

PURCHASE AND SALE AGREEMENT

BETWEEN

THE CITY OF SAN BRUNO, a California municipal corporation

AND

SAN BRUNO HOTELS, LLC, a ~~Delaware~~ ^{CA} limited liability company

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PURCHASE AND SALE AGREEMENT

Crossing Hotel Property

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) dated as of this 18TH day of APRIL, 2016 (“**Date of Agreement**”), is entered into by and between the CITY OF SAN BRUNO, a California municipal corporation (“**Seller**” or “**City**”), and SAN BRUNO HOTELS, LLC, a ~~Delaware~~ ^{CA} limited liability company (“**Buyer**”).

R E C I T A L S

The following Recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 1 of this Agreement:

A. Seller owns approximately 1.52 acres of real property located at the northwest corner of El Camino Real and Interstate 380, as depicted on Exhibit A-1, and more fully described on Exhibit A-2, attached hereto and incorporated herein by reference (“**Property**”).

B. The Property is located within a 20-acre master planned development, referred to as The Crossing San Bruno, and is subject to the U.S. Navy Site and its Environs Specific Plan adopted by City on January 9, 2001, and amended on August 9, 2005 and August 18, 2015 (as amended, the “**Specific Plan**”). The 2015 Specific Plan amendment modified the Specific Plan to allow development of a “Select Service Hotel” on the Property. In connection with the adoption of the 2015 amendment, the City Planning Commission, by Resolution No. 2015-05 adopted on August 18, 2015, certified a Supplemental Environmental Impact Report (“**SEIR**”) analyzing the potential environmental impacts of the hotel development in accordance with the California Environmental Quality Act (“**CEQA**”) (Public Resources Code, section 21000 *et seq.*).

C. Buyer desires to purchase the Property in order to develop and construct thereon an approximately 152 room Select Service Hotel with limited food and beverage service and conference space to accommodate: (i) approximately 3,000 square feet of theater-style seating for conferences/meetings to accommodate approximately 250-300 people; (ii) banquet-style seating for sit-down events to accommodate approximately 150-200 people; (iii) ballroom-style arrangements for wedding events to accommodate approximately 125-150 people, and (iv) surface and underground parking (including a Transportation Demand Management Plan), which together will ensure a minimum of 163 parking spaces, all in a manner consistent with the Specific Plan (“**Project**”).

D. On March 15, 2016, the Planning Commission of the City of San Bruno conducted a review pursuant to Government Code Section 65402 and adopted Resolution No. 2016-04 determining, among other things, that the City’s disposition of the Property for the purpose of constructing a hotel is consistent with the project evaluated in the SEIR, and accordingly consistent with the City of San Bruno General Plan. Development of the Project to be undertaken by Buyer pursuant to this Agreement is consistent with the project evaluated in the SEIR.

E. Buyer desires to purchase the Property from Seller and to develop the Project and Seller desires to sell the Property to Buyer, upon the terms and conditions stated in this Agreement, which the City Council of the City of San Bruno authorized by adoption Resolution No. 2016-26 at a public meeting on March 29, 2016.

F. In order to effectuate the foregoing, Seller and Buyer desire to enter into this Agreement.

A G R E E M E N T

NOW, THEREFORE, Seller and Buyer hereby agree as follows:

1. DEFINITIONS.

“**Action Title Objections**” is defined in Section 3.2.

“**Agreement**” means this Purchase and Sale Agreement between Seller and Buyer.

“**As-Is Condition**” is defined in Section 6.6.

“**Buyer**” means San Bruno Hotels, LLC, and its permitted assignees and successors-in-interest.

“**Buyer Conditions Precedent**” is defined in Section 4.2.

“**Buyer Party**” and “**Buyer Parties**” is defined in Section 3.1.4.

“**CEQA**” is defined in Recital B.

“**Certificate of Completion**” is defined in Section 9.3.

“**City Council**” means the City Council of the City of San Bruno.

“**Claims**” means liabilities, obligations, orders, claims, damages, governmental fines or penalties, and expenses of defense with respect thereto, including reasonable attorneys’ fees and costs.

“**Close of Escrow**” is defined in Section 6.

“**Closing**” is defined in Section 6.

“**Closing Default**” is defined in Section 10.3.

“**Commenced Construction**” is defined in Section 9.9.

“**Condition of Title**” is defined in Section 3.2.

“**Date of Agreement**” means the date first set forth above.

“**Default**” means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following Notice and opportunity to cure.

“**Discretionary City Permits**” is defined in Section 6.1.

“**Environmental Laws**” means, collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S. Code § 1251, *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.*, (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.*, (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.*, (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.*, (xvi) Health & Safety Code § 25501, *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.*, (xix) California Fish and Game Code §§ 5650-5656 and (xx) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety.

“**Escrow Agent**” and “**Title Company**” means First American Title Company.

“**Extended Stay**” is defined as overnight occupancy for 30 consecutive days or longer; provided, however, that a stay in which a guest "checks out" of the hotel at the Property not less than every twenty-ninth (29th) day shall not be considered an Extended Stay, notwithstanding that such guest immediately checks back into the hotel at the Property.

“**Final City Approval**” is defined in Section 6.1.

“**Final Deposit**” is defined in Section 2.1.

“**Force Majeure Delay**” is defined in Section 11.2.

“**Grant Deed**” means the grant deed for the conveyance of the Property from Seller to Buyer to be executed and recorded at Closing substantially in the form attached hereto as Exhibit B and incorporated herein by this reference.

“**Hazardous Materials**” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as a “hazardous waste,” “extremely hazardous waste,” “restricted hazardous waste” or

“hazardous substance” under any Environmental Laws.

“**Initial Conditions Precedent**” is defined in Section 4.3.

“**Initial Deposit**” is defined in Section 2.1.

“**Initial Litigation Challenge**” is defined in Section 11.19.

“**Inspection Period**” is defined in Section 3.1.1.

“**Inspections**” is defined in Section 3.1.1.

“**Materials**” is defined in Section 3.1.5.

“**Municipal Code**” means the City of San Bruno Municipal Code.

“**Net Gain**” is defined in Section 9.9.

“**No Action Title Objections**” is defined in Section 3.2.

“**Notice**” means a written notice in the form prescribed by Section 11.1.

“**Organizational Documents**” means the Certificate of Formation and organization chart of the Buyer, as the same may be amended from time to time.

“**OTO**” means Buyer’s parent company, OTO Development, LLC, a Delaware limited liability company.

“**Outside Date**” is defined in Section 6.1.

“**Permitted Exceptions**” is defined in Section 3.3.

“**Project**” is defined in Recital C.

“**Property**” is defined in Recital A.

“**Purchase Price**” is defined in Section 2.4.

“**SEIR**” is defined in Recital B.

“**Select Service Hotel**” means a hotel operated under the Marriott Springhill Suites flag or another flag offering services and amenities equivalent to or better than Marriott Springhill Suites which has been approved by City in its reasonable discretion. Buyer agrees that it shall not be unreasonable for City to disapprove a hotel flag generally associated with limited service hotels, such as La Quinta or Holiday Inn Express. Select Service Hotel does not include any Extended Stay hotel.

“**Seller**” means the City of San Bruno, a California municipal corporation.

“**Seller Conditions Precedent**” is defined in Section 4.1.

“**Seller Party**” and “**Seller Parties**” is defined in Section 6.6.

“**Seller Title Default**” is defined in Section 10.2.

“**Specific Plan**” is defined in Recital B.

“**Title Objections**” is defined in Section 3.2.

“**Title Policy**” is defined in Section 6.4.

2. DEPOSIT AND PURCHASE PRICE.

2.1 Deposit. Within five (5) days following the full execution and delivery of this Agreement, Buyer shall deposit in escrow the sum of TWENTY FIVE THOUSAND and 00/100 DOLLARS (\$25,000.00) (“**Initial Deposit**”) in good funds, either by cashier’s check or wire transfer of immediately available federal funds. Further, within five (5) days following the satisfaction of all Initial Conditions Precedent, as defined in Section 4.3, the Buyer shall deposit in escrow an additional sum of SEVENTY-FIVE THOUSAND and 00/100 DOLLARS (\$75,000.00) (“**Final Deposit**”) in good funds, either by cashier’s check or wire transfer of immediately available federal funds. The term “**Deposit**” is used throughout this Agreement to refer collectively to the Initial Deposit and, if and when made, the Final Deposit. The Escrow Agent shall hold the Deposit in an interest-bearing account and any interest accrued shall become part of the Deposit. The Deposit shall be applied towards the Purchase Price (defined below) or otherwise distributed in accordance with the terms of this Agreement.

2.2 Independent Consideration. Notwithstanding anything herein to the contrary, upon any return of the Deposit to Buyer, there shall first be deducted and delivered to Seller One Hundred and 00/100 DOLLARS (\$100.00) (the “**Independent Consideration**”), which amount the parties hereto bargained for and agreed to as consideration for Seller’s execution, delivery and performance of this Agreement. The Independent Consideration is in addition to and independent of any other consideration or payment provided in this Agreement.

2.3 Purchase and Sale. Subject to the terms, covenants and conditions of this Agreement, Buyer shall purchase from Seller and Seller shall sell to Buyer the Property.

2.4 Purchase Price. The purchase price for the Property is THREE MILLION NINE HUNDRED SEVENTY THOUSAND AND NO /100 DOLLARS (\$3,970,000.00) (“**Purchase Price**”), which represents the fair market value of the Property as previously determined by an MAI licensed appraiser. The Purchase Price shall be paid in immediately available funds and delivered into escrow prior to Closing.

3. INSPECTION AND TITLE REVIEW.

3.1 Buyer’s Inspection Period.

3.1.1 During the sixty (60) day period following the Date of Agreement (the “**Inspection Period**”), Buyer, at its sole cost and expense, shall have the right to perform or conduct any feasibility and other due diligence studies, inspections and inquiries relative to the Property (collectively, the “**Inspections**”), provided, however, Buyer hereby acknowledges and agrees that it shall not (and it does not have the authority to) perform (or cause to be performed) any sampling or testing studies or assessments (including without limitation any underground/subsurface testing (i.e., soil, groundwater, etc.) of the Property without the express written consent of Seller. All Inspections shall be performed in accordance with all applicable laws, rules, ordinances or regulations of any government or other body, and shall be performed by competent, qualified and licensed contractors. Buyer agrees that it shall promptly provide to Seller the results of all Inspections upon the conclusion thereof, provided that in no event shall Buyer be obligated to deliver to Seller any proprietary, confidential information developed by Buyer or its agents or consultants in connection with the Property.

3.1.2 Buyer agrees to restore the Property to the condition it was in prior to Buyer's entry onto the Property if Buyer elects to terminate this Agreement prior to the expiration of the Inspection Period, and such obligation to restore shall survive such termination.

3.1.3 Buyer shall indemnify, defend and hold harmless Seller from and against all Claims, arising from or as a result of: (i) any actual or alleged accident, injury, loss, or damage whatsoever caused to any person, or to the property of any person alleged to have occurred in or about the Property in connection with the Inspections as provided herein, (ii) any actual or alleged act or omission whatsoever or actual or alleged negligence of Buyer or any Buyer Party occurring in connection with the Inspections, and/or (iii) any contamination occurring to land, water, and/or air alleged to have occurred as a result of the Inspections (but excluding any Hazardous Materials contamination existing on, under or about the Property as of the date of such Inspections or the mere discovery of such pre-existing Hazardous Materials contamination). Such indemnity, defense and hold harmless agreements shall survive for a period of one (1) year following the Closing or the date of termination of this Agreement and shall not be merged upon delivery and acceptance of the Grant Deed or upon payment of the Purchase Price by Buyer to Seller.

3.1.4 Prior to any entry upon the Property by Buyer or its employees, agents, contractors, subcontractors or representatives (each a “**Buyer Party**” and, collectively, the “**Buyer Parties**”), Buyer shall provide Seller evidence of insurance in forms and amounts reasonably acceptable to Seller which covers Buyer for its Inspections as well as the indemnification provided herein.

3.1.5 Without obligating Seller to provide same, any reports, studies, surveys or other documents related to the Property (collectively, the “**Materials**”) which are provided by Seller to Buyer (including without limitation those that may have been provided prior to the Date of Agreement) are solely to be used by Buyer in connection with the Inspections. Prior to the Date of Agreement, Seller delivered to Buyer (and Buyer acknowledges receipt of same) copies of the following (which shall be deemed “**Materials**”): “Environmental Reports” that were described on “Exhibit C” to the Purchase and Sale Agreement dated July 12, 2012 between Seller and Martin/Regis San Bruno Associates L.P. Buyer acknowledges that the Materials were prepared by or at the direction of others and that Seller is not making any representation or

warranty of any kind with respect to the Materials, including their accuracy, completeness or suitability for reliance thereon by Buyer. Accordingly, such Materials are provided on an "AS IS," "WHERE IS" and "WITH ALL FAULTS" condition and Seller shall have no liability therefor. Similarly, Buyer hereby acknowledges and agrees that any entry or investigation of the Property is done at Buyer's sole risk and peril. Seller accepts no responsibility (and Buyer hereby releases Seller from same) whatsoever for any losses or damages (personal or property) which Buyer suffers or incurs as a result of accessing the Property and/or performing the Inspections. The provisions of this section shall survive any termination of this Agreement, shall survive the Closing and shall not be merged upon delivery and acceptance of the Grant Deed or upon payment of the Purchase Price by Buyer to Seller.

3.1.6 If, on or before the expiration of the Inspection Period, Buyer, in its sole and absolute discretion, notifies Seller that Buyer is terminating the Agreement, then this Agreement shall be deemed terminated and the Title Company shall return the Deposit to Buyer. If Buyer fails to give such written Notice to Seller, Buyer shall be deemed to have elected to purchase the Property and proceed to Closing and the Deposit shall be deemed non-refundable (except as otherwise provided herein).

3.2 Covenants Regarding Operation and Maintenance Prior to Closing. From the Date of Agreement until the Closing or earlier termination of this Agreement, Seller shall operate and maintain the Property in a manner generally consistent with the manner in which Seller has operated and maintained the Property prior to the date hereof. Notwithstanding the foregoing, from and after the Date of Agreement, Seller shall not: (a) cause nor voluntarily permit, any new lien, encumbrance or any other matter to cause the condition of title to be changed, without Buyer's prior written consent; (b) enter into any agreements with any governmental agency, utility company or any person or entity regarding the Property, which would remain in effect after the Closing, without obtaining Buyer's prior written consent; or (c) amend any existing licenses, agreements or leases, or enter into any new licenses, agreements or leases, that would give any person or entity any right of possession to any portion of the Property, or which would remain in effect after the Closing. If Buyer's consent is required by the terms of this Section, such consent may be withheld in Buyer's sole and absolute discretion.

3.3 Review and Approval of Condition of Title. Prior to the Date of Agreement, Buyer has obtained from Title Company preliminary ALTA title commitment dated May 13, 2014 (Order No. NCA-669237-DC72) on the Property. The title exceptions noted in this Section 3.3 correspond to the exception numbers in the May 13, 2014 preliminary title commitment. During the Inspection Period, Buyer shall obtain an updated commitment for an owner's title insurance policy on the Property issued by the Title Company in the amount of the Purchase Price. Buyer shall bear the cost of any and all surveys of the Property made in connection with Buyer's title review. Buyer shall examine title and, no later than twenty (20) days prior to the expiration of the Inspection Period, notify Seller of any exceptions or defects to title not consented to by Buyer (collectively, the "Title Objections"); provided, however, the following exceptions are hereby approved by Buyer: (i) general and special taxes and assessments for the current fiscal year, a lien not yet due and payable, (ii) the lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code [Exception No. 2], (iii) a waiver of any claims for damages by reason of the location, construction, landscaping or maintenance of a contiguous freeway, highway, roadway

or transit facility as contained in document recorded November 30, 1944 in Book 1144, Page 413 of Official Records [Exception No. 4]; (iv) an easement shown or dedicated on the map filed or recorded December 9, 2002 in Book 132, Page 54 of Maps for private utility and emergency vehicle access and incidental purposes; (v) the terms and provisions contained in the document entitled "Maintenance Agreement" recorded December 9, 2002 as Instrument No. 2002-258605 of Official Records by and between the City of San Bruno and Martin/Regis San Bruno Associates, L.P. [Exception No. 7]; (vi) Covenants, conditions, restrictions and easements in the document recorded December 17, 2002 as Instrument No. 2002-267962 of Official Records, which provide that a violation thereof shall not defeat or render invalid the lien of any first mortgage or deed of trust made in good faith and for value, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Section 12955 of the California Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status and document(s) declaring modifications thereof recorded March 18, 2005 as Instrument No. 2005-043348 of Official Records [Exception No. 8]; (vii) an easement for avigation and incidental purposes, recorded August 05, 2003 as Instrument No. 2003-218363 of Official Records in favor of the City and County of San Francisco [Exception No. 9]; and (viii) the fact that the land lies within the boundaries of the City of San Bruno Redevelopment Project Area, as disclosed by the document recorded September 05, 2007 as Instrument No. 2007-132337 of Official Records [Exception No. 10] (collectively, the "**Permitted Exceptions**"). Seller shall, within ten (10) days of receipt of any Title Objections, notify Buyer whether it intends to remove and/or cure any or all of such Title Objections. Seller's failure to notify Buyer within said 10-day period shall be deemed Seller's election not to remove such Title Objections. In the event Seller notifies Buyer that Seller will not remove and/or cure any of such Title Objections or is deemed to have so notified Buyer (collectively, the "**No Action Title Objections**"), Buyer may terminate the Agreement prior to the expiration of the Inspection Period (as provided in Section 3.1 above); if Buyer does not elect such termination, the No Action Title Objections shall be deemed to be Permitted Exceptions. For those Title Objections that Seller notified Buyer that Seller would remove and/or cure, if any (collectively, the "**Action Title Objections**"), Seller shall remove and/or cure the Action Title Objections prior to the Closing, provided, however, if Buyer elects to close without the Action Title Objections being removed or cured, the Action Title Objections shall be deemed to be Permitted Exceptions. If Seller fails to remove and/or cure the Action Title Objections by the Closing, then, the parties shall extend the Closing (and, if necessary, the Outside Date) for a period of up to sixty (60) days during which period Seller shall use diligent, good faith efforts to remove and/or cure the Action Title Objections. If Seller fails to remove and/or cure the Action Title Objections within such 60-day period, Buyer may terminate this Agreement by written Notice to Seller. In the event of such termination, Title Company shall immediately return the Deposit to Buyer and neither party hereto shall thereafter have any rights, duties, liabilities or obligations whatsoever under this Agreement, other than Seller's obligation to pay Buyer's demonstrated out-of-pocket costs paid to unaffiliated third parties in connection with preparation of engineering and architectural drawings and plans for the Project, up to a maximum cap amount as provided in Section 10.2 below, and the parties obligations under those provisions that expressly survive termination hereof. The exceptions to title approved or deemed

approved by Buyer, including the Permitted Exceptions, are hereinafter referred to as the “**Condition of Title**”.

4. CONDITIONS PRECEDENT TO CLOSE.

4.1 Seller’s Conditions Precedent. Seller’s obligation to proceed with the sale of the Property to Buyer is subject to the fulfillment or waiver by Seller of each and all of the conditions precedent described below (“**Seller Conditions Precedent**”). The Seller Conditions Precedent are solely for the benefit of Seller and shall be fulfilled or waived within the time periods provided for herein, and in any event, no later than the Outside Date, as such date may be extended hereunder.

4.1.1 No Default. Buyer shall not be in Default under this Agreement, and no event shall have occurred which with the passage of time or giving of Notice or both would constitute a Default by Buyer hereunder.

4.1.2 Execution and Delivery of Documents. Seller and Buyer shall have executed and acknowledged the Grant Deed, and Buyer shall have executed (and, where appropriate, acknowledged), and delivered into escrow all other documents that Buyer is required to deliver into escrow pursuant to this Agreement.

4.1.3 Final City Approvals. All Discretionary City Permits (defined in Section 6.1 below) with respect to the Project shall be final and non-appealable, and if any appeals, legal challenges, requests for rehearing, or referenda have been filed or instituted, such appeals, legal challenges, requests for rehearing, or referenda shall have been fully and finally resolved in a manner acceptable to Seller in its sole discretion and the statutes of limitations or other time limits applicable to any further appeals, legal challenges, requests for rehearing, or referenda have lapsed.

4.1.4 Delivery of Funds. Buyer shall have delivered through escrow the Purchase Price and such other funds, including escrow costs, recording fees and other closing costs as are necessary to comply with Buyer’s obligations under this Agreement.

4.1.5 Demonstrated Loan/Equity Commitments. Buyer shall have reviewed with Seller a firm budget for construction of the Project and all related improvements, together with evidence acceptable to Seller, in its reasonable discretion, that Buyer has sufficient debt and equity funds to pay all hard and soft costs of the Project as shown in the budget.

4.1.6 Construction Loan. Buyer’s construction loan, if any, for the Project shall have closed or shall be ready to close concurrently with the Closing.

4.1.7 Other Approvals, Assurances and Permits. Buyer shall have sought and received approvals and assurances from all appropriate governmental entities to develop the Property in the manner anticipated. Buyer shall have submitted complete applications for all ministerial permit(s) necessary for Buyer to commence construction of the Project and such permits shall be ready to be issued by the City subject only to payment of applicable fees.

4.1.8 Hotel Agreement. Buyer shall have provided to Seller evidence that Buyer has a fully executed agreement with Springhill Suites Marriott, or another comparable Select Service Hotel flag approved by Seller in its reasonable discretion, demonstrating that Buyer and the hotel entity intend to operate and maintain a Select Service Hotel at the Property following completion of construction of the Project.

4.1.9 General Contractor Agreement. Buyer shall have reviewed with Seller Buyer's general contractor agreement for construction of the Project which agreement shall be in an amount consistent with Buyer's construction cost budget provided under Section 4.1.5 above, and shall have provided a letter signed on behalf of both Buyer and its general contractor representing and warranting that Buyer and general contractor have entered or are ready to enter into a construction contract for the Project in an amount which does not exceed the Project's hard costs, not including contingencies, as shown on such construction cost budget.

4.1.10 Insurance. Buyer shall have provided proof of insurance as required by this Agreement.

4.1.11 Organizational Documents. Buyer shall have submitted the Organizational Documents for Buyer.

4.2 Buyer Conditions Precedent. Buyer's obligation to proceed with the acquisition of the Property from Seller is subject to the fulfillment or waiver by Buyer of each and all of the conditions precedent described below ("**Buyer Conditions Precedent**"), which are solely for the benefit of Buyer, and which shall be fulfilled or waived within the time periods provided for herein, and in any event, no later than the Outside Date, as such date maybe extended hereunder:

4.2.1 No Default by Seller. Seller shall not be in Default under this Agreement, and no event shall have occurred which with the passage of time or giving of Notice or both would constitute a default by Seller hereunder.

4.2.2 Execution and Delivery of Documents by Seller. Seller and Buyer shall have executed and acknowledged the Grant Deed, and Seller shall have executed (and, where appropriate, acknowledged) and delivered into escrow any other documents that Seller is required to deliver into escrow pursuant to this Agreement

4.2.3 Final City Approvals. All Discretionary City Permits with respect to the Project shall be final and non-appealable, and if any appeals, legal challenges, requests for rehearing, or referenda have been filed or instituted, such appeals, legal challenges, requests for rehearing, or referenda shall have been fully and finally resolved in a manner acceptable to Buyer in its sole discretion and the statute of limitations or other time limits applicable to any further appeals, legal challenges, requests for rehearing, or referenda have lapsed.

4.2.4 Other Approvals, Assurances and Permits. Buyer shall have sought and received approvals and assurances from all appropriate governmental entities to develop the Property in the manner anticipated and, subject to payment of the applicable fees, City shall be ready to issue all ministerial permit(s) necessary for the Buyer to commence construction of the Project.

4.2.5 Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, be irrevocably committed to issue the Title Policy upon recordation of the Grant Deed subject only to the Condition of Title.

4.2.6 Absence of Proceedings. There shall be an absence of any condemnation, environmental or other pending governmental or any type of administrative or legal proceedings with respect to the Property which would materially and adversely affect Buyer's intended uses of the Property or the value of the Property.

4.2.7 Termination of Jack's Restaurant License. City shall have terminated the parking license agreement between City and Jack's Restaurant.

4.3 Initial Conditions Precedent. Certain of the Buyer's Conditions Precedent are Initial Conditions Precedent (defined below). Upon the satisfaction of the Initial Conditions Precedent, the Buyer shall make the Final Deposit pursuant to Section 2.1. The "**Initial Conditions Precedent**" means and includes, exclusively, the following: (i) Final City Approvals, Section 4.2.3, including the absence of any legal proceedings challenging the Project or the Discretionary City Permits at the time such Discretionary City Permits become final and non-appealable, (ii) Other Approvals, Assurances and Permits, Section 4.2.4, and (iii) Termination of Jack's Restaurant License, Section 4.2.7.

If this Agreement is terminated prior to the satisfaction of all such Initial Conditions Precedent, then Buyer shall be entitled to a refund of the Initial Deposit within five (5) days of the termination date.

5. ESCROW

5.1 Escrow. Within five (5) days following the Date of Agreement, the Parties shall open an escrow for the conveyance of the Property to Buyer.

5.2 Costs of Escrow. All fees, charges, and costs chargeable by Escrow Agent for the escrow, including recording fees, document fees, title insurance premiums and documentary transfer taxes, if any, due with respect to the conveyance of the Property to Buyer shall be paid by Buyer.

5.3 Escrow Instructions. This Agreement constitutes the joint escrow instructions of Buyer and Seller with respect to the conveyance of the Property to Buyer, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties shall use reasonable good faith efforts to close the escrow for the conveyance of the Property in the shortest possible time. Insurance policies for fire or casualty are not to be transferred. All funds received in the escrow shall be deposited in interest-bearing accounts for the benefit of the depositing party in any state or national bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such accounts. If, in the opinion of either party, it is necessary or convenient in order to accomplish the Closing, such party may provide supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The Closing shall take place as set forth in Section 6

below. Escrow Agent is instructed to release Seller's and Buyer's escrow closing statements to the respective parties.

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

5.4.1 Pay and charge Buyer for the premium of the Title Policy, including any endorsements requested by Buyer.

5.4.2 Pay and charge Buyer for escrow fees, charges, and costs as provided in Section 5.2.

5.4.3 Disburse funds to Seller and record the Grant Deed when both the Buyer Conditions Precedent and Seller Conditions Precedent have been fulfilled or waived in writing by Buyer and Seller, as applicable.

5.4.4 Do such other actions as necessary, including obtaining and issuing the Title Policy, to fulfill its obligations under this Agreement.

5.4.5 Direct Seller and Buyer to execute and deliver any instrument, affidavit, and statement, and to perform any act, reasonably necessary to comply with the provisions of FIRPTA, if applicable, and any similar state act and regulations promulgated thereunder.

5.4.6 Prepare and file with all appropriate governmental or taxing authorities uniform settlement statements, closing statements, tax withholding forms including IRS 1099-S forms, and be responsible for withholding taxes, if any such forms are provided for or required by law.

6. CLOSING

6.1 Closing. The escrow for conveyance of the Property shall close (“**Close of Escrow**”) within thirty (30) days after the satisfaction, or waiver by the appropriate party, of all of the Seller Conditions Precedent and all of the Buyer Conditions Precedent, which shall occur prior to the Outside Date. The “**Outside Date**” shall be the date that is one year after Final City Approval (defined below) of the Discretionary City Permits (defined below); provided, however, (i) the Outside Date will be automatically extended to the date which is thirty (30) days after the final conclusion of any third-party litigation which the Buyer elects to defend against pursuant to Section 11.19; (ii) the Outside Date will be automatically extended by 90 days to the extent there are any unanticipated delays in City’s review and approval of Buyer’s construction drawings in connection with issuance of building permits for construction of the Project; and (iii) the Outside Date may also be extended by mutual agreement of the parties, each in its sole discretion. “**Final City Approval**” means the date the City Planning Commission approves the Planned Development Permit, Architectural Review Permit, Conditional Use Permit (sale of alcohol) and, lot line adjustment (but only if such lot line adjustment is appealed to the Planning Commission following staff level approval thereof) (collectively, the “**Discretionary City Permits**”) or, if Planning Commission’s approval is appealed to the City Council, the day that the City Council approves such Discretionary City Permits. If Closing does not occur on or before the Outside Date, as it may be extended as provided above, then this Agreement shall automatically terminate. For purposes of this Agreement, the “**Closing**” shall mean the time and

day the Grant Deed is recorded with the San Mateo County recorder. Notwithstanding any other provision hereof to the contrary, if Final City Approval of the Discretionary City Permits has not occurred by October 31, 2016, this Agreement shall automatically terminate.

6.2 Delivery of Documents and Closing Funds.

6.2.1 At or before the Closing, Buyer shall deposit into escrow the following items:

- (a) Funds in an amount necessary to consummate the Closing, including the Purchase Price and escrow costs set forth in Sections 2.4 and 5.2, respectively;
- (b) one (1) original executed and acknowledged Grant Deed; and
- (c) one (1) original executed Preliminary Change of Ownership Report for the Property.

6.2.2 At or before the Closing, Seller shall deposit into escrow the following:

- (a) one (1) original executed and acknowledged Grant Deed;
- (b) one (1) duly executed non-foreign certification for the Property in accordance with the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended; and
- (c) one (1) duly executed California Form 593-W Certificate for the Property or comparable non-foreign person affidavit.

6.2.3 At the Closing, Seller and Buyer shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the conveyance of the Property in accordance with the terms hereof.

6.3 Closing Procedure. At the Closing, this purchase and sale transaction shall be closed in accordance with the following procedure:

6.3.1 Title Company shall record the Grant Deed in the official records of San Mateo County.

6.3.2 Title Company shall charge Buyer with any and all other charges and fees of the Escrow as provided in Section 5.2 above.

6.3.3 Title Company shall deliver to Seller on the Closing:

- (a) The Purchase Price;
- (b) A copy of the real estate transfer declaration, if applicable;
- (c) A copy of the closing statement; and

(d) A conformed copy of the duly executed, acknowledged and recorded Grant Deed.

6.3.4 Title Company shall deliver to Buyer on the Closing:

(a) A copy of the real estate transfer declaration, if applicable;

(b) A copy of the closing statement; and

(c) A conformed copy of the recorded Grant Deed (with the recorded original to be delivered once recorded).

6.4 Title Insurance. Concurrently with recordation of the Grant Deed, the Title Company shall issue to Buyer such policy of title insurance for the Property which at Buyer's option may be an ALTA extended coverage owner's policy ("**Title Policy**") as may be required by Buyer, and/or Buyer's lenders or other institutions that may be providing financing for the Project, together with such endorsements as are reasonably requested by Buyer and/or Buyer's lenders or other institutions, insuring that Buyer has a valid fee ownership interest in the Property, subject only to the Condition of Title, and other encumbrances expressly contemplated by this Agreement to be recorded at Closing. The Title Policy for the Property shall be in the amount of the Purchase Price. The premium for the Title Policy, plus any additional costs, including the cost of surveys, and any endorsements requested by Buyer shall be paid by Buyer.

6.5 Property Taxes and Assessments. Ad valorem taxes and assessments levied, assessed or imposed on the Property for any period prior to the Closing, if any, shall be paid by Seller. Ad valorem taxes and assessments levied, assessed or imposed on the Property, the Project or any other improvements thereon, for the period after the Closing shall be paid by Buyer.

6.6 AS-IS CONVEYANCE. SUBJECT TO SATISFACTION OF THE BUYER CONDITIONS PRECEDENT, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND CONDITION INCLUSIVE OF ANY AND ALL FAULTS AND DEFECTS, LEGAL, PHYSICAL, OR ECONOMIC, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE CLOSING ("**AS-IS CONDITION**") AND THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES FROM SELLER OR ANY OF SELLER'S ELECTED OFFICIALS, OFFICERS, AGENTS, EMPLOYEES OR REPRESENTATIVES (EACH, A "**SELLER PARTY**" AND COLLECTIVELY, "**SELLER PARTIES**") AS TO ANY MATTERS CONCERNING THE PROPERTY.

7. SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller represents and warrants to Buyer as of the date hereof and as of the Closing, as follows:

7.1 Authority. Seller is a California municipal corporation with full right, power and lawful authority to perform its obligations hereunder, and the execution, delivery, and

performance of this Agreement by Seller has been fully authorized by all requisite actions on the part of the City.

7.2 No Conflict. Seller's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Seller is a party or by which Seller is bound.

7.3 No Litigation or Other Proceeding. To Seller's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Seller to perform its obligations under this Agreement, or that would adversely affect the Property.

7.4 No Seller Bankruptcy. Seller is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Seller's assets has been made.

7.5 Right to Possession. With the exception of Jack's Restaurant's use of a portion of the Property for vehicular parking purposes pursuant to a month-to-month license agreement between Seller and Jack's Restaurant which Seller agrees to terminate prior to the Closing, to Seller's current actual knowledge, no person or entity other than Seller has the right to use, occupy, or possess the Property or any portion thereof. Seller shall not enter into any lease or other agreement respecting use, occupancy, or possession of the Property or any portion thereof or any amendment of the Jack's Restaurant license without the prior written consent of Buyer, in Buyer's sole and absolute discretion.

7.6 Condition of Property. Seller has no notice of any pending or threatened action or proceeding arising out of the condition of the Property or any alleged violation of any Environmental Laws. Except as otherwise disclosed by Seller, to Seller's actual current knowledge, the Property is in compliance with all Environmental Laws.

Until the expiration or earlier termination of this Agreement, Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true, immediately give written Notice of such fact or condition to Buyer. The foregoing representations and warranties shall survive the Closing for a period of twelve (12) months.

8. BUYER'S REPRESENTATIONS AND WARRANTIES; DISCLAIMERS; WAIVER AND RELEASE.

Buyer represents and warrants to Seller as of the date hereof and as of the Closing, as follows:

8.1 Authority. Buyer is duly organized within the State of Delaware and in good standing under the laws of the State of California. The Organizational Documents provided by Buyer to Seller are true and complete copies of the originals, as may be amended from time to time. Buyer has full right, power and lawful authority to undertake all of its obligations hereunder and the execution, performance and delivery of this Agreement by Buyer has been fully authorized by all requisite company actions on the part of Buyer.

8.2 No Conflict. Buyer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Buyer is a party or by which Buyer is bound.

8.3 No Litigation or Other Proceeding. To Buyer's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Buyer to perform its obligations under this Agreement.

8.4 No Buyer Bankruptcy. Buyer is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Buyer's assets has been made.

8.5 Independent Investigation. Buyer acknowledges, agrees, represents, and warrants that, prior to the Closing, Buyer will have been given a full opportunity to obtain, review, inspect and investigate each and every aspect of the Property, either independently or through agents of the Buyer's choosing, including the following:

- (a) The size and dimensions of the Property.
- (b) The availability and adequacy of water, sewage, fire protection, and any utilities serving the Property.
- (c) All matters relating to title including extent and conditions of title to the Property, taxes, assessments, and liens.
- (d) All legal and governmental laws, statutes, rules, regulations, ordinances, limitations on title, restrictions or requirements concerning the Property and/or applicable to development of the Project, including zoning, use permit requirements and building codes.
- (e) Natural hazards, including flood plain issues, currently or potentially concerning or affecting the Property.
- (f) The physical, legal, economic and environmental condition and aspects of the Property, and all other matters concerning the conditions, use or sale of the Property, including any permits, licenses, agreements, and liens, zoning reports, engineers' reports and studies and similar information relating to the Property. Such examination of the condition of the Property has included examinations for the presence or absence of Hazardous Materials as Buyer deemed necessary or desirable.
- (g) Any easements and/or access rights affecting the Property.
- (h) Any contracts and other documents or agreements affecting the Property.

(i) All other matters of material significance affecting the Property and/or the Project.

8.6 Disclaimers. Buyer acknowledges and agrees that except as expressly set forth in this Agreement: (i) neither Seller, nor any Seller Party, has made any representations, warranties, or promises to Buyer, or to anyone acting for or on behalf of Buyer, concerning the condition of the Property or any other aspect of the Property; (ii) the condition of the Property has been independently evaluated by Buyer prior to the Closing; and (iii) any information including any engineering reports, architectural reports, feasibility reports, marketing reports, title reports, soils reports, environmental reports, analyses or data or other similar reports, analyses, data or information of whatever type or kind, if any, which Buyer has received or may hereafter receive from Seller or any Seller Party were and are furnished without warranty of any kind and on the express condition that Buyer has made its own independent verification of the accuracy, reliability and completeness of such information and that Buyer will not rely on any of the foregoing.

8.7 Waivers and Releases. Buyer hereby waives and releases Seller and Seller Parties from any and all manner of Claims or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, now existing or which may in the future arise, including lost business opportunities or economic advantage, and special and consequential damages, arising out of, directly or indirectly, or in any way connected with: (i) all warranties of whatever type or kind with respect to the physical or environmental condition of the Property, whether express, implied or otherwise, including those of fitness for a particular purpose, tenantability, habitability or use; (ii) use, management, ownership or operation of the Property, whether before or after Closing; (iii) the physical, environmental or other condition of the Property; (iv) the application of, compliance with or failure to comply with any and all applicable laws with respect to the Property; (v) Hazardous Materials in, on, or under the Property; and (vi) the As-Is Condition of the Property; the foregoing are collectively referred to as "**Property Claims**" provided, however, that notwithstanding anything to the contrary set forth in this Agreement, such waiver and release shall not apply to the intentional fraud or intentional misconduct of Seller or any Seller Party, to Seller's default or breach under this Agreement or the exhibits attached hereto, to third party claims for personal injury or property damage based on an occurrence or any act by Seller or any Seller Party prior to the Closing, or to matters covered by the specific representations and warranties of Seller set forth in Section 7 above. By releasing and forever discharging the Property Claims, Buyer expressly waives any rights under California Civil Code Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

INITIALS: BUYER CM

9. POST CLOSING.

9.1 Development of Project Improvements. After Closing, Buyer shall construct and develop the Project within the times provided in Section 9.2 below. All such work related to the Project shall be performed by licensed contractors.

9.2 Schedule of Performance. Buyer shall (i) commence construction of the Project within thirty (30) days of Closing; (ii) complete construction of the Project within thirty (30) months of Closing; and (iii) open the Select Service Hotel for business within thirty-two (32) months of Closing.

9.3 Certificate of Completion. Following satisfactory completion of construction of the Project and the opening of the Select Services Hotel for business, City shall furnish Buyer with a "**Certificate of Completion**". City shall not unreasonably withhold, condition, or delay such Certificate of Completion. The Certificate of Completion shall be, and shall state that it is, conclusive determination of satisfactory completion of the construction of a Select Service Hotel, substantially in compliance with the plans approved by the City as a Seller Condition Precedent to the Closing. After issuance of such Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property or Project shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement pertaining to such construction. Except as otherwise provided herein, after the issuance of the Certificate of Completion, neither City nor any other person shall have any rights, remedies or controls with respect to the Property that it would otherwise have or be entitled to exercise under this Agreement as a result of a Default in or breach of any provision of this Agreement pertaining to such construction, and the respective rights and obligations of the parties with reference to the Property shall be, as applicable, as set forth in the Grant Deed. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Buyer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Project or any part thereof. The Certificate of Completion shall not be deemed a notice of completion as referred to in California Civil Code Section 9208.

9.4 Cost of Development. All the costs of site preparation (including demolition and removal of all temporary structures or improvements on the Property), planning, designing, constructing and developing the Project shall be borne solely by Buyer.

9.5 Compliance With Laws. Buyer shall carry out, and shall ensure that its contractors and subcontractors carry out the Project in conformity with all applicable laws, including all applicable state labor laws and standards; the Specific Plan, the City of San Bruno zoning and development standards; building, plumbing, mechanical and electrical codes; all other applicable provisions of the City of San Bruno Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* Buyer's obligations under this Section shall include the obligation to undertake all appropriate inquiries with state and federal governmental enforcement and regulatory agencies as necessary to fully comply with all applicable laws.

9.6 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development. Prior to issuance of the Certificate of Completion, mortgages and deeds of trust will be permitted on the Property or any portion thereof only for the purpose of financing construction and development of the Project improvements. Following issuance of the Certificate of Completion, mortgages and deeds of trust shall be permitted for any purpose, and City shall have no approval or disapproval rights with respect thereto. The words “mortgage” and “deed of trust” as used herein shall include sale and lease-back financing.

9.7 No Extended Stay Hotel. As set forth in the Grant Deed, Buyer on behalf of itself and its successor and assigns agrees that the Project, following completion thereof, shall not be operated as an Extended Stay hotel at any time prior to January 1, 2058.

9.8 Sales Tax Point of Sale Designation. Buyer shall use good faith efforts to the extent allowed by law and to the extent such efforts do not increase the amount of taxes payable in connection with construction of the Project or increase Buyer’s costs of developing the Project to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to (a) obtain a use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars (\$5,000,000) or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Buyer shall instruct each of its subcontractors to cooperate with City to ensure the full local sales/use tax is allocated to City. To assist City in its efforts to ensure that the full amount of such local sales/use tax is allocated to the City, Buyer shall provide City with an annual spreadsheet, which includes a list of all subcontractors with contracts in excess of the amount set forth above, a description of all applicable work, and the dollar value of such subcontracts. City may use said spreadsheet sheet to contact each subcontractor who may qualify for local allocation of use taxes to the City.

9.9 City’s Right to Receive Share of Net Gain Upon Project Sale Prior to Construction Commencement. If, following the Closing and prior to the date Buyer has Commenced Construction (defined below) of the Project, Buyer or its successor or assign sells or transfers all or any portion of its interest in the Property and/or the Project to a person or entity other than OTO or an entity that controls, is controlled by or under common control with OTO, then Buyer or its successor shall pay to City through escrow for such sale or transfer, or outside of escrow if no escrow is established, fifty percent (50%) of the Net Gain (defined below) generated from the sale or transfer of the Property and/or Project or interest therein. The obligations of Buyer under this Section 9.9 shall survive the Closing and shall be binding on Buyer’s successors and assigns for the time period set forth herein. Buyer shall be deemed to have “**Commenced Construction**” when Buyer or its successor has obtained a building permit for construction of the Project and commenced grading and utility work. “**Net Gain**” means all monies and other consideration paid to or received by Buyer or its successor in connection with the transferee’s acquisition of Buyer’s or its successor’s interest in the Property and/or Project or any portion thereof less (i) the Purchase Price paid by Buyer to City under this Agreement; (ii) the closing costs, escrow charges, reasonable brokerage commissions and other customary and reasonable costs of sale payable to third parties, incurred by Buyer or its successor in connection

with such sale or transfer; and (iii) the actual out-of-pocket hard and soft costs incurred by Buyer and paid to unaffiliated third parties prior to the date of such transfer for design, engineering, and construction (including labor and materials costs) of the Project. Buyer shall provide City with reasonable documentation, including copies of paid invoices and its escrow closing statement, to confirm the accuracy of the amount paid by Buyer to City in payment of City's share of such Net Gain. City shall have no right to share in the proceeds of any sale or transfer occurring after the date Buyer or its successor has Commenced Construction of the Project.

10. DEFAULTS AND REMEDIES.

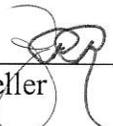
10.1 Default Remedies - General. Failure by either party to perform any action or covenant required by this Agreement within ten (10) days following receipt of written Notice from the other party specifying the failure shall constitute a "Default" under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such ten (10) day period, a party shall be allowed additional time as is reasonably necessary to cure the failure so long as such party commences to cure the failure within the 10-day period and thereafter diligently prosecutes the cure to completion. Neither party shall have the right to recover any punitive, consequential, or special damages in connection with this Agreement. Legal actions brought in connection with this Agreement must be instituted in the Superior Court of the County of San Mateo, State of California, or in the Federal District Court for the Northern District of the State of California.

10.2 Specific Remedies of Buyer and Seller. Upon the occurrence of a Default by Buyer of its indemnity obligations under Sections 3.1, 11.7, 11.18 or 11.19 or Buyer's obligations under Section 9.9, Seller shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy such Default, or to recover actual damages; provided, however, that in no event shall Seller's pre-Closing remedies include specific performance of Buyer's obligation to close escrow on the Property. Buyer's remedies in the event of a Default by Seller shall be limited to obtaining specific performance or injunctive relief, or terminating this Agreement in which case the Deposit shall be returned to Buyer; except that, for a Seller failure to remove and/or cure an Action Title Objection, pursuant to Section 3.3, the Seller shall pay Buyer's demonstrated out-of-pocket costs paid to unaffiliated third parties in connection with preparation of engineering and architectural drawings and plans for the Project, capped at Two Hundred Thousand Dollars (\$200,000).

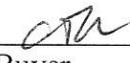
10.3 Liquidated Damages in the Event of Buyer Failure to Close Escrow on the Property. SUBJECT TO NOTICE AND EXPIRATION OF APPLICABLE CURE PERIODS AND ANY PERMITTED EXTENSIONS OF TIME AS PROVIDED IN THIS AGREEMENT, IF, FOLLOWING SATISFACTION OF THE INTIAL CONDITIONS PRECEDENT, BUYER FAILS TO CLOSE ESCROW AS REQUIRED UNDER THIS AGREEMENT (A "**CLOSING DEFAULT**"), THE SELLER WILL SUFFER DAMAGES AND THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, IN THE EVENT OF A CLOSING DEFAULT, ESCROW AGENT SHALL DISBURSE TO SELLER AND SELLER SHALL RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES FOR A CLOSING

DEFAULT. THE AMOUNT OF THE DEPOSIT CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES THAT THE SELLER WOULD INCUR IN THE EVENT OF A CLOSING DEFAULT. RETENTION OF THE DEPOSIT SHALL BE THE SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT OF A CLOSING DEFAULT, AND THE SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE. THE LIQUIDATED DAMAGES PROVIDED FOR HEREIN IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTIONS 3275 OR 3369 OF THE CALIFORNIA CIVIL CODE, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. SELLER WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. BY PLACING ITS INITIALS BELOW, BUYER AND SELLER SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE, THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES AGREED UPON, AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS:



Seller



Buyer

10.4 Acceptance of Service of Process. In the event that any legal action is commenced by Buyer against Seller, service of process on Seller shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by Seller against Buyer, service of process on Buyer shall be made by personal service upon CSC – Lawyers Incorporating Services or in such other manner as may be provided by law.

10.5 Termination. In addition to the automatic termination provided for under Section 6.1 above, this Agreement may be terminated: (i) if there is an uncured Default, after Notice from the party not in default and expiration of all cure periods, or (ii) if there is a failure of an express Buyer Condition Precedent or Seller Condition Precedent (which is not waived by the party whom the condition benefits) by timely Notice from the party whom the condition benefits.

10.6 Seller Option to Repurchase, Reenter and Repossess. Subject to notice and opportunity to cure under Section 6.1 and applicable Force Majeure Delay under Section 11.2 below, Seller shall have the additional right, at its option, to repurchase, reenter and take possession of the entire Property (and acquire title and ownership to all assets, rights, materials, reimbursements, refunds and/or claims owned, used or held in connection with the ownership, use, management, development or enjoyment of the Property) if, after Closing and prior to issuance of a Certificate of Completion, Buyer shall (a) fail to commence construction of the Project within ninety (90) days after Closing; or (b) abandon or substantially suspend construction of the Project for a period in excess of one hundred eighty (180) days after commencement of construction of the Project; (c) fail to substantially complete construction of the Project within thirty (30) months after Closing; or (d) fail to open the Select Service Hotel for business to the public within thirty-two (32) months of the date of Closing.

Seller's right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

- (a) Any mortgage, deed of trust or other security instrument permitted by this Agreement; or
- (b) Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

To exercise its right to repurchase, reenter and take possession of the Property, City shall pay to Buyer in cash an amount equal to:

- (i) \$3,970,000.00; plus
- (ii) The actual out-of-pocket hard and soft costs incurred by Buyer and paid to unaffiliated third parties for design, engineering, labor and materials for the design, engineering and construction of the improvements existing on the Property (or applicable portion thereof) at the time of the repurchase, reentry and repossession; less
- (iii) Any gains or income withdrawn or made by Buyer from the Property (or applicable portion thereof) or the improvements thereon; less
- (iv) The total amount of any mortgages, deeds of trust or other liens encumbering the Property (or applicable portion thereof) at the time of the repurchase, reentry and repossession.

In order to exercise such purchase option, City shall first give Buyer Notice of such exercise and Buyer shall, within sixty (60) days after Buyer's receipt of such Notice, provide City with a detailed accounting of all of Buyer's costs incurred as provided above. Following review of such accounting City at its option may retract its Notice of exercise by Notice to Buyer. If City does not retract its Notice of exercise, City, within sixty (60) days after City's receipt and approval of such accounting, shall pay to Buyer in cash, through an escrow established by the parties (with the costs thereof shared equally by the parties), all sums owing pursuant to this Section 10.6, if any, and Buyer shall thereupon execute and deliver to City through such escrow a grant deed transferring to City all of Buyer's interest in the Property, together with a bill of sale, in form reasonably acceptable to City, pursuant to which Buyer sells, transfers, assigns, conveys and delivers to City, all of Buyer's right, title and interest in all assets, rights, materials, reimbursements, refunds and/or claims owned, used or held in connection with the ownership, use, management, development or enjoyment of the Property, including, without limitation: (i) all entitlements, permits and other agreements relating to the development of Property; (ii) all plans, specifications, maps, drawings and other renderings relating to the Property; (iii) all warranties, claims, indemnities and any similar rights relating to and benefiting the Property or the assets transferred thereunder; (iv) all intangible rights, goodwill and similar rights benefiting the Property; (v) all development rights benefiting the Property; and (vi) all rights, refunds, claims and awards benefiting or appurtenant to the Property (but specifically excluding any proprietary financial or marketing information that Buyer may have produced in connection with its acquisition of the Property and efforts to develop the Project).

Following close of such repurchase transaction, Buyer shall, at any time and from time to time upon written request therefor, execute and deliver to City, its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts that City, its nominees, successors and/or assigns, may reasonably request in order to fully transfer possession and control of, and protect the rights of City, its nominees, successors and/or assigns in, all the assets of Buyer intended to be transferred and assigned under such bill of sale..

City's rights under this Section 10.6 shall terminate upon the issuance of a Certificate of Completion and in connection therewith, City shall record against the Property a notice that such Certificate of Completion has been issued. City's failure to record such notice or to issue a Certificate of Completion following Buyer's completion of construction of the Project and the opening for business of the Select Service Hotel shall not, however, forestall the termination of City's rights under this Section 10.6, which repurchase rights shall be deemed terminated at such time the Select Service Hotel opens for business.

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

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

11. GENERAL PROVISIONS.

11.1 Notices. Any approval, disapproval, demand, or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and shall be given by certified mail, return receipt requested and postage prepaid, personal delivery, or reputable overnight courier (but not by facsimile or email), to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Seller: City of San Bruno
Office of the City Manager
567 El Camino Real
San Bruno, CA 94066
Attention: City Manager

With a copy to: City of San Bruno
Office of the City Attorney
527 El Camino Real
San Bruno, CA 94066
Attention: City Attorney

and: Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94612
Attention: Gerald J. Ramiza, Esq.

To Buyer: OTO Development, LLC
124 Johnson Court
Folsom, CA 95630
Attention: Steve Pieters
Email: spieters@otodevelopment.com

With a copy to: OTO Development, LLC

100 Dunbar Street, Suite 402

Spartanburg, SC 29306

Attention: Jason C. Lynch

Email: jlynch@otodevelopment.com

Any Notice shall be deemed received on the date of delivery if delivered by personal service, on the date of delivery or refused delivery as shown by the return receipt if sent by certified mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via nationally recognized overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

11.2 Force Majeure. Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: war; insurrection; strikes and labor disputes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation and arbitration, including court delays; legal challenges to this Agreement, or any other approval or permit required for the Project or any initiatives or referenda regarding the same; or acts or failures to act of any public or governmental agency or entity (except that acts or failures to act of Seller shall not excuse performance by Seller) (each a "**Force Majeure Delay**"). An extension of time for any such cause shall be for the period of the Force Majeure Delay and shall commence to run from the time of the commencement of the cause, if Notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. If Notice is sent after such thirty (30) day period, then the extension shall commence to run no sooner than thirty (30) days prior to the giving of such Notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Seller and Buyer. Buyer acknowledges that adverse changes in economic conditions or the economy generally, changes in market conditions or demand, and/or inability to obtain financing or other lack of funding to complete the work of the Project shall not constitute grounds of force majeure pursuant to this Section 11.2. Buyer expressly assumes the risks of

such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Date of Agreement.

11.3 Assignments; Successors and Assigns. Buyer may not assign or transfer this Agreement or any interest therein except to a special purpose entity owned and controlled by Buyer's parent company, OTO, and created for the purposes of achieving the Project or the financing thereof. If Buyer desires to assign or transfer to an OTO-owned and controlled special purpose entity, Buyer shall give at least ten (10) days' prior written Notice to Seller. Seller shall be entitled to review such documentation as may be reasonably required by the Seller to approve the proposed assignment or transfer to the special purpose entity, which approval shall not be unreasonably withheld. Subject to the limitations on Buyer transfers set forth above, all of the terms, covenants and conditions of this Agreement shall be binding upon Buyer and Seller and their respective successors and assigns. Whenever the term "Buyer" is used in this Agreement, such term shall include any permitted successors and assigns as herein provided.

11.4 Seller Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by Seller, the City Manager or his or her designee is authorized to act on behalf of Seller, unless specifically provided otherwise or the context requires otherwise.

11.5 Counterparts. This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original.

11.6 Integration. This Agreement, including the exhibits hereto, contains the entire understanding between the parties relating to the transactions contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written are merged in this Agreement and shall be of no further force or effect.

11.7 Brokerage Commissions. Seller and Buyer each represents to the other that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the conveyance of the Property as described in this Agreement, or the negotiation and execution of this Agreement, except that Buyer has retained Bay Area Realty whose commission shall be paid by Buyer pursuant to the terms of a separate written agreement. Each party shall indemnify, defend, protect and hold the other party harmless from any and all Claims based upon any assertion that such commissions or fees are allegedly due from the party making such representations. The provisions of this Section shall survive any termination of this Agreement, shall survive the Closing and shall not be merged upon delivery and acceptance of the Grant Deed or upon payment of the Purchase Price by Buyer to Seller.

11.8 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise. References to specific section numbers shall include all subsections which follow the referenced section.

11.9 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The words “include” and “including” shall be construed as if followed by the words “without limitation.” The parties acknowledge that each party and his, her or its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection with this Agreement.

11.10 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

11.11 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

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

11.13 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or its agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

11.14 Time of Essence. Time is expressly made of the essence with respect to the performance by Seller and Buyer of each and every obligation and condition of this Agreement.

11.15 Cooperation. Prior to and following the Closing, each party agrees to cooperate with the other in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement. Without limiting the generality of the foregoing, Buyer shall use good, faith diligent efforts to expeditiously prepare and submit to City for review all applications and plan sets, including revisions to plans and drawings in response to City comments, that may be required to obtain approval and issuance of the entitlements and permits required to construct the Project on the Property. In addition, Seller shall use diligent efforts to assist Buyer in the

expeditious processing of the applications and permits submitted by Buyer in connection with the entitlement, design, and construction of the Select Service Hotel, including, without limitation, the approvals and permits referred to in Sections 4.2.3 and 4.2.4 of this Agreement. City retains full and complete discretion with regard to consideration of such applications and permits.

11.16 Conflicts of Interest. No City Council member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

11.17 Insurance Requirements. Prior to Closing and continuing until the completion of construction of the Project, as evidenced by Seller's issuance of a Certificate of Completion, Buyer shall take out and maintain or shall cause its contractor to take out and maintain, a commercial general liability policy with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage, or such other higher policy limits as may be required by Buyer's lenders or other institutions providing financing for the Project. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001). If commercial general liability insurance or other form with a general aggregate is used, the general aggregate limit shall at least Five Million Dollars (\$5,000,000). Buyer and each of its contractors shall also take out and maintain a comprehensive automobile liability policy in an amount not less than One Million Dollars (\$1,000,000).

Until such time as Buyer has completed the Project, Buyer shall also obtain and maintain builder's all-risk insurance in an amount not less than the full insurable cost of the Project improvements on a replacement cost basis, or such other greater policy limits as may be required by Buyer's lenders or other institutions providing financing for the Project, and shall furnish or cause to be furnished to Seller evidence satisfactory to Seller that Buyer and any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII or otherwise acceptable to Seller. The commercial general liability and comprehensive automobile policies hereunder shall name Seller and Seller Parties as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Buyer on or about the Property, including materials, parts or equipment furnished in connection with such work or operations.

Buyer shall furnish Seller with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. To the extent provided by the insurance carrier, the insurance policies shall be endorsed to notify Seller of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Buyer shall be primary insurance and shall not be contributing

with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall so provide. Any insurance, self-insurance or joint self-insurance maintained by City shall be excess of and shall not contribute with the insurance required to be maintained by Buyer. The insurance policies shall contain a waiver of subrogation for the benefit of Seller. The required certificate and endorsement for the Project shall be furnished by Buyer to Seller prior to Closing.

Any deductibles or self-insured retentions must be declared to and approved by Seller, which may require Buyer to provide proof of its ability to pay losses and costs of related investigation, claim administration, and defense expenses within the retention.

11.18 Buyer's Indemnity. Buyer shall indemnify, defend (with counsel reasonably acceptable to Seller), protect and hold Seller and Seller Parties, harmless from, all Claims relating to the development of the Project or arising from the acts, omissions, negligence or willful misconduct of anyone employed or contracted with by Buyer and whether such Claims shall accrue or be discovered before or after termination of this Agreement or the Closing. Buyer's indemnity obligations under this Section shall not extend to Claims caused by the active negligence or willful misconduct of Seller or Seller's Parties; provided, however, that Buyer shall remain obligated to defend Seller and Seller's Parties notwithstanding any actual or alleged comparative negligence on the part of Seller or Seller's Parties until such time as the actual or alleged comparative negligence is adjudicated and Seller or Seller's Parties, as the case may be, are found to have been actively negligent or to have engaged in any willful misconduct, in which case the damage award and defense costs shall be apportioned and paid by Buyer and Seller in accordance with their respective comparative negligence percentages. Insurance limits shall not operate to limit Buyer's indemnity obligations under this Section. Notwithstanding anything to the contrary in this Section, any claims related to Initial Litigation Challenges shall be controlled exclusively by Section 11.19. The provisions of this Section shall survive any termination of this Agreement, shall survive the Closing and shall not be merged upon delivery and acceptance of the Grant Deed or upon payment of the Purchase Price by Buyer to Seller.

11.19 Cooperation in the Event of Legal Challenge to Project Approvals. City and Buyer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the City's initial approval of this Agreement or any of the Project land use approvals ("**Initial Litigation Challenge**"), and the parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information.

11.19.1 Meet and Confer. If an Initial Litigation Challenge is filed, upon receipt of the petition, the parties will have 20 days to meet and confer regarding the merits of such Initial Litigation Challenge and to determine whether to defend against the Initial Litigation Challenge, which period may be extended by the parties' mutual agreement so long as it does not impact any litigation deadlines. The parties shall expeditiously enter a joint defense agreement, which will include among other things, provisions regarding confidentiality. The City Manager is authorized to negotiate and enter such joint defense agreement in a form acceptable to the City Attorney. Such joint defense agreement shall also provide that any proposed settlement of an Initial Litigation Challenge shall be subject to both City's and Buyer's approval, each in its reasonable discretion. If the terms of the proposed settlement would constitute an amendment or

modification of this Agreement, the settlement shall not become effective unless such amendment or modification is approved by Buyer, and by City in accordance with applicable laws, and City reserves its full legislative discretion with respect thereto.

11.19.2 Defense Election. If, after meeting and conferring, the parties mutually agree (each in its sole discretion) to defend against the Initial Litigation Challenge, then the following shall apply:

(a) For the purposes of cost-efficiency and coordination, the Parties shall first consider defending the Initial Litigation Challenge jointly, with counsel and under terms of joint representation mutually acceptable to the City and Buyer (each in its sole discretion), at the Buyer's sole cost and expense. If the parties cannot reach timely and mutual agreement on a joint counsel, and Buyer continues to elect (in its sole discretion) to defend against the Initial Litigation Challenge, then:

(i) Buyer shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice;

(ii) City may, in its sole discretion, elect to be separately represented by the outside legal counsel of its choice in any such action or proceeding with the reasonable costs of such representation to be paid by Buyer; and

(iii) Buyer shall reimburse City, within ten (10) business days following City's written demand therefor, which may be made from time to time during the course of such litigation, all necessary and reasonable costs incurred by City in connection with the Initial Litigation Challenge, including City's administrative, outside legal fees and costs, and court costs.

(b) The Parties intend that the City's role under subsection 11.19.2(a) above shall be primarily oversight although the City reserves its right to protect the City's interests, and the City shall make good faith efforts to maximize coordination and minimize its outside legal costs (for example, minimizing filing separate briefs, and duplication of effort to the extent feasible).

(c) For any Initial Litigation Challenge which the Buyer has elected to defend under this Section 11.19.2, Buyer shall indemnify and hold harmless the City and Seller Parties from any Claims (including City costs to effectuate such judgment, including any attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure Section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation), loss (direct or indirect), or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, staff time, expenses or costs) related to such Initial Litigation Challenge.

(d) If Buyer elects, in its sole and absolute discretion, not to defend against the Initial Litigation Challenge, it shall deliver written Notice to the City regarding such decision. If Buyer elects not to defend, the City has the right, but not the obligation, to proceed to defend against the Initial Litigation Challenge and shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal

counsel of its choice, at its sole cost and expense. If Buyer elects not to defend, the City has the right, but not the obligation, to terminate this Agreement and consider the Buyer's application for any related Project approvals withdrawn, the Deposit shall be returned to Buyer and this Agreement shall be of no further force or effect. In the event the City does not terminate this Agreement, then if the terms of a proposed settlement would constitute an amendment or modification of this Agreement, the settlement shall not become effective unless such amendment or modification is approved by Buyer, in its sole discretion, and by City in accordance with applicable laws, and City reserves its full legislative discretion with respect thereto. In the event the Buyer does not approve such amendment or modification, the City retains the right, but not the obligation, to terminate this Agreement and consider the Buyer's application for any related Project approvals withdrawn, the Deposit shall be returned to Buyer and this Agreement shall be of no further force or effect.

11.20 Non-liability of Officials and Employees of Seller. No member, official or employee of Seller shall be personally liable to Buyer, or any successor in interest, in the event of any Default or breach by Seller or for any amount which may become due to Buyer or its successors, or for any obligations under the terms of this Agreement. Buyer hereby waives and releases any claim it may have against the members, officials or employees of Seller with respect to any Default or breach by Seller or for any amount which may become due to Buyer under the terms of this Agreement. No member, officer or employee of Buyer shall be personally liable to Seller, or any successor in interest, in the event of any Default or breach by Buyer or for any amount which may become due to Seller or successors, or for any obligations under the terms of this Agreement. Seller hereby waives and releases any claim it may have against the members, officers, or employees of Buyer with respect to any Default or breach by Buyer or for any amount which may become due to Buyer under the terms of this Agreement.

11.21 Applicable Law; Venue. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Mateo or the United States District Court, Northern California District.

11.22 Survival. The parties' representations and warranties, indemnification obligations and post-development covenants and obligations shall survive termination of this Agreement, shall survive the Closing for the period set forth herein, and shall not be merged upon delivery and acceptance of the Grant Deed or upon payment of the Purchase Price to Seller.

[Remainder of page intentionally left blank]

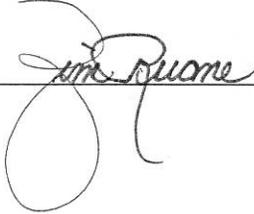
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:

CITY OF SAN BRUNO, a California municipal corporation

By:

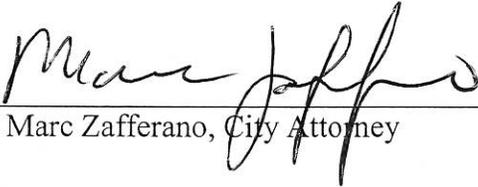
Jim Ruane, Mayor



APPROVED AS TO FORM:

By:

Marc Zafferano, City Attorney



ATTEST:

By:

Carol Bonner, City Clerk



BUYER:

SAN BRUNO HOTELS, LLC,
a ^{CA} Delaware limited liability company

By:

Name:

Title:

Charles T. King
Assistant Treasurer

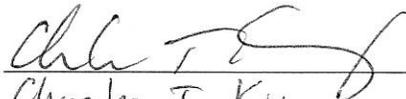
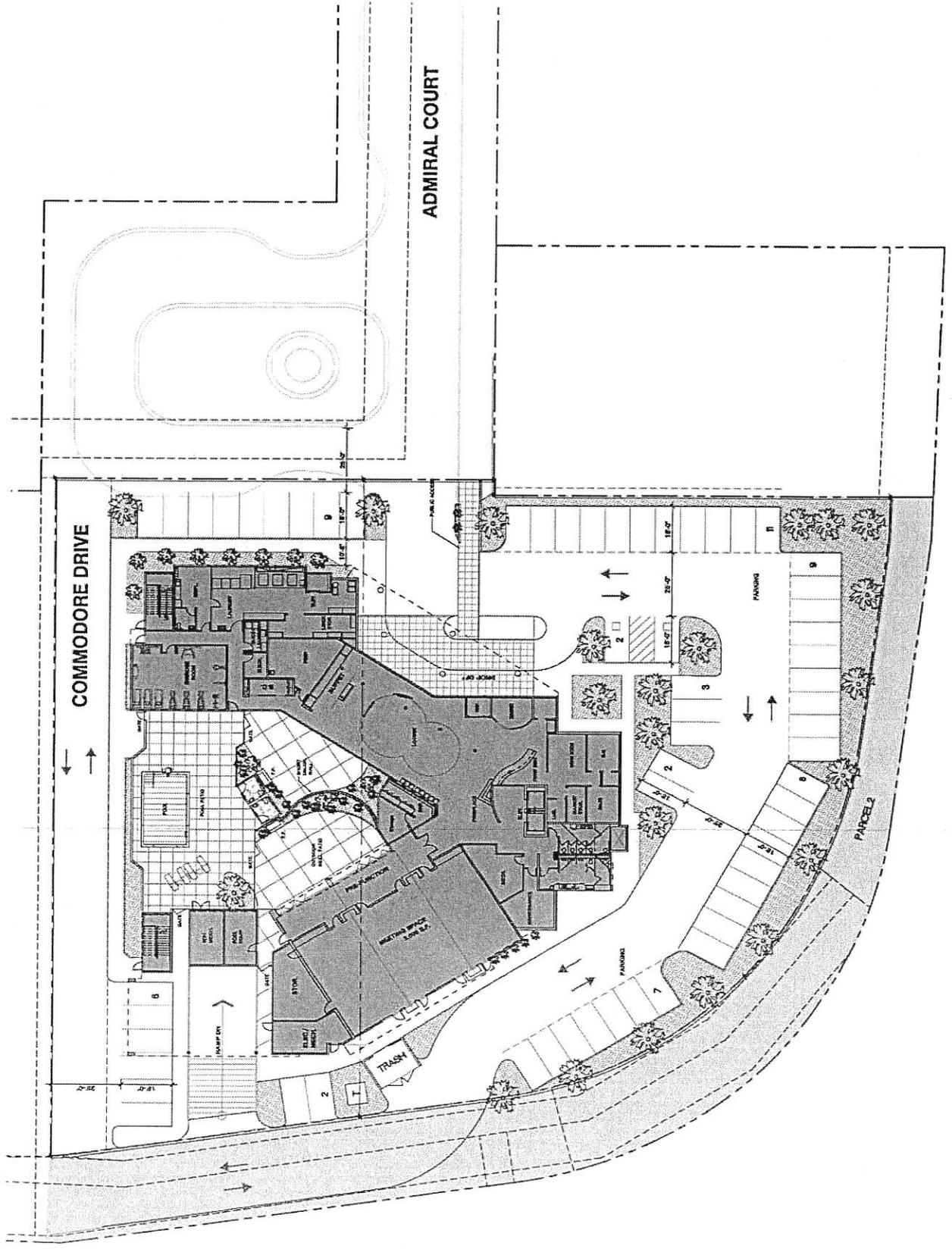


EXHIBIT A-1

SITE MAP OF PROPERTY

Springhill Suites, San Bruno – Site Plan



INTERSTATE 380

EXHIBIT A-2

LEGAL DESCRIPTION – PROPERTY

EXHIBIT A

LEGAL DESCRIPTION OF THE REAL PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN BRUNO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel A:

Parcel 7 and Parcel 8 as shown on the map entitled, "The Crossing", filed in the Office of the Recorder of San Mateo County, California on December 9, 2002 in Book 132 of Maps at Pages 54 through 60.

Parcel B:

Easements for ingress and egress and private utility service over those portions of Parcel 1 and Parcel 2 as shown on the map entitled, "The Crossing", filed in the Office of the Recorder of San Mateo County, California on December 9, 2002 in Book 132 of Maps at Pages 54 through 60, designated thereon as "Reservation of Private Roadway Easement for the Benefit of Parcels 1, 2, 7, 8, 9 & 10, and Private Utility Easement".

Parcel C:

An easement for storm drain purposes over those portions of Parcel 2 as shown on the map entitled, "The Crossing", filed in the Office of the Recorder of San Mateo County, California on December 9, 2002 in Book 132 of Maps at Pages 54 through 60, designated thereon as "10' Private Storm Drain Easement".

JPN: 132-054-000-0007T, 132-054-000-0008T

APN: 020-013-250 (Parcel 7), 020-013-260 (Parcel 8)

EXHIBIT B

**RECORDING REQUESTED BY AND
AFTER RECORDATION MAIL TO:**

*This document is exempt from the payment of a recording fee
pursuant to Government Code §§ 6103, 27383*

(Space Above This Line for Recorder's Use Only)

**GRANT DEED
(INCLUDING COVENANTS AND OPTION TO REPURCHASE)**

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CITY OF SAN BRUNO, a California municipal corporation (“**Grantor**”), hereby grants to SAN BRUNO HOTELS, LLC, a Delaware limited liability company (“**Grantee**”), the real property (the “**Property**”) located in the City of San Bruno, County of San Mateo, California, designated as San Mateo County Assessor’s Parcel Nos. 020-013-250 (Parcel 7) and 020-013-260 (Parcel 8) and more particularly described in Attachment No. 1 attached hereto and incorporated in this grant deed (“**Grant Deed**”) by reference.

1. PSA. The Property is conveyed pursuant to the Purchase and Sale Agreement (“**PSA**”) entered into by and between Grantor and Grantee dated _____, 2016. Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the PSA.

2. Select Service Hotel Development. Grantee hereby covenants and agrees, for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that the Property may only be developed with a Select Service Hotel that is consistent with the requirements of the Discretionary City Permits. The covenants in this Paragraph 2 shall remain in effect until issuance of the Certificate of Completion.

3. No Extended Stay Use. Grantee hereby further covenants and agrees, for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that for the time period set forth below, no Extended Stay hotel use shall be allowed on the Property. As used herein “**Extended Stay**” is defined as overnight occupancy for thirty (30) consecutive days or longer; provided, however, that a stay in which a guest "checks out" of the hotel at the Property not less than every twenty-ninth (29th) day shall not be considered an Extended Stay, notwithstanding that such guest immediately check back into the hotel at the Property. The covenants in this Paragraph 3 shall survive issuance of the Certificate of Completion and remain in effect until January 1, 2058.

4. Covenant: Mortgage and Deeds of Trust. Grantee expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that as to the Property and any improvements constructed or to be constructed thereon, or any part thereof, or alterations or changes thereto, Grantee and all such successors and assigns and all persons claiming under or through it, that the Property is being conveyed to the Grantee subject to the limitation of the PSA that mortgages and deeds of trust will be permitted on the Property, or any portion thereof, only for the purpose of financing construction and development of the Select Service Hotel Project improvements until the issuance of the Certificate of Completion, in accordance with the PSA. Following issuance of the Certificate of Completion, mortgages and deeds of trust shall be permitted for any purpose, and City shall have no approval or disapproval rights with respect thereto. The words “mortgage” and “deed of trust” as used herein shall include sale and lease-back financing.

5. City’s Right to Receive Share of Net Gain Upon Project Sale Prior to Construction Commencement. If, following the Closing and prior to the date Grantee has Commenced Construction (defined below) of the Project, Grantee or its successor or assign sells or transfers all or any portion of its interest in the Property and/or the Project to a person or entity other than OTO or an entity that controls, is controlled by or under common control with OTO, then Grantee or its successor shall pay to Grantor through escrow for such sale or transfer, or outside of escrow if no escrow is established, fifty percent (50%) of the Net Gain (defined below) generated from the sale or transfer of the Property and/or Project or interest therein. The obligations of Grantee under this Paragraph 5 shall be binding on Grantee’s successor and assigns for the time period set forth herein. Grantee shall be deemed to have “**Commenced Construction**” when Grantee has obtained a building permit for construction of the Project and commenced grading and utility work. “**Net Gain**” means any and all monies and other consideration paid to or received by Grantee or its successor in connection with the transferee’s acquisition of Grantee’s or its successor’s interest in the Property and/or Project or any portion thereof less (i) the Purchase Price paid by Grantee to Grantor in connection with Grantee’s acquisition of the Property as provided in the PSA; (ii) the closing costs, escrow charges, reasonable brokerage commissions and other customary and reasonable costs of sale payable to third parties, incurred by Grantee or its successor in connection with such sale or transfer; and (iii) the actual out-of-pocket hard and soft costs incurred by Grantee or its successor and paid to unaffiliated third parties prior to the date of such transfer for design, engineering, and construction (including labor and materials costs) of the Project. Grantee shall provide Grantor with reasonable documentation, including copies of paid invoices and its escrow closing statement, to confirm the accuracy of the amount paid by Grantee to Grantor in payment of Grantor’s share of such Net Gain. Grantor shall have no right to share in the proceeds of any sale or transfer occurring after the date Grantee or its successor has Commenced Construction of the Project.

6. Grantor Option to Repurchase, Reenter and Repossess. Subject to notice and opportunity to cure under Section 10 of the PSA and extension for Force Majeure delay under Section 11.2 of the PSA and subject to the mortgagee protection provisions of Paragraph 8 below, Grantor shall have the right, at its option, to repurchase, reenter and take possession of the entire Property (and acquire title and ownership to all assets, rights, materials, reimbursements, refunds and/or claims owned, used or held in connection with the ownership, use, management, development or enjoyment of the Property) if prior to issuance of a Certificate of Completion, Grantee shall (a)

fail to commence construction of the Project within ninety (90) days after Closing; or (b) abandon or substantially suspend construction of the Project for a period in excess of one hundred eighty (180) days after commencement of construction of the Project; (c) fail to substantially complete construction of the Project within thirty (30) months after Closing; or (d) fail to open the Select Service Hotel for business to the public within thirty-two (32) months of the date of Closing.

Such right to repurchase, reenter and repossess shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit: (i) any Security Instrument permitted by the PSA; or (ii) any rights or interests provided in the PSA or this Grant Deed for the protection of the Holder.

To exercise its right to repurchase, reenter and take possession with respect to the Property, Grantor shall pay to Grantee in cash an amount equal to:

- a. 3,970,000.00; plus
- b. The actual out-of-pocket hard and soft costs incurred by Grantee and paid to unaffiliated third parties for design, engineering, labor and materials for the design, engineering, construction of the Project at the time of the repurchase, reentry and repossession; less
- c. Any gains or income withdrawn or made by Grantee from the Property or the improvements thereon; less
- d. The total amount of any mortgage, deed of trust or other security instrument encumbering the Property recorded in connection with a third party lender construction loan financing (each a "**Security Instrument**") which is of record at the time of the repurchase, reentry and repossession.

In order to exercise such repurchase option, Grantor shall give Grantee written notice of such exercise and Grantee shall, within sixty (60) days after Grantee's receipt of such notice, provide Grantor with a detailed accounting of all of Grantee's costs incurred as provided in subparagraph b. above. Following review of such accounting Grantor at its option may retract its Notice of exercise by written notice to Grantee. If Grantor does not retract its notice of exercise, Grantor, within sixty (60) days after Grantor's receipt and approval of such accounting, shall pay to Grantee in cash, through an escrow established by the parties (with the costs thereof shared equally by the parties), all sums owing pursuant to this Paragraph 6, if any, and Grantee shall thereupon execute and deliver to Grantor through such escrow a grant deed transferring to Grantor all of Grantee's interest in the Property, together with a bill of sale, in form reasonably acceptable to Grantor, pursuant to which Grantor sells, transfers, assigns, conveys and delivers to Grantor, all of Grantee's right, title and interest in all assets, rights, materials, reimbursements, refunds and/or claims owned, used or held in connection with the ownership, use, management, development or enjoyment of the Property, including, without limitation: (i) all entitlements, permits and other agreements relating to the development of Property; (ii) all plans, specifications, maps, drawings and other renderings relating to the Property; (iii) all warranties, claims, indemnities and any similar rights relating to and benefiting the Property or the assets

transferred thereunder; (iv) all intangible rights, goodwill and similar rights benefiting the Property; (v) all development rights benefiting the Property; and (vi) all rights, refunds, claims and awards benefiting or appurtenant to the Property (but specifically excluding any proprietary financial or marketing information that Grantee may have produced in connection with its acquisition of the Property and efforts to develop the Project).

Following close of such repurchase transaction, Grantee shall, at any time and from time to time upon written request therefor, execute and deliver to Grantor, its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts that Grantor, its nominees, successors and/or assigns, may reasonably request in order to fully transfer possession and control of, and protect the rights of Grantor, its nominees, successors and/or assigns in, all the assets of Grantee intended to be transferred and assigned under such bill of sale.

Grantor's rights under this Paragraph 6 shall terminate upon the issuance of a Certificate of Completion and in connection therewith, Grantor shall record against the Property a notice that such Certificate of Completion has been issued. Grantor's failure to record such notice or to issue a Certificate of Completion following Grantee's completion of construction of the Project and the opening for business of the Select Service Hotel shall not, however, forestall the termination of Grantor's rights under this Paragraph 6, which repurchase rights shall be deemed terminated at such time the Select Service Hotel opens for business.

7. Effect, Duration and Enforcement of Covenants and Repurchase Option.

(a) It is intended and agreed that the covenants and agreements set forth in this Grant Deed shall be covenants running with the land and that they shall be, in any event and without regard to technical classification or designation, legal or otherwise, to the fullest extent permitted by law and equity, (i) binding for the benefit and in favor of Grantor, as beneficiary; and (ii) binding against Grantee, its successors and assigns to or of the Property and any improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of the Property or the improvements thereon or any part thereof. The agreements and covenants herein shall be binding on Grantee itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to or an interest in or possession or occupancy of the Property or part thereof.

(b) Grantee shall be entitled to written notice from Grantor and have the right to cure any alleged breach or violation of all or any of the covenants set forth in this Grant Deed; provided that Grantee shall cure such breach or violation within thirty (30) days following the date of written notice from Grantor, or in the case of a breach or violation not reasonably susceptible of cure within thirty (30) days, Grantee shall commence to cure such breach or violation within such thirty (30) day period and thereafter diligently to prosecute such cure to completion within a reasonable time.

8. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any Security Instrument encumbering the Property; provided, however, that any successor of Grantee to the Property (other than the Grantor in the event

Grantor acquires title to the Property through exercise of Grantor's option to repurchase under Paragraph 6 above), shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

9. Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any Registered Holder (defined below), so long as any Security Instrument shall remain unsatisfied, the following provisions shall apply:

(a) Grantor, upon serving Grantee any notice pursuant to Paragraph 6 of this Grant Deed, shall also serve a copy of such notice to any holder who has previously registered, in writing as provided in Section 11.1 of the PSA, its address with Grantor for purposes of receiving such notices ("**Registered Holder**"). No notice by Grantor to Grantee hereunder shall affect any rights of a Registered Holder unless and until a copy thereof has been delivered to such Registered Holder; provided, however, that failure to so deliver any such notice shall in no way affect the validity of the notice sent to Grantee as between Grantee and Grantor.

(b) In the event of a failure to perform or other breach of any covenant or requirement under this Grant Deed by Grantee, any Registered Holder shall have the right to remedy, or cause to be remedied, such failure or breach within sixty (60) days following the later to occur of (i) the date of Registered Holder's receipt of the notice referred to in Paragraph 9(a) above, or (ii) the expiration of the period provided herein for Grantee to remedy or cure such failure or breach, and Grantor shall accept such performance by or at the insistence of the Registered Holder as if the same had been timely made by Grantee; provided, however, that (a) if such failure or breach is not capable of being cured within the timeframes set forth in this Paragraph and Registered Holder commences to cure the failure or breach within such timeframes, then Registered Holder shall have such additional time as is required to cure the failure or breach so long as such Registered Holder diligently prosecutes the cure to completion and (b) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Registered Holder shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

(c) Any notice or other communication which Grantor shall desire or is required to give to or serve upon the Registered Holder shall be in writing, sent via certified mail or national overnight courier and addressed to the Registered Holder at the address provided by Registered Holder to Grantor. Any notice or other communication which Registered Holder shall give to or serve upon Grantor shall be deemed to have been duly given or served if sent to Grantor via certified mail or national overnight courier addressed as follows:

City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Attention: City Attorney

or to such other address as shall be designated by Grantor by notice in writing given to

the Registered Holder in like manner.

10. Amendments. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed. For purposes of this Paragraph, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and shall not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property and the Project.

11. Grantee's Acknowledgment. By its execution of this Grant Deed, Grantee has acknowledged and accepted the provisions hereof.

12. Counterparts. This Grant Deed may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

GRANTOR:

City of San Bruno, a California municipal corporation

Date: _____, 2016

By: _____

_____, City Manager

[SIGNATURE MUST BE NOTARIZED]

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

_____, City Attorney

GRANTEE:

_____, a

Date: _____, 2016

By: _____

Name: _____

[SIGNATURE MUST BE NOTARIZED]

Title: _____

By: _____

Name: _____

[SIGNATURE MUST BE NOTARIZED]

Title: _____

ACKNOWLEDGMENT

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

State of California)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

ATTACHMENT NO. 1

LEGAL DESCRIPTION

That certain real property located in the City of San Bruno, County of San Mateo described as follows: