graffiti, and in good repair at all times. Graffiti shall be eradicated within **twenty-four (24) hours** of detection by Developer, its agents or employees, or upon written or verbal notice from City.

7.5 **Continued Occupancy.** Notwithstanding the provisions of Section 6.13 above, Developer covenants and agrees to, and it is the intent of this Agreement that the Developer shall, continuously and uninterruptedly during the term of the Agreement, occupy and use the Premises for the purposes hereinabove specified, except while Premises are untenable by reason of fire, flood, or other unavoidable casualty, or by reason of a delay of the start of construction, or a mid-construction delay resulting from a delay in permits being issued and, in that event, City shall be promptly notified by Developer.

ARTICLE 8 SIGNATURES

8.1 **Signatory's Authority.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Developer and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

Grantor:

City of Oceanside

By: _____
Name: _____
Title: _____

Approved as to Form

City Attorney's Office

By: _____
Name: _____
Title: City Attorney

Grantee:

S.D. Malkin Properties, Inc.
a Delaware Corporation

By: _____
Name: _____
Title: _____

EXHIBIT 1.1

Legal Description of Property

EXHIBIT 15.6

DEVELOPER PROCESSING SCHEDULE

This Developer Processing Schedule is made and entered by the Successor Agency of the City of Oceanside ("Successor Agency"), the City of Oceanside ("City") and Developer S.D. Malkin Properties, Inc., a Delaware corporation ("Developer"), who agree as follows:

1. Successor Agency is the fee owner of that certain real property in Oceanside, California more particularly described on Exhibit 1, attached hereto ("**Property**").

2. Pursuant to the provisions and conditions of that certain Disposition Agreement and Escrow Instructions between Successor Agency and Developer, dated _____, 2014, as the same may be amended from time to time (collectively, the "**Disposition Agreement**"), the provisions and conditions of which are hereby incorporated herein by this reference, Successor Agency has agreed to sell to Developer the Property upon and subject to the provisions and conditions set forth in the Disposition Agreement. Nothing in this Developer Processing Schedule is intended to amend or waive any provision of the Disposition Agreement, including but not limited to any condition to the Closing of the Phase I hotel. Rather, the Parties establish this Developer Processing Schedule in an effort to require certain actions to facilitate the Phase I Closing Date.

3. The Developer shall meet the following milestones prior to the Phase I Closing Date, as that term is defined in the Disposition Agreement:

i. Developer shall submit to the City a substantially complete copy of the Substantial Conformity Application for the Phase I Hotel within thirty (30) calendar days after the Effective Date of the Disposition Agreement.

ii. Developer shall submit to the City and Successor Agency 100% Schematic Design Drawings within one hundred eighty (180) calendar days after the Effective Date of the Disposition Agreement;

iii. Developer shall submit to the City and Successor Agency a copy of the Franchise Agreement within one hundred eighty (180) calendar days after the Effective Date of the Disposition Agreement.

iv. Developer shall submit one hundred percent (100%) Design Development Drawings within three hundred sixty-five (365) calendar days after the Effective Date of the Disposition Agreement.

v. Developer shall submit to the City and Successor Agency a Contingent Financing Commitment within four hundred twenty five (425) calendar days after the Effective Date of the Agreement.

vi. Developer shall submit to the City a complete Grading Plan Permit Set within four hundred fifty-five (455) calendar days after the Effective Date of the Agreement.

vii. Developer shall obtain Grading Permit and will provide evidence of the closing of the Phase I Construction Financing and Mezzanine Financing on or before the Phase I Closing Date.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

Successor Agency City of Oceanside

By: _____
Name: _____
Title: _____

City of Oceanside

By: _____
Name: _____
Title: _____

Approved as to Form

By: _____
Name: _____
Title: City Attorney

Developer
S.D. Malkin Properties, Inc.
a Delaware Corporation

By: _____
Name: _____
Title: _____

