

**ITEM 2 ATTACHMENT A
CITY COUNCIL ORDINANCE NO. 2017-356**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALABASAS, CALIFORNIA APPROVING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CALABASAS AND RONDELL OASIS, LLC PROVIDING FOR ACQUISITION OF VACANT LAND AND CONSTRUCTION OF A PUBLIC PARKING LOT AND APPROVING SUBSTITUTE USE OF THAT PUBLIC PARKING LOT FOR REQUIRED OFF-STREET PARKING AND CONCENTRATION OF RELATED DEVELOPMENT RIGHTS FOR AN APPROVED HOTEL LOCATED AT 26300 RONDELL STREET.

WHEREAS, Rondell Oasis, LLC has received approvals by City Council Resolution No. 2016-1496 for land use entitlements for a three-story hotel with up to one hundred twenty-seven (127) rooms at 26300 Rondell Street (hereinafter "Proposed Project"); and

WHEREAS, the Proposed Project will require one hundred forty (140) off-street parking spaces to be maintained in connection with the hotel's use and operation; and

WHEREAS, as approved the development space of the Proposed Project is limited to forty percent (40%) of its floor to area ratio or a maximum of sixty seven thousand (67,000) square feet of building area; and

WHEREAS, the City Council adopted Resolution No. 2016-1496 approving a Conditional Use Permit, Site Plan Review, Scenic Corridor Permit, Oak Tree Permit, and Development Plan, and adopted a Mitigated Negative Declaration associated with the Proposed Project, on June 22, 2016; and

WHEREAS, the City owns an unimproved portion of Rondell Street adjacent to the Property ("Rondell Parcel"); and

WHEREAS, Rondell Oasis, LLC owns vacant land adjacent to the proposed hotel("Dedication Area"), part of the approved Proposed Project site, which has the capacity, together with the City's Rondell Parcel and a portion of the Hotel Site, to be striped for approximately one hundred fifty-two (152) parking spaces with curbs, driveways, lighting, landscaping, and associated parking lot improvements ("Public Parking Lot") and

WHEREAS, Rondell Oasis, LLC has offered to transfer the ownership of the Dedication Area to the City for improvement and joint use, together with the Rondell Parcel, as a public park & ride lot which would be open to public use 24 hours a day; and

WHEREAS, the transfer of the Dedication Area would deprive Rondell Oasis, LLC of the space to maintain one hundred forty (140) off-street parking spaces in connection with the hotel use and operation; and

WHEREAS, the transfer of the Dedication Area would deprive Rondell Oasis, LLC of the required lot area on which to develop a sixty seven thousand (67,000) square foot hotel; and

WHEREAS, the City has proposed entering into a development agreement with Rondell Oasis, LLC whereby the City obtains the ownership rights to the Dedication Area in exchange for Rondell Oasis, LLC's ability to use the public park & ride lot to satisfy its off-street parking requirements and a concentration of development rights from the Dedication Area to the Proposed Project; and

WHEREAS, public parking and public transit access in and around the Las Virgenes Scenic Corridor is limited given the area's present development and the lack of any existing public park & ride lots adjacent to public transit; and

WHEREAS, acquiring the Dedication Area and improving it together with the Rondell Parcel for public parking purposes, together comprising the necessary area for the Public Parking Lot, is beneficial for the public to maintain adequate parking supply, reduce the need for vehicular travel by facilitating carpooling and ride-sharing, and improve access to environmentally friendly and convenient transit options; and

WHEREAS, Calabasas Municipal Code sections 17.28.010 through 17.28.030 outline the purpose and requirements for off-street parking standards, which will be met, and in many respects exceeded, by transfer of the Dedication Area to the City and construction by the City of a public parking lot, which will be available to the hotel's staff and patrons; and

WHEREAS, Calabasas Municipal Code sections 17.14.010 through 17.14.020 outline the purpose and requirements for floor to area ratio limitations in Commercial, Retail zoning districts, which may be met, but will not be exceeded, by the transfer of development rights from the area that will become the public park & ride lot to the Proposed Project, and compliance with these requirements while acquiring the land for the public park & ride lot requires concentrating the existing development rights of the Proposed Project onto the hotel site; and

WHEREAS, the City's proposed development agreement with Rondell Oasis, LLC and the approval of the proposed ordinance permitting substitute use of a public parking lot for the required off-street parking for the Proposed Project and concentrating the Dedication Area's development rights onto the portion of the Property retained by the developer after conveying the Dedication Area to the City ("Hotel Site") is in the public's interest, and provides a public benefit for the entire Las Virgenes Scenic Corridor and Community at large; and

WHEREAS, the City Council has considered requirements of the Municipal Code related to off-street parking and floor to area ratio limitations; obtaining ownership over the Dedication Area adjacent to the Proposed Project; the addition of extra parking spaces through the construction of a public park & ride lot; the adherence to the zoning code's floor to area ratio limitations through a concentration of development rights; and the resulting public benefit which would accrue by approving the proposed development agreement; and

WHEREAS, the Proposed Project is consistent with the Calabasas General Plan, Las Virgenes Gateway Master Plan, Commercial Retail Zoning District, and the Las Virgenes Scenic Corridor Overlay Zoning District; and

WHEREAS, the proposed action herein is in compliance with the provisions of the California Environmental Quality Act (CEQA) because an Initial Study/Mitigated Negative Declaration ("IS/MND") was prepared for the proposed hotel, inclusive of all improvements along Rondell Street. In preparing and reviewing the IS/MND, staff exercised independent judgment over the project and the project's environmental impacts. The Final IS/MND was adopted by City Council via Resolution No. 2016-1496. The Proposed Project and public park & ride lot and associated improvements along Rondell Street are in substantial conformance with the project analyzed in the adopted IS/MND, therefore no additional environmental review is necessary; and

WHEREAS, Rondell Oasis, LLC applied to the Community Development Director to enter into a development agreement; and

WHEREAS, the Community Development Director reviewed the application and recommended it to the Planning Commission of the City of Calabasas; and

WHEREAS, on April 27, 2017, the Planning Commission reviewed Rondell Oasis, LLC's application and the Community Development Director's recommendation at a properly noticed public hearing and made a recommendation to approve the application to the City Council; and

WHEREAS, the procedures to be followed for adopting a development agreement are consistent with Article 2.5 of Chapter 4 of Division 1 of Title 7

(Sections 65864 through 65869.5) of the California Government Code and Chapter 17.68 of the Calabasas Municipal Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALABASAS DOES ORDAIN AS FOLLOWS:

SECTION 1. Based upon the foregoing the City Council finds:

- 1. Notice of the May 24, 2017 City Council public hearing was posted at Juan de Anza Bautista Park, the Calabasas Tennis and Swim Center, Gelson’s Market, Agoura Hills / Calabasas Community Center and at Calabasas City Hall.
- 2. Notice of the May 24, 2017 City Council public hearing was posted in the *Las Virgenes Enterprise* ten (10) days prior to the hearing.
- 3. Notice of the May 24, 2017 City Council public hearing was mailed or delivered to property owners within 500 feet of the property as shown on the latest equalized assessment roll, at least ten (10) days prior to the hearing.
- 4. Notice of the May 24, 2017 City Council public hearing included the information set forth in Government Code Section 65009 (b)(2).
- 5. Following a public hearing held on April 27, 2017, the Planning Commission adopted Resolution No. 2017-646 recommending to the City Council approval of this ordinance.

SECTION 2. The City Council finds the acquisition of the vacant land described in Exhibit A and depicted in Exhibit B (the “Dedication Area”) for public parking lot purposes and the adoption of this ordinance approving the related Development Agreement and permitting substitute use of a public parking lot for the required off-street parking for the Proposed Project concentrating the Proposed Project’s development rights onto the Hotel Site is consistent with the Calabasas General Plan; specifically policies: II-11, II-16, VI-11, VI-13, VI-23, VI-24, IX-43, and XII-3, which generally promote a mix of retail and service commercial uses, like hotels; proactive programs to attract commercial businesses and to ensure that projects are compatible with adjacent uses, like this development agreement; and development of public park & ride lots to maintain adequate parking supply, reduce the need for vehicular travel, and improve access to environmentally friendly and convenient transit options.

SECTION 3. The City Council finds the acquisition of the Dedication Area for public parking lot purposes and the adoption of this ordinance approving the related Development Agreement and permitting substitute use of a public parking lot for the required off-street parking for the Proposed Project concentrating the Proposed Project’s development rights onto the Hotel Site is consistent with the Las Virgenes Gateway Master Plan; specifically objectives 2.4 and 3.1, which generally promote the development of a public park & ride lot to offer safe and efficient vehicle

access and parking; and development agreements that address potential conflicts with the zoning code.

SECTION 4. The City Council finds the acquisition of the Dedication Area for public parking lot purposes and the adoption of this ordinance approving the related Development Agreement and permitting substitute use of a public parking lot for the required off-street parking for the Proposed Project concentrating the Dedication Area's development rights onto the Hotel Site is consistent with Section 17.14.010(B) of the Calabasas Municipal Code and the requirements of the Commercial, Retail Zoning District because a hotel is a form of lodging, which is a conditionally permitted use and the City Council granted the Proposed Project's conditional use permit pursuant to Resolution No. 2016-1496.

SECTION 5. The City Council finds the acquisition of the Dedication Area for public parking lot purposes and the adoption of this ordinance approving the related Development Agreement and permitting substitute use of a public parking lot for the required off-street parking for the Proposed Project concentrating the Dedication Area's development rights onto the Hotel Site is consistent with Section 17.18.040 of the Calabasas Municipal Code and the requirements of the Las Virgenes Scenic Corridor Overlay Zoning District because the City Council granted the Proposed Project's Scenic Corridor Permit pursuant to Resolution No. 2016-1496 and because it complies with the design requirements of the scenic corridor development guidelines; incorporates design measures to ensure maximum compatibility with and enhancement of the scenic corridor; is within an urban and scenic corridor designed by the General Plan, and includes adequate design and landscaping; and is compatible in design, appearance, and scale with existing uses, development signs, structures, and landscaping of the surrounding areas.

SECTION 6. In view of all the evidence and based on the foregoing findings, the City Council concludes as follows:

Notwithstanding sections 17.28.010 through 17.28.040 and sections 17.14.010 through 17.14.020 of the Calabasas Municipal Code, and based on the benefit to the Las Virgenes Scenic Corridor and Community generally from the acquisition at no cost of the vacant land comprising the Dedication Area within the Proposed Project's site by the City for a public park & ride lot and other public unrestricted parking, the City Council approves the acquisition of the Dedication Area and adopts this ordinance approving the related development agreement and permitting substitute use of a public parking lot for the required off-street parking for the Proposed Project and concentrating the Dedication Area's development rights onto the Hotel Site, which is defined as the balance of the site of the Proposed Project retained by the project applicant after transfer of the Dedication Area to the City, thereby allowing for the use of the public park & ride lot's parking spaces and development rights by the Proposed Project and declaring the Proposed

Project to be in full compliance with any provision of the Calabasas Municipal Code including but not limited to off-street parking, pervious surface, site coverage, or floor area ratio limitations. In lieu of the following conditions of approval for the project modified by this ordinance, the project applicant is required to perform the work of improvement defined above as the Public Parking Lot, and the Project shall not be opened or operated for hotel guests unless and until the Public Parking Lot has been completed and is operational. Pursuant to the terms and conditions of the Development Agreement, the City will pay for and complete the construction of the Public Parking Lot. The City Council hereby modifies the Proposed Project's conditions of approval in City Council Resolution No. 2016-1496 to reflect these actions, as follows: Condition Nos. 9, 21, 39, 40, 41, 43, 46, 47, 49, 50, 51, and 52 are moot, as the public parking lot will now be constructed and owned by the City. Condition No. 48 is void to the extent it requires the project applicant to install signs and plant trees on the Dedication Area and remains in place to the extent the project applicant is required to plant trees on the Hotel Site and adjacent Santa Monica Mountains Conservancy property.

SECTION 7. The provisions of Section 6 herein shall not be applicable unless and until the Dedication Area is transferred to the City for use as a public park & ride lot and other unrestricted public parking.

SECTION 8. Pursuant to Calabasas Municipal Code Section 17.68.030(C), the City Council directs the Community Development Director and the City Attorney to prepare a development agreement embodying the terms and conditions of the Proposed Project as conditionally approved and authorize the City Manager to execute the development agreement, which shall be substantially consistent with the draft development agreement attached as Exhibit C.

SECTION 9. Severability Clause:

Should any section, clause, or provision of this Ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the Ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

SECTION 10. Effective Date:

This Ordinance shall take effect 30 days after its passage and adoption pursuant to California Government Code Section 36937 and shall supersede any conflicting provision of any City of Calabasas ordinance.

SECTION 11. Certification:

The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published or posted according to law.

PASSED, APPROVED AND ADOPTED this 14th day of June, 2017.

Mary Sue Maurer, Mayor

ATTEST:

Maricela Hernandez, MMC
City Clerk

APPROVED AS TO FORM:

Scott H. Howard, City Attorney
Colantuono Highsmith & Whatley

EXHIBIT "A"

LEGAL DESCRIPTION

PORTION LOT 2, TRACT NO. 34801, M.B. 977, PAGES 1 AND 2

THAT PORTION OF LOT 2 OF TRACT NO. 34801, IN THE CITY OF CALABASAS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 927, AT PAGES 1 AND 2, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHERLY OF THE NORTHWESTERLY LINE OF THE 20 FOOT WIDE EASEMENT TO LAS VIRGINES MUNICIPAL WATER DISTRICT PER BOOK D 3255, PAGE 157 OF OFFICIAL RECORDS OF SAID COUNTY RECORDER'S OFFICE, AS SHOWN ON SAID TRACT NO. 34801, AND LYING EASTERLY OF THE EASTERLY RIGHT OF WAY OF RONDELL STREET, BEING OF VARIABLE WIDTH, AS SHOWN ON SAID TRACT NO. 34801.

ALL AS SHOWN ON EXHIBIT "B", ATTACHED HERETO, AND BE REFERENCE MADE HEREIN, MADE A PART HEREOF.

AREA OF DEDICATION IS COMPRISED OF 1.28 ACRES, MORE OR LESS.

Chris Nelson

CHRIS NELSON, PLS 6385

DATED: MARCH 24, 2017

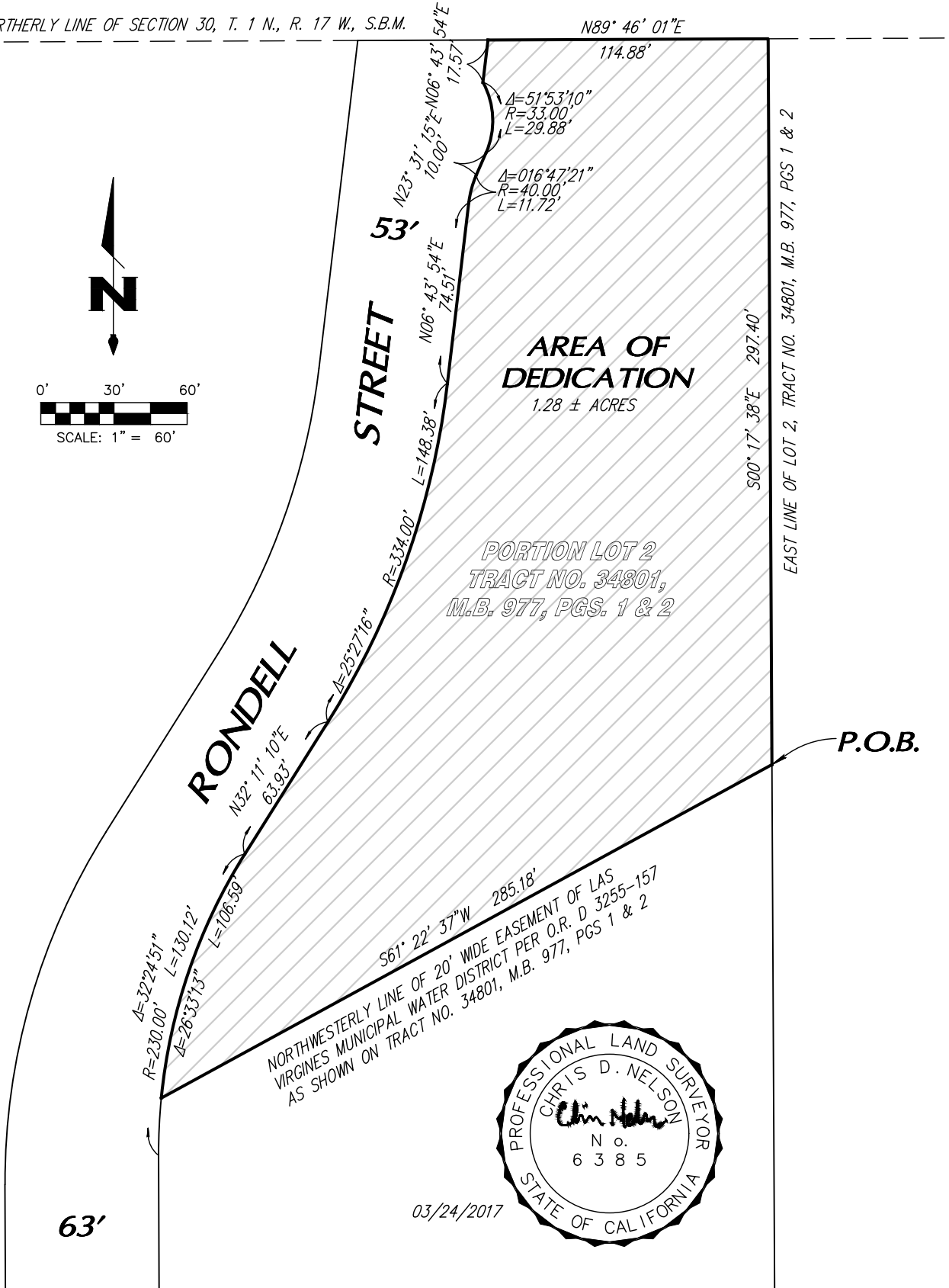
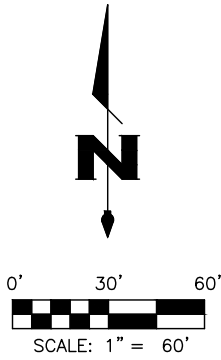


EXHIBIT "B"

PORTION LOT 2, TRACT NO. 34801, M.B 977, PAGES 1 AND 2

NORTHERLY LINE OF SECTION 30, T. 1 N., R. 17 W., S.B.M.

N89° 46' 01"E



AREA OF DEDICATION
1.28 ± ACRES

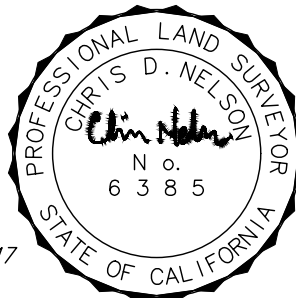
PORTION LOT 2
TRACT NO. 34801,
M.B. 977, PGS. 1 & 2

RONDELL STREET

53' STREET

P.O.B.

NORTHWESTERLY LINE OF 20' WIDE EASEMENT OF LAS VIRGINES MUNICIPAL WATER DISTRICT PER O.R. D 3255-157 AS SHOWN ON TRACT NO. 34801, M.B. 977, PGS 1 & 2



03/24/2017

63'

INDEXPage(s)**DEVELOPMENT AGREEMENT NO. 2017-01****BY AND BETWEEN****THE CITY OF CALABASAS****AND****RONDELL OASIS, LLC**

This Development Agreement (“**Agreement**”) is made and entered into this day of , 2017, by and between the City of Calabasas, a California municipal corporation (“**City**”), and Rondell Oasis, LLC, a California limited liability company (“**Developer**”) pursuant to the authority set forth in Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code (“**Development Agreement Act**”) and Chapter 17.68 of the Calabasas Municipal Code (“**Enabling Ordinance**”).

RECITALS

WHEREAS, Developer owns the property located at 26300 Rondell Street, consisting of approximately 4.13 acres (“**Property**”), as more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference; and

WHEREAS, Developer desires, subject to certain terms and conditions referenced in this Agreement, to construct a three-story hotel with one hundred twenty-seven (127) rooms on a portion of the Property (“**Hotel Project**”); and

WHEREAS, the Property includes vacant land adjacent to the proposed hotel (“**Dedication Area**”), more particularly described in Exhibit “B” attached hereto and incorporated herein by this reference, which has the capacity to be striped, together with the City’s Rondell Parcel and a portion of the Hotel Site, for approximately one hundred fifty-two (152) parking spaces with curbs, driveways, lighting, landscaping and associated parking lot improvements (“**Public Parking Lot**”); and

WHEREAS, Developer has offered to transfer the ownership of the Dedication Area to the City for improvement and joint use as a public park & ride lot which would be open to public use 24 hours a day; and

WHEREAS, the transfer of the Dedication Area would deprive Developer of the space to maintain one hundred forty (140) off-street parking spaces in connection with the hotel use and operation; and

WHEREAS, the transfer of the Dedication Area would deprive Developer of the required lot area on which to develop a sixty seven thousand (67,000) square-foot hotel; and

WHEREAS, the City owns an unimproved portion of Rondell Street adjacent to the Property (“**Rondell Parcel**”), as shown in Exhibit “C” and incorporated herein by reference; and

WHEREAS, the City has proposed entering into a development agreement with Developer whereby the City obtains the ownership rights to the Dedication Area in exchange for Developer’s ability to use the public park & ride lot to satisfy its off-street parking requirements and a concentration of development rights from the Dedication Area to the Hotel Project; and

WHEREAS, public parking and public transit access in and around the Las Virgenes Scenic Corridor is limited given the area’s present development and the lack of any existing public park & ride lots adjacent to public transit; and

WHEREAS, because of the distinct and complimentary parking demand and peaking characteristics of commuter park & ride, recreational/trailhead and hotel uses, establishment of a multi-use parking lot at this location will provide a more efficient use of limited land available for parking in the City and thereby limit pressure for “urban sprawl” and for future conversion of open space lands to development; and

WHEREAS, acquiring the Dedication Area and improving it together with the Rondell Parcel for public parking purposes, together comprising the area necessary for the Public Parking Lot, is beneficial for the public to maintain adequate parking supply, reduce the need for vehicular travel by facilitating carpooling and ride-sharing, and improve access to environmentally friendly and convenient transit options; and

WHEREAS, this Agreement with Developer and the City Council’s approval of the related ordinance permitting substitute use of a public parking lot for the required off-street parking for the Hotel Project and concentrating the Dedication Area’s development rights onto the portion of the Property retained by Developer after conveying the Dedication Area to the City (“Hotel Site”) is in the public’s interest, and provides a public benefit for the entire Las Virgenes Scenic Corridor and community at large; and

WHEREAS, the Developer applied to the “**Community Development Director**” to enter into a development agreement; and

WHEREAS, the Community Development Director reviewed the application and recommended it to the Planning Commission of the City of Calabasas (“**Planning Commission**”) for approval; and

WHEREAS, on April 27, 2017, the Planning Commission reviewed the Developer’s application and the Community Development Director’s recommendation at a properly noticed public hearing and made a recommendation to approve the application to the City Council of the City of Calabasas (“**City Council**”); and

WHEREAS, on May, 2017, the City Council reviewed the Developer's application and the Planning Commission's recommendation at a properly noticed public hearing and conditionally approved the application for a development agreement and conducted a first reading of the ordinance for the approval of this Agreement; and

WHEREAS, on May 24, 2017, the City Council directed the Community Development Director to finalize this Agreement; and

WHEREAS; on May 24, 2017, the City Council adopted an ordinance containing findings that the provisions of this Agreement are consistent with the City's "**General Plan**", the Enabling Ordinance, the Las Virgenes Gateway Master Plan, the Las Virgenes Scenic Corridor Overlay Zoning District, and the requirements of the Commercial, Retail Zoning District, and authorized the City Manager to execute this Agreement; and

WHEREAS, the City and Developer recognize that construction and development of the Hotel Project will create economic benefits to the City in terms of construction jobs and business and tourist overnight stays, and will facilitate the implementation of private and public improvements needed to accommodate local and regional growth and parking demand, and will generate significant social and public benefits to the City; and

WHEREAS, Developer, in consideration of the benefits and opportunities provided to Developer by the Hotel Project and the cooperation and assistance of the City in connection therewith, will provide assurances to the City that the public infrastructure, public facilities and design features of the Hotel Project are implemented in a timely manner when the Hotel Project is developed; and

WHEREAS, in order to provide certainty and render development of the Hotel Project more feasible in light of the large amount of capital investment necessary to implement the Hotel Project and the extended planning horizon necessary to coordinate a project of such scope and complexity, Developer requires assurance from the City, with respect to the Property that the certain existing governmental entitlements shall, to the extent specified herein, not be changed or supplemented with inconsistent burdens and exactions; and

WHEREAS, for the foregoing reasons, the Parties desire to enter into, pursuant to the Development Agreement Act and the Enabling Ordinance and the City's general law powers, a development agreement upon the terms set forth herein for the development of the Hotel Project and Public Parking Lot.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act and the Enabling Ordinance, and in consideration of the promises and covenants herein contained, and other valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties hereto agree as follows:

1. DEFINITIONS.

For all purposes of this Agreement, except as otherwise expressly defined in this Agreement or unless the context otherwise requires:

1.1 “Administrative Amendment” shall mean an amendment or modification to the Project Approvals that is a Minor Modification and is consistent with this Agreement.

1.2 “Agreement” shall mean this Development Agreement and all amendments and modifications thereto.

1.3 “Annual Review” shall mean the annual review process as described in Section 4 of this Agreement and required by California Government Code Section 65865.1.

1.4 “Applicable Rules” shall mean the rules, regulations, ordinances and officially adopted policies of the City in force as of the Effective Date (as hereinafter defined) of this Agreement, including the General Plan and the CMC, except as such rules, regulations, ordinances and officially adopted policies may be modified in accordance with Section 3.2.2 of this Agreement.

1.5 “Attorneys' Fees” shall mean and shall be limited to (a) attorneys' fees, if any, specifically awarded to a Plaintiff by a court of competent jurisdiction pursuant to a final judgment in connection with any Litigation and (b) the amount required to be paid, if any, to reimburse any Plaintiff for the Plaintiffs attorneys' fees as provided in a settlement agreement approved by City and Developer in connection with any Litigation, as provided in Section 9.8.3.1 of this Agreement.

1.6 “CEQA” shall mean the California Environmental Quality Act (“CEQA”) (Cal. Public Resources Code §§ 21000 *et seq.*), the State CEQA Guidelines (Cal. Code of Regs., Title 14, §§ 15000 *et seq.*) and any applicable City CEQA Guidelines.

1.7 “City” shall mean the City of Calabasas, a general law city.

1.8 “City Agency” shall mean each and every agency, department, board, commission, authority, agency, employee, and/or official acting under the authority of the City, including without limitation, the City Council, the City Planning Commission and any joint power authority of the City over which the City has effective control.

1.9 “City Attorney” shall mean the City Attorney of the City.

1.10 “City Council” shall mean the City Council of the City and the legislative body of the City pursuant to Section 65867 of the California Government Code.

1.11 “City Manager” shall mean the most senior executive and/or administrative officer of the City.

1.12 “**City Project Manager**” shall mean an individual selected by the City to coordinate processing of all Ministerial Permits and Approvals and all Discretionary Actions.

1.13 “**CMC**” shall mean the Calabasas Municipal Code.

1.14 “**Dedication Area**” shall mean the portion of the Property to be transferred from the Developer to the City, as more particularly described in Exhibit “B”.

1.15 “**Dedication Agreement**” shall mean the further agreement concerning the transfer of the Dedication Area to the City, attached as Exhibit “F”.

1.16 “**Conditions of Approval**” shall mean the final conditions of approval imposed by the City in connection with development of the Hotel Project, reflecting the changes made to the Conditions of Approval by the ordinance approving this Agreement and the provisions of Section 3.4 of this Agreement.

1.17 “**Consensual Transfer**” shall mean a Transfer of the Property or any of its rights or obligations hereunder by the Developer that requires written consent of the City, as set forth in Article 8 of this Agreement.

1.18 “**Counsel**” shall mean the counsel retained by Developer to represent the City and/or the Developer in connection with any Litigation.

1.19 “**Developer**” shall mean Rondell Oasis, LLC, a California limited liability company.

1.20 “**Developer Project Manager**” shall mean the person designated from time to time by Developer as having primary responsibility for supervision and implementation of the Hotel Project.

1.21 “**Development Agreement Act**” shall mean Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

1.22 “**Discretionary Action**” or “**Discretionary Approvals**” shall mean an action which requires the exercise of judgment, deliberation or a decision on the part of the City and/or any City Agency in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires the City and/or any City Agency to determine whether there has been compliance with statutes, ordinances or regulations.

1.23 “**Effective Date**” is the date on which this Agreement is attested by the City Clerk of the City after approval by the City Council and execution by the Mayor of the City and Developer.

1.24 “**Enabling Ordinance**” shall mean Chapter 17.68 of the CMC.

1.25 “**Enforced Delays**” shall have the meaning ascribed in Section 9.5 of this Agreement.

1.26 “**General Plan**” shall mean the General Plan of the City.

1.27 “**Government Agencies**” or “**Government Agency**” shall mean any entity or subordinate entity, including any administrative agency, of the State of California, the United States Federal Government, a local municipality or special or regional body created to carry out a governmental function or to implement a statute or statutes.

1.28 “**Hotel Project**” shall mean the additional buildings, facilities and other improvements to be constructed, demolished, removed, or replaced on a portion of the Property pursuant to this Agreement, consisting of up to sixty-seven thousand (67,000) square feet of building area for the construction of a three story, one hundred twenty-seven (127) room hotel, together with other onsite and offsite improvements as permitted by the CMC, General Plan and this Agreement.

1.29 “**Hotel Site**” shall mean the portion of the Property retained by Developer after conveying the Dedication Area to the City.

1.30 “**Impact Fees**” shall mean impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on and in connection with new development by the City pursuant to rules, regulations, ordinances and policies of the City. Impact Fees do not include Processing Fees and Charges.

1.31 “**Inspections**” shall mean all field inspections and reviews by City officials during the course of construction of the Hotel Project and the processing of certificates of occupancy (permanent or temporary).

1.32 “**Litigation**” shall mean any action (including any cross-action) filed against the City and/or Developer initiated by a person, group of persons, or entity other than a Party to this Agreement to the extent such action challenges the validity of, or seeks any other remedy directly relating to, all or any part of the Project Approvals or this Agreement, including legal challenges brought by initiative or referendum.

1.33 “**Major Modification**” shall mean any amendment or modification to the Project Approvals that is either: (a) not a Minor Modification; or (b) inconsistent with this Agreement.

1.34 “**Minor Modification**” shall mean those amendment or modifications to the Project Approvals listed in Section 6.1.3 of this Agreement or otherwise determined to be consistent with this Agreement and shall be approved at the administrative level and that shall not require an amendment to this Development Agreement.

1.35 “**Ministerial Permits and Approvals**” shall mean the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City that do not require or allow the exercise of discretion by the City in order for Developer to implement, develop and construct the Hotel Project and the program to monitor the Mitigation Measures, including without limitation, building permits, public works permits, grading permits, encroachment permits and other similar permits and approvals which are necessary or desired by

Developer for implementation of the Hotel Project and the Mitigation Measures. Ministerial Permits and Approvals shall not include any Discretionary Actions.

1.36 “Mitigated Negative Declaration” or “MND” shall mean the Mitigated Declaration adopted by the City Council with the approval of City Council Resolution No. 2016-1496 approving the Project.

1.37 “Mitigation Monitoring Program” shall mean those certain MND mitigation measures which have been determined by the City to be applicable to the Hotel Project as part of the City Council’s approval of Resolution 2016-1496.

1.38 “Mortgagee” shall have the meaning ascribed in Section 7.2 of this Agreement.

1.39 “Parties” shall mean collectively Developer and the City.

1.40 “Party” shall mean any one of Developer or the City.

1.41 “Permitted Mortgage” shall have the meaning ascribed in Section 7.1 of this Agreement.

1.42 “Plaintiff” shall mean any party initiating Litigation whether as plaintiff, petitioner or otherwise.

1.43 “Planning Commission” shall mean the Planning Commission of the City and the planning agency of the City pursuant to Section 65867 of the California Government Code.

1.44 “Community Development Director” shall mean the Director of Community Development for the City or his or her designee.

1.45 “Processing Fees and Charges” shall mean all fees and charges duly adopted and imposed by the City on a uniform, non-discretionary basis on all development projects within the City to defray actual costs of processing entitlement applications. Processing Fees and Charges include, without limitation, fees for land use applications, project permits, building applications, building permits, grading permits, encroachment permits, tract or parcel maps, lot line adjustments, air right lots, street vacations, certificates of occupancy and other similar permits. Processing Fees and Charges shall not include Impact Fees.

1.46 “Project Approvals” shall mean the “Existing Development Approvals,” defined as the land use permits and entitlements issued by the City for the development of the Hotel Project on or before the effective date of the agreement, including City Council Resolution No. 2016-1496 and the Site Plan and Conditions of Approval, which are listed in Exhibit “D,” attached hereto and incorporated herein by this reference., and the “Future Development Approvals,” defined as any additional land use permits and entitlements issued by the City for the development of the Hotel Project on the Property after the effective date of this agreement and in accord with its terms and conditions.

1.47 “**Property**” shall mean the real property located at 26300 Rondell Street and consisting of approximately 4.13 acres within the City which is owned by Developer and specifically described on Exhibit ”A” attached hereto.

1.48 “**Public Works Director**” shall mean the Director of Public Works for the City of Calabasas.

1.49 “**Public Parking Lot**” shall be the approximately one hundred fifty-two (152) parking space public parking lot, with curbs, driveways, lighting, landscaping and associated parking lot improvements, to be built on the Dedication Area, a portion of the Hotel Site, and the Rondell Parcel, more fully described in Section 3.3 of this Agreement.

1.50 “**Remaining Property**” shall have the meaning ascribed in Section 8.3 of this Agreement.

1.51 “**Reserved Powers**” shall mean the right and authority to enact rules, regulations and ordinances after the Effective Date that may be in conflict with the Applicable Rules, but: (1) which prevent or remedy conditions which the City has found, based on substantial evidence, to pose a serious and imminent threat to the public health or safety; (2) are Uniform Codes; (3) are necessary to comply with state and federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date), including but not limited to rules, regulations and ordinances related to the City’s compliance with federal, state and county mandates under any National Pollutant Discharge Elimination System permit applicable to the City, or to comply with a court order or judgment of a state or federal court issued or imposed upon the City; (4) are expressly agreed to or consented to in writing by Developer; (5) are for the formation of assessment districts, Mello-Roos or community facilities districts, special districts, maintenance districts or other similar districts formed in accordance with applicable laws, provided, however, that Developer shall retain all its rights with respect to such districts pursuant to all applicable laws; or (6) are taxes. Reserved Powers shall also include the power to enact rules, regulations, ordinances and policies after the Effective Date that are not inconsistent with the Applicable Rules or with development of the Hotel Project as contemplated by this Agreement.

1.52 “**Rondell Parcel**” shall mean the City-owned unimproved portion of Rondell Street adjacent to the Property as shown in Exhibit “C”.

1.53 “**Taxes**” shall mean any pecuniary burden imposed for funding government purposes by the City generally upon the persons and entities within the City, without reference to peculiar benefits to particular individuals or property.

1.54 “**Term**” shall mean that period of time during which this Agreement shall be in effect and shall bind the City and Developer as described in Section 9.2 below.

1.55 “**Transfer**” shall mean any direct or indirect conveyance, sale, assignment, lease, sublease, license, concession, franchise, gift, hypothecation, mortgage, pledge, encumbrance or the like, to any person or entity.

1.56 “**Transferee**” shall have the meaning ascribed in Section 8.3 of this Agreement.

1.57 “**Transferred Property**” shall have the meaning ascribed in Section 8.3 of this Agreement.

1.58 “**Uniform Codes**” shall mean those regulations of a City-wide scope which are based on recommendations of a multi-state professional organization and become applicable throughout the City, such as, but not limited to, the Uniform Building Code, the Uniform Electrical Code, the Uniform Mechanical Code, or the Uniform Fire Code (including those amendments to the promulgated Uniform Code which reflect local modification to implement the published recommendations of the multi-state organization and which are applicable City-wide).

2. RECITALS OF PREMISES, PURPOSE AND INTENT.

2.1 Purpose of this Agreement.

2.1.1 Developer Objectives. In accordance with the legislative findings set forth in the Development Agreement Act, Developer wishes to obtain reasonable assurances that the Public Parking Lot and the Hotel Project may be developed in accordance with the Applicable Rules, subject to the terms of this Agreement, the terms of the Project Approvals, and the City’s Reserved Powers. In the absence of this Agreement, Developer would have no assurance that it can complete the Hotel Project for the uses and to the density and intensity of development set forth in this Agreement. This Agreement, therefore, is necessary to assure Developer that the Hotel Project will not be (1) reduced in density, intensity or use; or (2) subjected to new rules, regulations, ordinances or official policies or delays which are not permitted by this Agreement, the terms of the Project Approvals, or the Reserved Powers.

2.1.2 Mutual Objectives. Development of the Hotel Project in accordance with this Agreement will provide for the orderly development of the Hotel Project and the Public Parking Lot in accordance with the objectives set forth in the General Plan. Moreover, a development agreement for the Hotel Project will eliminate uncertainty in planning for and securing orderly development of the Hotel Project, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. The Parties believe that such orderly development of the Project will provide many public benefits to the City through the imposition of development standards and requirements under the provisions and conditions of this Agreement, including without limitation: increased tax revenues, installation of on-site and off-site improvements, expanded public parking facilities, and job creation. Additionally, although development of the Project in accordance with this Agreement will shift the risk of changes in the City’s land use or other relevant powers to the City, the Agreement provides the City with sufficient reserved powers during the Term hereof to remain responsible and accountable to its residents and to adequately protect the public health and safety. In exchange for these and other benefits to the City, Developer will receive assurances that the Hotel Project may be developed during the Term of this Agreement in accordance with the Applicable Rules and Reserved Powers and subject to the terms and conditions of this Agreement.

3. AGREEMENT AND ASSURANCES.

3.1 Agreement and Assurances on the Part of Developer. In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the promises, purposes and intentions set forth in the Recitals and Section 2 of this Agreement, Developer hereby agrees as follows:

3.1.1 Development of the Hotel Project. Any development of the Developer during the Term of this Agreement must fully comply with the terms and conditions of this Agreement, all Applicable Rules, and the terms of the Project Approvals, including without limitation the Mitigation Monitoring Program and the Conditions of Approval.

3.1.2 Real Property Transfer. The Developer shall transfer its rights to the Dedication Area at no cost to the City pursuant to the terms of the Dedication Agreement attached as Exhibit "E" and incorporated herein by reference.

3.1.3 Concentrated Development Rights. In exchange for the Dedication Area, the City will by ordinance permit the concentration of development rights inherent in the Dedication Area on the remaining portion of the Property, allowing the Developer to construct the Hotel Project on the Property and preserving the Property's present maximum density and allowable developable square footage, as limited by the applicable floor-area ratio, site coverage, off-street parking, and pervious surface coverage requirements for the entire Property, as a concentrated development right for future use on the remaining portion of the Property after transfer of the Dedication Area to the City.

3.1.4 Construction Timeline. Subject to the occurrence of the close of escrow and transfer of the Dedication Area to the City pursuant to the Dedication Agreement, Developer agrees to commence construction of the Hotel Project within two years from the Effective Date of this Agreement. From the commencement of construction to completion of the Hotel Project, Developer shall not cease or suspend building or construction for any continuous period of time equal to or greater than 180 days for any reason other than for Enforced Delays described in Section 9.5 of this Agreement.

3.2 Agreement and Assurances on the Part of the City. In consideration for Developer entering into this Agreement, and as an inducement for Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the promises, purposes and intentions set forth in the Recitals and Section 2 of this Agreement, the City hereby agrees during the Term as follows:

3.2.1 Entitlement to Develop.

3.2.1.1 Project Entitlement. Developer is hereby granted the vested right to develop the Hotel Project on the Property subject only to the terms and conditions of this Agreement, the Applicable Rules, the Project Approvals, the Reserved Powers, and applicable federal and state law.

3.2.2 Changes in Applicable Rules.

3.2.2.1 Nonapplication of Changes in Applicable Rules. Any change in, or addition to, the Applicable Rules, including, without limitation, any change in any applicable general or specific plan, zoning or building regulation, after the Effective Date, including, without limitation, any such change by means of ordinance, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Manager, City Council, Planning Commission or City Agency, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Hotel Project and which would conflict with the Applicable Rules or this Agreement, shall not be applied to the Hotel Project unless such changes represent an exercise of the City's Reserved Powers or are otherwise expressly allowed by this Agreement.

3.2.2.2 Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, construction of the Hotel Project shall comply with changes occurring from time to time in the Uniform Building Code, Uniform Fire Code and other Uniform Codes pursuant to the Reserved Powers.

3.2.2.3 Changes Mandated by Federal or State Law. This Agreement shall not preclude the application to the Hotel Project of changes in, or additions to, the Applicable Rules that are mandated by federal or state law. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended only to such extent as may be necessary to comply with such state or federal laws or regulations.

3.2.2.4 Special Taxes and Assessments. Developer hereby waives all rights to protest, oppose and vote against any and all special taxes, assessments, levies, charges and/or fees imposed with respect to any assessment districts, Mello-Roos or community facilities districts, maintenance districts or other similar districts that may be necessitated by development of the Hotel Project.

3.2.2.5 Monitoring Impacts; Corrective Measures. Notwithstanding anything in this Agreement to the contrary, City shall have the right to monitor Hotel Project impacts to trees, traffic, and water quality as described in the Project Approvals and to prescribe corrective measures or impose changes to the Project Approvals to the extent therein provided.

3.2.3 Agreed Changes and Other Reserved Rights. This Agreement shall not preclude changes to the Applicable Rules which are mutually agreed to in writing by Developer and the City and other changes to the Applicable Rules resulting from an exercise of the Reserved Powers.

3.2.4 Permit Requirements. The City shall not require Developer to obtain any approvals or permits for the development of the Hotel Project in accordance with this Agreement other than those permits or approvals which are required by this Agreement, the Applicable Rules or the Reserved Powers, specified in the Hotel Project Approvals, or specifically required by Section 3.2.3.

3.2.5 Effective Development Standards. The City agrees that it is bound to permit the Hotel Project uses, intensity of use, and density of the Hotel Project allowed by the Project Approvals, subject to this Agreement. Moreover, the City hereby agrees that it will not unreasonably withhold or unreasonably condition any Discretionary Action which must be issued by the City in order for the Hotel Project to proceed, provided that Developer reasonably and satisfactorily complies with all City-wide standard procedures and policies of the City for processing any such Discretionary Action, pays any applicable Processing Fees and Charges and generally complies with City-wide standard policies of the City for processing applications for Discretionary Actions. The City shall cooperate in processing any further Discretionary Actions requested by Developer which are reasonably necessary for successful implementation of the Project as contemplated by this Agreement and the Project Approvals.

3.2.6 City's Consideration and Approval of Requested Changes in the Project. The City acknowledges that Developer may in the future desire to change or modify the precise location, configuration, size and height of proposed buildings or other facilities and the mix of proposed uses after the Effective Date of this Agreement. The City shall cooperate in reviewing such changes and shall not impose conditions on its approval of such changes other than the conditions of the Project Approvals and the Mitigation Monitoring Program; provided, however, that: (i) such changes comply with the development standards set forth in the Applicable Rules; (ii) such changes do not result in new significant environmental impacts beyond the impacts studied in the MND, or do not substantially increase the severity of impacts previously identified in the MND; and (iii) are consistent with the Applicable Rules. No change to the Project which is consistent with the Applicable Rules shall require an amendment to this Agreement, and, in the event any change in the Hotel Project is approved, the references in this Agreement to the Hotel Project or applicable portion thereof shall be deemed to refer to the Hotel Project as so changed. To the extent permitted by the Applicable Rules, including the standard appeal and review procedures, any changes to the Hotel Project shall be reviewed at an administrative level without the necessity of approval by any City board or commission or the City Council.

3.2.7 Interim Use. The City agrees that, pending build-out of the Hotel Project, Developer may use the Property during the Term for existing Developer uses and for such other temporary uses as the City may allow from time to time pursuant to Project Approvals and Applicable Rules.

3.2.8 Moratoria. In the event an ordinance, resolution or other measure is enacted following the Effective Date, whether by action of the City, by initiative, or otherwise, which relates to the rate, amount, timing, sequencing or phasing of the development or construction of the Hotel Project on all or any part of the Property or the implementation or construction of the Mitigation Monitoring Program and the conditions of the Project Approvals, the City agrees that such ordinance, resolution or other measure shall not apply to the Hotel Project, the Property or this Agreement, unless such changes are adopted pursuant to the City's exercise of its Reserved Powers or other applicable provision of this Agreement.

3.2.9 Standard City Services. The City agrees to provide generally applicable standard municipal services to the Hotel Project upon the same terms as provided elsewhere in the City.

3.2.10 Impact Fees. Impact Fees imposed by the City with respect to the Hotel Project shall be only those Impact Fees in force and duly adopted from time to time. This Agreement shall not limit any impact fees, linkage fees, exaction, assessments or fair share charges or other similar fees or charges imposed by other governmental entities and which the City is required to collect or assess pursuant to applicable law (i.e. Developer district impact fees pursuant to Government Code Section 65995). The City agrees that the construction cost of public improvements installed pursuant to the Mitigation Measures and/or any conditions of the Project Approvals for which Developer paid more than its prorata share shall be credited against any applicable Impact Fees which relate to the type of improvement installed, to the extent of the cost in excess of Developer's pro-rata share.

3.3 Public Parking Lot.

3.3.1 Development. The City shall construct the Public Parking Lot on the Dedication Area and the Rondell Parcel designed by the Public Works Director, in consultation with the Developer, and consistent with this Agreement, the Applicable Rules, and the Project Approvals. Construction of the Public Parking Lot shall be complete within 180 working days of the commencement of construction of the Public Parking Lot. The Director of Public Works for the City of Calabasas and the Community Development Director shall approve the design and specifications for the Public Parking Lot. The Public Parking Lot will consist of approximately one hundred and fifty-two (152) parking spaces with curbs, driveways, lighting, landscaping and associated parking lot improvements. The City and Developer agree that the City's Project Manager (as defined herein) and the Developer's Project Manager (as defined herein) shall cooperate on developing a written site availability and construction schedule, including the specific date of commencement for construction of the Public Parking Lot which shall be within three months of conveyance of the Dedication Area to the City, and construction staging and management plan governing construction of the Public Parking Lot, complying with the timeline set in this section and Section 3.1.4.

3.3.2 Maintenance of Public Parking Lot. The City and Developer shall jointly maintain the Public Parking Lot for the Term of this Agreement, with costs and responsibilities divided as follows: (i) Developer shall be responsible for periodic sweeping, emptying of trash receptacles and trash removal as often as necessary to keep the Public Parking Lot generally clean consistent with or exceeding the standard of cleanliness generally prevailing at City-owned parking lots throughout the City; and (ii) City shall be responsible for all other maintenance, repair and replacement as needed to maintain the Public Parking Lot (including but not limited to paving, striping, curbs, fencing, landscape, walkways, lighting and hardscape) in a good and attractive condition at or exceeding the prevailing standard of maintenance and repair at City-owned public parking lots throughout the City. The Developer shall submit a maintenance plan, specifying the planned maintenance activities, schedules, and funding sources, to the Public Works Director for review and approval. The Public Parking Lot maintenance plan must be approved by the Public Works Director before issuance of a

Certificate of Occupancy for the Hotel Project. Once approved, the Developer and City must comply with the provisions of the Public Parking Lot maintenance plan.

3.3.3 Public Parking Lot Access. Upon completion of the Public Parking Lot, the City will open the Public Parking Lot for 24-hour public access, 7 days per week, 365 days per year. All spaces shall be open to the general public for vehicular parking on a first-come, first served basis, subject to regulations adopted by the City to control or prohibit uses which may pose a nuisance or be inconsistent with the purposes of this Agreement, e.g. long-term parking, parking of RVs and large trucks, people living in cars, abandoned vehicles, vehicle repairs, and other activities inconsistent with the purpose of the Public Parking Lot. The Developer and employees and guests of the hotel to be constructed as part of the Hotel Project will be entitled to use the Public Parking Lot on the same terms as every other member of the public, including for overnight parking. The City shall post signs in the Public Parking Lot indicating that it is open to any member of the public for purposes of parking their vehicle. The plans and design for these signs shall be approved by the Community Development Director and the Public Works Director before installation.

3.4 Amendments to Project Approvals. All the conditions of the Project Approvals remain in full force and effect, except those expressly modified by this section, including the following:

3.4.1 Condition No. 9. Condition number 9 of the Project Approvals is void pursuant to this Agreement.

3.4.2 Condition No. 21. Condition number 21 of the Project Approvals is void pursuant to this Agreement.

3.4.3 Condition No. 39. Condition number 39 of the Project Approvals is void pursuant to this Agreement.

3.4.4 Condition No. 40. Condition number 40 of the Project Approvals is void pursuant to this Agreement.

3.4.5 Condition No. 41. Condition number 41 of the Project Approvals is void pursuant to this Agreement.

3.4.6 Condition No. 43. Condition number 43 of the Project Approvals is void pursuant to this Agreement.

3.4.7 Condition No. 46. Condition number 46 of the Project Approvals is void pursuant to this Agreement.

3.4.8 Condition No. 47. Condition number 47 of the Project Approvals is void pursuant to this Agreement.

3.4.9 Condition No. 48. Condition number 48 of the Project Approvals is void to the extent it requires the Developer to install signs and plant trees on Property it conveys to

the City pursuant to this Agreement. Developer remains obligated to plant trees on the Hotel Site and adjacent Santa Monica Mountains Conservancy lands as required by Condition No. 48.

3.4.10 Condition No. 49. Condition number 49 of the Project Approvals is void pursuant to this Agreement.

3.4.11 Condition No. 50. Condition number 50 of the Project Approvals is void pursuant to this Agreement.

3.4.12 Condition No. 51. Condition number 51 of the Project Approvals is void pursuant to this Agreement.

3.4.13 Condition No. 52. Condition number 52 of the Conditions of Approval is void pursuant to this Agreement.

3.4.14 In lieu of the prior conditions of Project Approvals voided pursuant to paragraphs 3.4.1 through 3.4.12 above, City hereby imposes as a condition of regulatory approval on Developer's Project the requirement that Developer perform the work of improvement defined herein as the Public Parking Lot, and Developer's Hotel Project shall not be opened or operated for hotel guests unless and until the Public Parking Lot has been completed and is operational. Pursuant to the terms and conditions of this Agreement and in consideration of each party's promises to each other, Developer is delegating to the City, and the City is agreeing to pay for and undertake, the completion of the Public Parking Lot in satisfaction of this condition of approval.

3.5 Entitlements, Permits and Inspections. The City and Developer have agreed on the following provisions to expedite development of the Hotel Project:

3.5.1 Project Managers. If jointly agreed to by the Parties in order to facilitate the expeditious completion of the Public Parking Lot Project, the City shall select a City Project Manager for the Public Parking Lot Project and the Developer shall select a Developer Project Manager for the Hotel Project. The Project Managers will be the primary designees for their respective Party, responsible for coordinating all processing of Ministerial Permits and Approvals and all Discretionary Actions, if any, for the Project. Each Party agrees to consult with the other Party as to its proposed selection of its Project Manager, and in good faith to take into consideration the other Party's comments regarding the selection; provided that the selection of its Project Manager shall be made by each Party in its sole discretion. Each Party will endeavor to maintain reasonable consistency with respect to the Project Manager assigned to the Public Parking Lot Project through the completion of each phase of the Public Parking Lot and Hotel Projects, subject to employee performance criteria and operational requirements. Each Party agrees to assist in the efforts of the other Party's Project Manager by promptly providing information reasonably requested by the other Party or the other Party's Project Manager, in order to clarify an application or to otherwise facilitate processing of an application.

3.5.2 Time Limits and Extensions. If Developer commences and proceeds with the Project within the time required by provisions of this Agreement, any permit or

entitlement granted by City for the Hotel Project shall not expire and shall not become void pursuant to CMC Section 17.64.050(A) or any other provision. If Developer fails to commence or complete the Hotel Project within the time required by this Agreement, then unless otherwise extended by the Community Development Director for up to one additional year or by an amendment to this Agreement, all permits and entitlements granted by the City for the Hotel Project shall expire and become void 90 days following City's delivery to Developer of written notice of such failure, if the failure remains uncured at the end of such 90 days.

3.5.3 Processing Fees and Charges. Developer shall pay all Processing Fees and Charges in effect from time to time for Discretionary Actions, Discretionary Approvals, or Ministerial Permits and Approvals and Inspections for the Hotel Project.

3.5.4 Timeframes and Staffing for Processing and Review. In recognition of the importance of timely review and approval of Ministerial Permits and Approvals and Inspections, the Project Managers will work together to prevent unnecessary delays in reviewing and processing such Ministerial Permits and Approvals, Inspections, and Discretionary Actions.

3.5.5 Permits and Approvals by Other Agencies. The City shall assist and cooperate with Developer, to the extent such assistance and cooperation is requested by Developer, in obtaining permits and approvals from Government Agencies other than the City. Except as may be permissible pursuant to the City's Reserved Powers, the City shall not oppose or otherwise attempt to prevent issuance of any permit or approval from another Government Agency.

3.5.6 Permit/Approval Dispute Resolution. The Parties agree to establish and utilize the dispute resolution proceedings as set forth in this section to fairly and expeditiously resolve disputes or questions related to interpretation of the Project Approvals and the Ministerial Permits and Approvals during the Term. In the event of a dispute or question of interpretation regarding any Project Approvals or any Ministerial Permits and Approvals which cannot be resolved by the City Project Manager and the Developer Project Manager, upon the request of either Party, the City Project Manager and the Developer Project Manager shall meet and confer with the City Manager, or the designee of the City Manager if the City Manager is absent. Such meeting shall occur within five (5) business days following the request by either Party for such meeting. In the event that the City Manager is unable to resolve the dispute or question of interpretation within five (5) additional business days following such meeting, the Parties shall be entitled to pursue additional remedies as provided by Section 9.4 below. Nothing herein expands the authority of the City Manager, if any, to overrule determinations of the City Engineer, Chief Building Official, Fire Chief and/or other City officials and/or City Agencies as provided by the CMC or other applicable law.

3.5.7 Environmental Review. The City has conducted extensive environmental review of the Hotel Project and has adopted the MND pursuant to the requirements of CEQA. The Ministerial Permits and Approvals are not actions subject to requirements for further environmental review pursuant to CEQA. The City further agrees to use its best efforts to consult with Developer regarding any Discretionary Actions applicable to

the Project and, to the extent additional CEQA review is legally required for any subsequent Discretionary Action, to avoid any unnecessary or unreasonable delays due to requirements for additional documentation pursuant to CEQA.

3.5.8 If the City determines, on the basis of substantial evidence in the light of the whole record, that any one or more of the following circumstances have arisen then a subsequent environmental impact report or negative declaration shall be prepared:

3.5.8.1 Substantial changes are proposed in the Hotel Project which will require major revisions of the MND due to the involvement of new, significant environmental effects or a substantial increase in the severity of previously identified significant effects;

3.5.8.2 Substantial changes occur with respect to the circumstances under which the Hotel Project is undertaken which will require major revisions of the previous MND due to the involvement of new, significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

3.5.8.3 New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the MND was certified as complete reveals any of the following:

(1) The Hotel Project will have one or more significant effects not discussed in the MND;

(2) Significant effects previously examined will be substantially more severe than shown in the MND;

(3) Mitigation Measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Hotel Project, but Developer declines to adopt the Mitigation Measures or alternatives; or

(4) Mitigation Measures or alternatives which are considerably different from those analyzed in the MND would substantially reduce one or more significant effects on the environment.

3.5.9 A subsequent MND or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072 of the CEQA Guidelines. A subsequent MND or negative declaration shall state where the previous document is available and can be reviewed.

4. ANNUAL REVIEW.

4.1 Annual Review. During the Term of this Agreement, Developer shall submit and the City shall receive an Annual Review of Developer's compliance with this Agreement on the anniversary of the Effective Date of this Agreement. Such Annual Review shall be limited in scope to determining Developer's good faith compliance with the provisions of this Agreement

as provided in the Development Agreement Act and Section 17.68.060 of the Enabling Ordinance. The City shall analyze whether any state or federal laws enacted after the Effective Date of this Agreement prevent or preclude compliance with any provisions of this Agreement. It shall be Developer's burden to demonstrate to the Community Development Director or his/her designee such good faith compliance to the full satisfaction of, and in a manner prescribed, by the City. The Community Development Director's determination of compliance shall not be unreasonably withheld. The Developer shall pay appropriate fees to cover the costs of the City's Annual Review, limited to \$1,000 per year. As set forth in Section 9.4 of this Agreement, the Developer may appeal to the City Council any determination by the Community Development Director that the Developer has not in good faith complied with the provisions of this Agreement as provided in the Development Agreement Act and Section 17.68.060 of the Enabling Ordinance, or that state or federal laws enacted after the Effective Date of this Agreement prevent or preclude compliance with any provisions of this Agreement.

4.2 Termination or Modification of Agreement. In the event the City Council determines on the basis of substantial evidence that the Developer has not complied in good faith with the terms of this Agreement, and that such non-compliance has not been cured, following written notice thereof to the Developer, within the time period specified in Section 5.1.2 below, the City may, after a noticed public hearing, terminate this Agreement or modify this Agreement as reasonably necessary to address such non-compliance. Notwithstanding any other provision of this Agreement, and except as may be necessary pursuant to Section 4.4 below and/or California Government Code Section 65869.5, the City shall not have any right to modify the Agreement without the consent of Developer. If the Community Development Director determines that, pursuant to California Government Code Section 65869.5, any state or federal laws enacted after the Effective Date of this Agreement prevent or preclude compliance with any provisions of this Agreement, the Community Development Director and the Developer shall first negotiate in good faith to mutually agree upon the language and scope of any modification or suspension of the Agreement necessary to comply with Section 65869.5. If the Developer does not consent to the Community Development Director's proposed language and scope of any modification or suspension of the Agreement necessary to comply with Section 65869.5, then the Developer shall have the right to be heard by the City Council on the matter as set forth in Section 9.4 of this Agreement.

4.3 Judicial Review and Specific Performance is Sole Remedy. The Developer shall have the right to seek judicial review of any final termination, suspension, or modification decision by the City in conjunction with an annual review. The Parties agree that specific performance (or writ of mandate for performance of a required act) shall be the sole available and appropriate remedy for Developer under this Agreement, and Developer shall not seek monetary damages from the City under this Agreement or under any otherwise applicable legal basis for monetary damages. Notwithstanding the foregoing sentence or the last two sentences of Section 5.2.2 below, where this Agreement expressly provides for the payment of money by the City to Developer, e.g. recoupment of self-help expenditures under Section 5.2.3 below and indemnification under Section 9.9.4 below, Developer may obtain a monetary judgment requiring City to make the payment, but Developer shall not obtain any other damages (consequential, punitive, lost profit, delay, or otherwise) from the City hereunder.

5. DEFAULT PROVISIONS.

5.1 Default by Developer.

5.1.1 Default. In addition to the annual review process set forth in Section 4, in the event Developer does not perform its obligations under this Agreement in a timely manner, the City also shall have the right to terminate this Agreement, in addition to any other rights in law or equity.

5.1.2 Notice of Default. With respect to a default pursuant to this Agreement, the City through the Community Development Director shall submit to Developer, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 9.12, identifying with specificity those obligations of Developer which have not been performed. Upon receipt of the notice of default, Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) promptly not later than one hundred and twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Developer shall diligently pursue such remedy at all times until such default(s) is cured.

5.1.3 Failure to Cure Default Procedure. If after the cure period has elapsed, the Community Development Director finds and determines that Developer has not cured the default pursuant to this Section 5.1, Developer shall be entitled to appeal that finding and determination to the City Council in accordance with Section 9.4. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity.

5.1.4 Termination or Modification of Agreement. In the event the City Council determines on the basis of substantial evidence that Developer has not cured any such defaults, the City Council may terminate this Agreement or modify it in a manner acceptable to Developer. Notwithstanding any other provision of this Agreement, and except as may be necessary pursuant to California Government Code Section 65869.5, the City shall not have any right to modify this Agreement without the written consent of Developer. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code Sections 65867.5, 65868, and 65869.5 irrespective of whether an appeal is taken as provided in Section 9.4.

5.1.5 Specific Performance. Except as provided in this Section 5.1, the City shall have no right to seek a remedy of specific performance for any default by Developer pursuant to this Agreement. Further, in the event of an abandonment of the Hotel Project, City shall not be entitled to seek specific performance to compel completion of the Hotel Project. The City's right to specific performance shall be limited to: (i) compelling Developer, at the election of the City in its sole discretion, to demolish any partially-constructed offsite improvements on public property initiated in connection with the Hotel Project; and (ii) compelling Developer, at the election of Developer in its sole discretion, to either complete, demolish or make safe and secure any partially-constructed improvements located on the Property. Nothing in this Section 5.1 shall limit the City's right to enforce all applicable

provisions of this Agreement, the Applicable Rules, Uniform Codes and Project Approvals for any portion of the Project then or thereafter constructed and not abandoned. Further, the Parties agree to cooperate in pursuing an expedited process for any actions in specific performance permitted by this Agreement.

5.2 Default by the City.

5.2.1 Default and Notice of Default. In the event the City does not accept, process or render a decision on necessary development permits, entitlements, or other land use or building approvals for use as provided in this Agreement upon compliance with the requirements therefor, or the City otherwise defaults under the provisions of this Agreement, in addition to the dispute resolution process set forth in Section 3.5.6, Developer shall have only those rights and remedies provided herein which shall include compelling the specific performance of the City's obligations under this Agreement. With respect to a default pursuant to this Agreement, Developer shall first submit to the City a written notice of default stating with specificity those obligations which have not been performed. Upon receipt of the notice of default, the City shall cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure in any event not later than one hundred and twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

5.2.2 Specific Performance. Both Parties agree and recognize that, as a practical matter, it will not be feasible physically, financially and as a matter of land use planning, to restore the Property to its prior state once the Project is commenced. Moreover, Developer has invested a considerable amount of time and financial resources in planning to arrive at the kind, location and intensity of use and improvements for the Project. For these reasons, it may not be possible to determine an amount of monetary damages which would adequately compensate Developer for this work nor calculate the consideration the City would require to enter into this Agreement to justify such exposure. Therefore, the Parties agree that monetary damages shall not be an adequate remedy for Developer if the City should be determined to be in default under this Agreement. The Parties further agree that specific performance (or writ of mandate for performance of a required act) shall be the sole available and appropriate remedy for Developer under this Agreement, and Developer shall not seek monetary damages in the event of a default by the City under this Agreement or under any otherwise applicable legal basis for monetary damages. In no event will the City or its officers, agents, or employees, be liable for damages for any default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to Developer for a default under this Agreement by the City shall be a legal action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement.

5.2.3 Self-Help. Notwithstanding anything to the contrary in paragraph 5.2.2 above, Developer shall have (and City hereby grants a right of entry to Developer over the Dedication Area to accomplish) a limited self-help remedy as provided in this paragraph. In the event that following City's acquisition of the Dedication Area, the City defaults in commencing or completing the Public Parking Lot as required by Section 3.3.1 above, and the default

continues uncured after notice to the City and expiration of the applicable cure period under Section 5.2.1 above, then Developer may elect to engage a licensed contractor and enter onto the Dedication Area to proceed with construction of the Public Parking Lot in accordance with the approved plans and applicable law. Developer shall give the City at least ten days' prior written notice of such election prior to commencing work. The costs incurred by Developer in proceeding with construction of the Public Parking Lot under this paragraph shall initially be paid by Developer, but Developer shall be entitled to bring a court action to recover solely its reasonable expenditures incurred in construction of the Public Parking Lot from the City. Developer shall have no right to recover further monies beyond the reasonable expenditures incurred in construction of the Public Parking Lot from the City, including any consequential, punitive, lost profit, delay, or other damages.

5.3 Termination for Failure of Conditions Precedent to Occur. If the Conditions Precedent set forth in Sections 3, 4, and 5 of the Dedication Agreement as necessary precedents to the transfer of the Dedication Area from Developer to City have not been satisfied by December 31, 2018, then this Agreement shall terminate. In that event, the Existing Development Approvals shall remain valid and shall expire one year after the termination date if not exercised or extended by the Community Development Director under the provisions of Calabasas Municipal Code section 17.64.050.

6. AMENDMENT.

6.1 Amendment of Project Approvals. The Project Approvals from time to time may be amended or modified in the following manner:

6.1.1 City's Consideration and Approval of Requested Changes in the Hotel Project. The City acknowledges that Developer may in the future desire to change or modify the precise location, configuration, size, and height of proposed buildings or uses and/or the types and mix of proposed uses after the Effective Date of this Agreement based upon more precise planning, changes in market demand, the availability of funding, changes in development occurring in the vicinity, and similar factors. The City shall cooperate in reviewing such changes and shall not impose additional conditions on its approval of Minor Modifications as defined herein. In the event any change in the Hotel Project is approved, the references in this Agreement to the Hotel Project or applicable portion thereof shall be deemed to refer to the Hotel Project as so changed. To the extent permitted by the Applicable Rules, including the standard appeal and review procedures, any changes to the Hotel Project shall be reviewed at an administrative level without the necessity of approval by any City board or commission or the City Council.

6.1.2 Administrative Amendments. Upon the written request of Developer, the Community Development Director or his or her designee shall determine: (1) whether the requested amendment or modification is a Minor Modification, as defined herein or as may be determined by the Community Development Director in his or her reasonable discretion if the amendment or modification is not listed as a Minor Modification; and (2) whether the requested amendment or modification is consistent with this Agreement. If the Community Development Director finds that the amendment or modification is both minor and consistent with this

Agreement, the amendment or modification shall be determined to be an “**Administrative Amendment**,” and the Community Development Director shall approve the Administrative Amendment without notice or public hearing, and this Agreement and its pertinent exhibits shall be automatically amended without further action by the Parties.

6.1.3 Minor Modifications. Minor modifications are those requested changes in the project that shall be approved at the administrative level and that shall not require an amendment to this Development Agreement. Minor Modifications include, but are not limited to:

- Ministerial Permits and Approvals;
- Changes that do not result in new significant environmental impacts beyond the impacts studied in the MND;
- Changes that do not substantially increase the severity of impacts previously identified in the MND;
- Change that are consistent with the Applicable Rules;
- Extensions of the Term pursuant to Section 9.3 of this Agreement; or
- Changes that result in less than a 5% increase in any previously-studied environmental impact or development activity.

6.1.4 Non-Administrative Amendments. Any request by Developer for an amendment that is determined by the Community Development Director to be either: (1) not minor; or (2) inconsistent with this Agreement, shall be considered a “**Major Modification**” and shall be subject to review, consideration and action pursuant to the Applicable Rules and this Agreement, and shall be reflected in an amendment to this Agreement and/or its pertinent exhibits pursuant to Section 6.2 of this Agreement.

6.2 Amendment of this Agreement.

6.2.1 Generally. This Agreement may be amended from time to time, in whole or in part, by mutual consent of the original Parties or their successors in interest, in accordance with this Agreement and Sections 65867, 65867.5 and 65868 of the Government Code. If any proposed amendment purports to change the overall intensity of development or revise approved land uses, such amendment shall be consistent with the General Plan in effect as of the date of such amendment. If State law requires that amendments to a development agreement be conditioned upon consistency with the General Plan, the provisions of the amendment shall be made consistent with the General Plan.

6.2.2 Administrative Amendments. Notwithstanding Section 6.2.1 above, any amendment to this Agreement which does not relate to the Term, uses other than those permitted by the Applicable Rules, provisions for reservation and dedication of land or changes to any condition set forth in the Project Approvals may be determined by the Community

Development Director to be an Administrative Amendment, and if so, shall be processed pursuant to Section 6.1.1 above.

7. MORTGAGEE PROTECTIONS.

7.1 Encumbrance of Developer's Interest. Developer shall have the right to encumber and/or collaterally assign or grant a security interest in Developer's right, title and interest in, to and under this Agreement and the Property pursuant to one or more mortgages ("**Permitted Mortgage**"), provided that each such Permitted Mortgage is given for the purpose of securing funds to be used for financing the acquisition of the Property or any portion thereof, or for financing the construction of the Hotel Project thereon, and/or any other expenditures reasonably necessary and appropriate to develop the Hotel Project in accordance with this Agreement.

7.2 Mortgagee Protections. Provided that any mortgagee or beneficiary under a Permitted Mortgage ("**Mortgagee**") provides the City with a conformed copy of each Permitted Mortgage which contains the name and address of such Mortgagee, the City hereby covenants and agrees to faithfully perform and comply with the following provisions with respect to such Permitted Mortgage:

7.2.1 No Material Modification. No agreement between the Developer and the City to cancel, surrender or materially modify the terms of this Agreement, except for Administrative Amendments, or the provisions of this Article 7 shall be binding upon a Mortgagee without its prior written consent. Nothing in this Article 7 shall be construed to limit the City's rights under this Agreement to terminate this Agreement under the circumstances and according to the procedures for such termination set forth in this Agreement.

7.2.2 Notices. If the City shall give any Notice of Default to Developer hereunder, the City shall simultaneously give a copy of such Notice of Default to the Mortgagee at the address theretofore designated by the Mortgagor. No Notice of Default given by the City to Developer shall be binding upon or affect said Mortgagee unless a copy of said Notice shall be given to Mortgagee pursuant to this Section 7.2. In the case of an assignment of such Permitted Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to the City, may change the address to which such copies of Notices are to be sent. The City shall not be bound to recognize any assignment of such Permitted Mortgage unless and until the City shall be given written notice thereof, a copy of the executed assignment and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Mortgagee hereunder with respect to the Permitted Mortgage being assigned. If such Permitted Mortgage is held by more than one person, corporation or other entity, no provision of this Agreement requiring the City to give notices or copies thereof to said Mortgagee shall be binding upon the City unless and until all of said holders shall designate in writing one of their number to receive all such notices and copies thereof and shall have given to the City an original, executed counterpart of such designation.

7.2.3 Performance of Covenants. Any Mortgagee shall have the right to perform any term, covenant or condition and to remedy any default by Developer hereunder

within the time periods specified herein, and the City shall accept such performance with the same force and effect as if furnished by Developer; provided, however, that said Mortgagee shall not thereby or hereby be subrogated to the rights of the City.

7.2.4 Default by the Developer; Notice of Termination to Mortgagee. In the event of a default by Developer which has not been cured by Developer or as to which there is no cure period hereunder, the City agrees not to terminate this Agreement: (1) unless and until the City provides written notice of such default to any Mortgagee and such Mortgagee shall have failed to cure such Default within ninety (90) business days after the later of delivery of such notice or expiration of any applicable Developer cure period; and (2) as long as:

7.2.4.1 In the case of a default which cannot practicably be cured by the Mortgagee without taking possession of the Property (which defaults shall not include defaults “not susceptible of being cured” as defined below): (1) the Mortgagee has delivered to the City, prior to the date on which the City shall be entitled to give notice of termination, a written instrument wherein the Mortgagee unconditionally agrees that (subject to such delays as may be incident to obtaining a relief from stay in the case of a bankruptcy/dissolution event) it will commence and diligently pursue cure of such default promptly following its obtaining possession and; (2) said Mortgagee shall proceed diligently to obtain possession of the Property (including possession by receiver) (subject to such delays as may be incident to obtaining a relief from stay in the case of a bankruptcy/dissolution event) and, upon obtaining such possession, shall proceed diligently to cure such default; and 3) said Mortgagee has delivered to the City, prior to the date on which the City shall be entitled to give notice of termination, a written instrument wherein the Mortgagee unconditionally agrees that the Mortgagee will preserve and maintain the use of the Property as a Developer subject to the terms and conditions of this Agreement; and

7.2.4.2 In the case of a default which is not susceptible to being cured by the Mortgagee, the Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (subject to such delays as may be incident to obtaining a relief from stay in the case of a bankruptcy/dissolution event) (unless in the meantime it shall acquire Developer’s right, title and interest hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure) and upon such completion of acquisition or foreclosure such default shall be deemed to have been cured.

The Mortgagee shall not be required to obtain possession or to continue in possession as Mortgagee of the Property pursuant to Subsection 7.2.4.1 above, or to continue to prosecute foreclosure proceedings pursuant to Subsection 7.2.4.2 above, if and when such default shall be cured prior to the Mortgagee taking possession of the Property. Nothing herein shall preclude the City from exercising any of its rights or remedies with respect to any other default by Developer during any period of such forbearance, but in such event the Mortgagee shall have all of its rights provided for herein. If the Mortgagee, its nominee or a purchaser in a foreclosure sale, shall acquire title to Developer’s right, title and interest hereunder and shall cure all defaults which are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior defaults which are not susceptible to being cured by the Mortgagee or by said purchaser shall no longer be deemed defaults hereunder.

References herein to defaults which are “not susceptible of being cured” by a Mortgagee or purchaser (or similar language) shall not, except as provided below, be deemed to refer to any default which the Mortgagee or purchaser is not able to cure because of the cost or difficulty of curing such default, but rather shall be deemed to refer only to defaults specifically relating to the identity of the Developer which by their nature can be cured only by the Developer (such as the owner’s bankruptcy/dissolution event or an owner control change).

7.2.5 Foreclosure. Foreclosure of any Permitted Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in a Permitted Mortgage, or any conveyance of the Hotel Project from Developer to a Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of the City or constitute a breach of any provision of, or a default under, this Agreement, and upon such foreclosure, sale or conveyance the City shall recognize the purchaser or other transferee in connection therewith as Developer hereunder, provided that such purchaser or transferee assumes, subject to the terms of Section 7.2.4 above, each and all of the obligations of Developer hereunder pursuant to an assumption agreement satisfactory to the City. If the Mortgagee takes possession of the Property, the Mortgagee shall be subject to the Transfer restrictions and procedures set forth in Article 8 of this Agreement.

7.2.6 No Obligation to Cure. Except as set forth herein, nothing herein contained shall require any Mortgagee to cure any default of Developer referred to above.

7.2.7 Form of Notice. Any Mortgagee under a Permitted Mortgage shall be entitled to receive the notices required to be delivered to it hereunder, provided that such Mortgagee shall have delivered to each party a notice substantially in the following form:

The undersigned, whose address is _____, does hereby certify that it is the Mortgagee (as such term is defined in that certain Development Agreement dated as of _____, 2017 between Rondell Oasis, LLC and the City of Calabasas (“**Development Agreement**”) of the parcel of land described on Exhibit ”A,” attached hereto, which parcel is owned by Rondell Oasis, LLC, a party to the Development Agreement (“**Party**”). In the event that any notice shall be given of a default of the Party under the Development Agreement, a copy thereof shall be delivered to the undersigned who shall have the rights of a Mortgagee to cure the same, as specified in the Development Agreement. Failure to deliver a copy of such notice shall in no way affect the validity of the notice to the Party, including the commencement of any cure periods applicable to the undersigned, until actually received by the undersigned.

7.2.8 Estoppel Certificate. The City shall execute an estoppel certificate in form and substance reasonably satisfactory to the Mortgagee at the time of the initial advance in connection with construction financing and from time to time thereafter, upon the reasonable

request of the Mortgagee. This estoppel certificate can be administratively issued by the Community Development Director if it is in the form required by Section 9.10.

7.2.9 Limitation of Liability. Upon acquiring title to the Property or any portion thereof, said Mortgagee's obligations or liabilities to the City, if any, shall be limited to the terms of this Agreement. If said Mortgagee acquires only a portion of the Property, Mortgagee's obligations under this Agreement shall be limited to those applicable to the portion of the Property acquired by the Mortgagee. Mortgagee shall be released and relieved of any obligation or liability under the Agreement and under any other document entered into in connection therewith upon the assignment of Mortgagee's rights upon or subsequent to foreclosure of its collateral or acquisition in lieu of foreclosure, provided that such assignee accepts in a manner and form acceptable to the City all the transferring Mortgagee's rights and obligations under this Agreement.

7.2.10 Further Assurances. The City and Developer agree to cooperate in including in this Agreement, by suitable amendment, any provision which may be reasonably requested by any Mortgagee or any proposed Mortgagee for the purpose of (i) more fully or particularly implementing the mortgagee protection provisions contained herein; and (ii) allowing such Mortgagee reasonable means to protect or preserve the security interest of the Mortgagee in the collateral, including its lien on the Property and the collateral assignment of this Agreement; provided, however, in no event shall the City be obligated to modify any of the Developer's obligations or the City's rights under this Agreement in any manner not already contemplated in this Article 7.

8. ASSIGNMENT.

8.1 Restrictions on Transfer. The Parties acknowledge and agree that the City is relying upon the resources and experience of Developer to help assure that the City will receive the anticipated benefits of the Hotel Project as expressed in the recitals to this Agreement. Except as provided in this Section 8, prior to build-out of the Hotel Project, Developer shall not be entitled to "Transfer" the Property or any of its rights or obligations hereunder without the written consent of the City, which consent may not be unreasonably withheld or delayed. City shall not be entitled to Transfer the Dedication Area or any of its rights or obligations hereunder without the written consent of the Developer, which consent may not be unreasonably withheld or delayed. For the purposes of this Section, the term "**Transfer**" means any direct or indirect conveyance, sale, assignment, lease, sublease, license, concession, franchise, gift, hypothecation, mortgage, pledge, encumbrance or the like, to any person or entity.

8.2 Notice. At least thirty (30) days prior to any Transfer, Developer shall provide written notice to the City describing the nature of the Transfer, the identity of the proposed transferee, and the asset proposed to be transferred. In the event of any Transfer by Developer, all references in this Agreement to Developer shall thereafter also be deemed to refer to such successor or assign with respect to the interest transferred.

8.3 Effectuation of Transfers. If all or any portion of the Property is transferred by the Developer ("**Transferred Property**") to any person or entity ("**Transferee**") the Transferee

shall succeed to all of Developer's rights and obligations under this Agreement regarding the Transferred Property. The City shall be a necessary party to the effectiveness and validity of all Transfers pursuant to a written assignment and assumption agreement ("**Assignment Agreement**"). Thereafter, a default under this Agreement by Developer regarding that portion of the Property other than the Transferred Property ("**Remaining Property**") shall be considered a default by the Developer and shall not be considered or acted upon by City as a default by the Transferee regarding the Transferred Property and shall not affect the Transferee's rights or obligations regarding the Transferred Property. Likewise, a default by a Transferee relating to the Transferred Property be considered a default by the Transferee and shall not be considered or acted upon by the City as a default by the Developer regarding the Remaining Property and shall not affect the Developer's rights and obligations regarding the Remaining Property.

8.4 Allocation. The Parties acknowledge that in the event of a Transfer of a portion of the Property, Developer shall have the right to contractually allocate with any Transferee the Developer's rights and obligations under this Agreement, including without limitation, permitted density and/or development rights and the right and obligation to construct improvements, including the conditions of the Project Approvals and Mitigation Monitoring Program, all of which shall be set forth in the Assignment Agreement.

9. GENERAL PROVISIONS.

9.1 Effective Date. This Agreement shall be effective only after all of the following conditions are met: (1) approval by the City Council, (2) attestation by the City Clerk, (3) execution by the Developer and the City Manager, and (4) recordation pursuant to Section 9.14 of this Agreement.

9.2 Term. The Term of this Agreement shall commence on the Effective Date and shall extend for a period of 50 years after the Effective Date, unless said Term is otherwise terminated by circumstances set forth in this Agreement or by mutual consent of the Parties hereto. Following the expiration of the Term, this Agreement shall terminate and be of no further force and effect; provided, however, that this termination shall not affect any right or duty arising from entitlements or approvals, including the Project Approvals for the Property approved concurrently with, or subsequent to, the Effective Date.

9.3 Extension. The Term and construction deadlines for the Hotel Project may be extended, and the requirement in Section 3.1.5 above for continuous work on the Hotel Project once construction commences shall not be applicable, for the period of time of any actual delay in Hotel Project development resulting from causes beyond Developer's reasonable control, including but not limited to, delays arising from any enactments pursuant to the City's Reserved Powers or moratoria or pursuant to Section 9.5 of this Agreement. The Developer shall submit to the Community Development Director a written request to extend an applicable project deadline or excuse a break in continuous construction whenever the Developer determines such a request is justified under this Section 9.3. The Community Development Director shall approve or disapprove the request within thirty (30) days of receipt of a written request. Approval of requests under this Section 9.3 shall not be unreasonably withheld. If the Community Development Director disapproves the request or fails to approve or disapprove the request, the

Developer shall have the right to appeal to the City Council pursuant to Section 9.4 of this Agreement.

9.4 Appeals to City Council. Where a right to an appeal by Developer to the City Council from a finding and/or determination of the Community Development Director exists under this Agreement, such appeal shall be filed with the City Clerk, if at all, within twenty (20) days after the mailing of such finding and/or determination to Developer, or its successors, transferee and/or assignees, as the case may be. The City Council shall act upon the finding and/or determination of the Community Development Director within forty (40) days after such mailing, or within such additional period as may be agreed upon by the Developer and the Council. The failure of the City Council to act within such time shall be deemed to be a denial of the appeal.

9.5 Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: war; insurrection; terrorism; strikes; walk-outs; riots; floods; earthquakes; fires; casualties; acts of God; Litigation and administrative proceedings against the Hotel Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs such as the Annual Review); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the City's Reserved Powers; or similar bases for excused performance which is not within the reasonable control of the Party to be excused (financial inability excepted). Notwithstanding the foregoing, an extension need not be granted unless the Party to be excused provides notice to the other Party of the grounds for such extension within ten (10) business days following determination by the Party to be excused that such grounds exist. This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Developer or, if not dismissed within ninety (90) days, by any third parties against Developer.

9.6 Legal Action. Subject to the limitations on remedies provided above, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the Parties hereto or seek declaratory relief with respect to its rights, obligations or interpretations of this Agreement.

9.7 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions brought by any Party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions, and the Central District of California for any federal actions.

9.8 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of all assignees, transferees and successors to the Parties hereto.

9.9 Cooperation and Implementation.

9.9.1 Processing. Upon satisfactory completion by Developer of all required applications and payment of appropriate Processing Fees and Charges, including the fee for processing this Agreement, the City shall commence and diligently process all required steps necessary for the implementation of this Agreement and development of the Property in accordance with the terms of this Agreement. Developer shall, in a timely manner, provide the City with all documents, plans and other information necessary for the City to carry out its processing obligations.

9.9.2 Other Governmental Permits. Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Hotel Project as may be required for the development of, or provision of services to, the Hotel Project. The City shall cooperate with, and actively support, Developer in its endeavors to obtain such permits and approvals.

9.9.3 Legal Challenges; Cooperation. In the event of any Litigation, the Parties hereby agree to affirmatively cooperate in defending said action.

9.9.4 Indemnification. Developer hereby agrees to provide the City's legal defense and to indemnify, save and hold the City and its elected and appointed representatives, boards, commissions, commissioners, council members, officers, agents and employees, all personally and in their official capacities, harmless from any liability for damage or claims which may arise in Litigation or may arise from or related to the development of the Hotel Project. City hereby agrees to indemnify, save and hold the Developer and its officers, agents, and employees harmless from any liability for damage or claims which may arise from the City's construction of the Public Parking Lot. In the event any lawsuit subject to this indemnification clause is initiated and served on either or both Parties prior to commencement of construction of the Hotel Project or the Public Parking Lot, Developer may, prior to such commencement, elect to limit its exposure under this Section 9.9 by abandoning the Hotel Project or terminating this Agreement, and City shall cooperate in implementing Developer's election to do so. This provision shall survive and continue after the termination of this Agreement.

9.9.5 Defense Costs. In the event any Litigation should arise, the City shall notify Developer in writing of such Litigation no later than ten (10) business days after service upon City and shall transmit to Developer any and all documents (including, without limitation, correspondence and pleadings) received by, or served upon, the City in connection with such Litigation. Upon receipt of such notice from the City, Developer shall retain and appoint counsel to represent and defend both the Developer and the City with respect to the Litigation. The City shall have the right to review and approve counsel retained by the Developer to defend

the City. The Parties acknowledge that counsel will appear and represent the City and the Developer in connection with such Litigation and such counsel shall, at the request of the City Attorney, cooperate with the City Attorney in the preparation of all pleadings, motions and other Litigation-related documents for the City, coordinate legal strategy and otherwise cooperate with the City in connection with the Litigation, all at Developer's cost and expense. Developer shall also pay all filing fees, court costs and similar out-of-pocket expenses required to defend the Litigation. The City shall cooperate with counsel's defense of the Litigation, and shall make its records (other than documents privileged from disclosure) and personnel available to counsel as may be reasonably requested by counsel in connection with the Litigation.

9.9.6 Legal Conflicts. If a legally recognizable conflict of interest arises, which requires that each Party be represented by separate counsel, the Developer shall retain another law firm of such stature and pricing structure as is customary to law firms handling CEQA and land use litigation for the City to represent and defend the City in Litigation. If another firm is retained, Developer shall pay the costs as set forth in subsection 9.9.5 immediately above.

9.10 Estoppel Certificates. Either Party may, at any time, deliver written notice to the other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligation set forth in this Agreement or, if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. Any third Party, including a Mortgagee, shall be entitled to rely on the certificate. Any attorney's fees and costs associated with the preparation, review and execution of such certificate shall be paid by the Party requesting the certificate.

9.11 Relationship of the Parties. It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that Developer is an independent party and not an agent of the City. Further, the City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

9.12 Notices. Any notice or communication required hereunder between the City or Developer must be in writing, and may be given either personally, by registered or certified mail, return receipt requested or by overnight courier. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent; or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other

address in substitution of the address, or any additional address, to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at **their** addresses set forth below:

If to the City:

Maureen Tamuri,
Community Development Director
City of Calabasas
100 Civic Center Way
Calabasas, CA 91302

with copies to:

Scott H. Howard
City Attorney
City of Calabasas
100 Civic Center Way
Calabasas, CA 91302

If to Developer:

Richard Weintraub
Rondell Oasis LLC
Weintraub Real Estate Group
P.O. Box 6528
Malibu, CA 90264

with copies to:

Joshua Gottheim
Counsel for Rondell Oasis LLC
Canzoneri Gottheim Law LLP
4348 Hayman Avenue
La Canada, CA 91011

9.13 Recordation. As provided in Government Code Section 65868.5 and Section 17.68.050(B) of the Enabling Ordinance, the City Clerk shall record a copy of this Agreement with the Registrar-Recorder of Los Angeles County within ten (10) days following its execution by both Parties. Developer shall provide the City Clerk with the fees for such recording prior to or at the time of such recording.

9.14 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

9.15 Severability. If any provisions, conditions or covenants of this Agreement, or the application thereof to any circumstances of either Party, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

9.16 Time of the Essence. Time is of the essence for each provision of this Agreement of which time is an element.

9.17 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought and refers expressly to this section. No waiver of any right or remedy in

respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

9.18 No Third Party Beneficiaries. The only Parties to this Agreement are the City and Developer and their successors-in-interest. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed to be for the benefit of, or be enforceable by, any other person whatsoever.

9.19 Entire Agreement. This Agreement sets forth and contains the entire understandings and agreements of the Parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement.

9.20 Legal Advice; Neutral Interpretation; Headings and Table of Contents. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question. The headings and table of contents used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

9.21 Counterparts. This Agreement is executed in duplicate originals, each of which is deemed to be an original.

9.22 Attorneys' Fees. If any Party brings an action or files a proceeding arising out of this Agreement, then the prevailing Party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing Party.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

“City”

CITY OF CALABASAS, a municipal corporation of the State of California

APPROVED AS TO FORM:

By: _____
Name: Tony Coroalles
Title: City Manager

By: _____
Name: Scott H. Howard
Title: City Attorney
Date:

ATTEST:

By: _____
Name: Maricela Hernandez
Title: City Clerk
Date: _____

“Developer”

Rondell Oasis, LLC, a limited liability company of the State of California

By: _____
Name: _____
Title: _____