

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** ("Agreement") is made this 22nd day of March, 2016 (the "**Effective Date**"), by and between the CITY OF GARDEN GROVE, a municipal corporation ("**City**" or "**Seller**"), and INVESTEL HARBOR RESORTS LLC, a California limited liability company ("**Buyer**"), for the acquisition by Buyer of certain real property described below. Buyer and Seller are sometimes hereinafter individually referred to as a "party" or collectively as the "parties."

RECITALS

A. City is the owner of that parcel of real property commonly known as 12361 Chapman Avenue, Garden Grove, California, and currently identified as Assessor's Parcel No. 233-171-23, which is more particularly described in Exhibit "A" attached hereto and made a part hereof, together with the buildings and improvements thereon ("**Improvements**") and furniture, fixtures, and equipment therein ("**FF&E**"), and all appurtenances of the above-described real property, including easements or rights-of-way relating thereto (in the aggregate, the "**Property**"). The Property was conveyed to City from the Successor Agency to the Garden Grove Agency for Community Development ("**Successor Agency**") on or about May 26, 2015, pursuant to California Health and Safety Code Section 34191.5.

B. City wishes to convey the Property to Buyer, and Buyer wishes to purchase the Property from the City, upon the performance of conditions precedent as set forth in this Agreement.

C. On March 22, 2016, following a duly noticed public hearing pursuant to Government Code Section 52201, City's City Council adopted a resolution making certain findings pursuant to Government Code Sections 52201, approving this Agreement, and authorizing City's City Manager to execute this Agreement on behalf of the City.

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

1. **Agreement to Sell and Purchase.** Subject to and in accordance with the terms and conditions hereinafter set forth, City agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from City, upon the terms and for the consideration set forth in this Agreement.

2. **Opening and Close of Escrow and Other Pertinent Dates.**

2.1 **Opening of Escrow; Escrow Agent.** Promptly after execution of this Agreement, the parties shall promptly open escrow (the "**Escrow**") at First American Title Insurance Company, National Commercial Services, located at 18500 Von Karman Avenue, Suite 600, Irvine, California 92612 ("**Escrow Agent**"), Attention: Patty Beverly; Tel. (949) 885-2465; Fax (877) 478-3007, or another escrow company mutually agreeable to the parties.

2.2 **Due Diligence Date.** The "**Due Diligence Date**" shall mean the date that is thirty (30) days from the Effective Date.

2.3 **Due Diligence Period.** The "**Due Diligence Period**" shall mean the period commencing on the Effective Date and continuing until the Due Diligence Date.

2.4 **Close of Escrow.** The "**Close of Escrow**" shall mean the date the Grant Deed and other necessary instruments of conveyance are recorded in the office of the Orange County Recorder.

2.5 **Outside Closing Date.** Unless extended by mutual agreement of the parties, the Close of Escrow shall occur on or before the date that is thirty (30) days from the Due Diligence Date (the "**Outside Closing Date**"). In the event the Close of Escrow does not occur by the Outside Closing Date, either party that is not in default hereunder shall be entitled to cancel Escrow and terminate this Agreement, in which case the Escrow Agent shall release to the depositor thereof all documents, instruments, and monies for escrow charges which were deposited hereunder. The foregoing shall not constitute an election of remedies for a non-defaulting party if the other party wrongfully fails to close Escrow. Notwithstanding the foregoing and any other provisions of this Agreement, unless the failure to close escrow by the Outside Closing Date is due solely to default by Buyer, the Deposit shall be returned to Buyer, provided however, should the Close of Escrow not occur solely as a result of a default by Buyer, then the Deposit shall be retained by City.

3. **Purchase Price and Deposit.** The total purchase price for the Property to be paid by Buyer is the sum of One Million One Hundred Thousand Dollars (\$1,100,000) ("**Purchase Price**"). The Purchase Price shall be paid as follows:

3.1 **Deposit.** In consideration for City entering into this Agreement, within five (5) business days after the opening of Escrow, Buyer shall deposit into an escrow account with the Escrow Agent a good faith deposit ("**Deposit**") in the amount of Fifty Thousand Dollars (\$50,000.00) in immediately available funds. In the event Buyer fails to timely deliver the Deposit to the Escrow Agent, this Agreement may be terminated by Seller upon written notice to Buyer in which case this Agreement shall be of no further force and effect. The Deposit shall be invested in an interest-bearing account and all interest earned thereon shall accrue to Buyer's benefit. The Deposit and all accrued interest shall be applied to the Purchase Price at the Close of Escrow.

3.2 **Balance of Purchase Price.** Prior to the Close of Escrow, Buyer shall deposit into Escrow the balance of the Purchase Price and its share of closing costs in immediately available funds.

4. **Title and Title Insurance.**

4.1 Buyer shall order a title insurance commitment for a California Land Title Association ("CLTA") Owner's Policy of Title Insurance in the amount of the Purchase Price ("**Title Commitment**") from First American Title Insurance Company, National Commercial Services ("**Title Company**"). Seller shall pay for the cost of the Title Commitment. If Buyer desires an American Land Title Association ("ALTA") Extended Coverage Owner's Policy of Title Insurance, Buyer shall order such policy and pay the cost difference between the CLTA policy and ALTA policy. Should Buyer elect to obtain a survey, Buyer shall do so at its own expense.

4.2 Buyer shall have ten (10) calendar days after receipt of the Title Commitment to give written notice to City of Buyer's approval or disapproval of any exceptions to title identified in the Title Commitment ("**Exceptions**"). No deeds of trust, mortgages or other liens, except for the lien of property taxes and assessments not yet due,

shall be approved Exceptions. If Buyer notifies City of its disapproval of any Exceptions, City shall have the right, but not the obligation, to remove any disapproved Exceptions within five (5) business days after receiving written notice of Buyer's disapproval or provide assurances satisfactory to Buyer that such Exceptions will be removed on or before the Close of Escrow. If City cannot or does not elect to remove any of the disapproved Exceptions within that period, Buyer shall have until the Due Diligence Date to either give the City written notice that Buyer elects to proceed with the purchase of the Property subject to the disapproved Exceptions or to terminate this Agreement pursuant to Section 5.1. Buyer's failure to give written disapproval of any Exceptions within such time limit and/or to terminate the Agreement by the Due Diligence Date shall be deemed approval of such Exceptions and conclusive evidence of Buyer's willingness to accept title subject to such Exceptions. Notwithstanding the foregoing, in the event the Title Company reports an additional Exception following Buyer's receipt of the Title Commitment, which Exception was not previously identified in the Title Commitment ("**Additional Exception**"), Buyer shall have five (5) business days after receiving notice of such Additional Exception to give written notice to City of Buyer's approval or disapproval thereof. Buyer's failure to give written disapproval of any such Additional Exception within such time limit shall be deemed approval of such Additional Exception and conclusive evidence of Buyer's willingness to accept title subject to such Additional Exception. If Buyer notifies City of its disapproval of any such Additional Exception, City shall have the right, but not the obligation, to remove such disapproved Additional Exception within five (5) business days after receiving written notice of Buyer's disapproval or provide assurances satisfactory to Buyer that such Additional Exception will be removed on or before the Close of Escrow. If City cannot or does not elect to remove any disapproved Additional Exception within that period, Buyer shall have until the date that is ten (10) business days after the date of Buyer's written disapproval of such Additional Exception, or until the Due Diligence Date, whichever is later, to either give the City written notice that Buyer elects to proceed with the purchase of the Property subject to the disapproved Additional Exception or to terminate this Agreement by sending written notice of termination to Seller, in which case this Agreement shall terminate, the Deposit shall be returned to Buyer, and the parties shall have no further obligations to each other except for such provisions that specifically survive the termination of this Agreement.

4.3 **Title Insurance Policy.** Escrow Agent shall, following recording of the Grant Deed, provide Buyer with, at Buyer's request, either a CLTA Owner's Policy of Title Insurance or an ALTA Extended Coverage Owner's Policy of Title Insurance for the Property issued by the Title Company in the amount of the Purchase Price, insuring Buyer as owner of good, marketable and indefeasible fee simple title to the Property, subject only to the Exceptions approved by Buyer as set forth in Section 4.2 and the printed exceptions and stipulations in the policy, and together with any endorsements required by Buyer ("**Buyer's Title Policy**"). Seller shall pay for the premium costs of a standard CLTA policy. Buyer shall pay for any additional costs related to the issuance of an ALTA policy if Buyer elects to purchase such additional coverage, as well any endorsements to the policy requested by Buyer.

5. **Inspections; Due Diligence Period.**

5.1 **Due Diligence Period.** During the Due Diligence Period, Buyer shall may review the Title Commitment (as defined in Section 4.1) and the Property Information (as defined in Section 5.2) and perform such Due Diligence Activities (as defined in Section 5.3) as Buyer deems appropriate to decide whether the Property is acceptable to Buyer for its intended use, including, but not limited to, evaluation of the physical condition of the Property, determination of the availability of financing, review of applicable zoning requirements, consultation with governmental agencies with permitting authority over Buyer's intended uses of the Property, review of all easements and rights appurtenant to the Property, and securing of any necessary parking and/or ingress/egress rights or agreements from other property owners. All costs and expenses of such inspections, investigations, inquiries, studies, and document reviews shall be borne by Buyer. Buyer's obligation to purchase the Property as herein provided shall be subject to Buyer's approval of the Property in Buyer's sole and absolute discretion. Buyer may terminate this Agreement for any reason on or prior to the Due Diligence Date by sending written notice of termination to Seller, in which case this Agreement shall terminate, the Deposit (less any escrow cancellation charges) shall be returned to Buyer, and the parties shall have no further obligations to each other except for such provisions that specifically survive the termination of this Agreement. Except as otherwise expressly provided in this Agreement, if Buyer fails to deliver written notice of termination of the Agreement to Seller before the end of the Due Diligence Period, Buyer shall be deemed to have accepted the Property in its "AS-IS, WHERE-IS, AND WITH ALL FAULTS" condition, the Deposit (excluding any interest credited to Buyer) shall become non-refundable to Buyer, and Buyer shall be obligated to either close the transaction as herein provided or forfeit the Deposit to City.

5.2 **Property Information.** During the Due Diligence Period, Seller shall make available to Buyer copies of any and all information, maps, contracts, reports, plans, documents, and other items relating to the Property that Seller has in its possession, custody or control, excluding any documents deemed by Seller to be proprietary, confidential or privileged, but including, without limitation, architectural, structural, mechanical, and/or electrical plans for the Improvements, all tax bills, if any, applicable to the Property, and all environmental assessments or reports prepared for the Property ("**Property Information**"). If Buyer does not terminate this Agreement on or before the Due Diligence Date, and proceeds with this transaction past the Due Diligence Date, it shall be deemed that Buyer is either satisfied with the Property Information or, in the event Buyer decides not to inspect and/or make copies of the Property Information, that Buyer is not relying on the Property Information in its determination as to whether or not to purchase the Property. If this Agreement is terminated for any reason, Buyer shall promptly return to Seller the Property Information upon request by Seller. The obligations of Buyer pursuant to the foregoing sentence shall survive the termination of this Agreement.

5.3 **Property Inspection and Tests.** Subject to the terms of a Right of Entry and Access Agreement in the form attached hereto as **Exhibit "C"**, which shall be executed and delivered prior to Buyer's (or its agents') entry onto the Property, Buyer, or its authorized agents, may enter upon the Property at all reasonable times prior to Close of Escrow for the purpose of making Buyer desired inspections, investigations, inquiries, tests,

feasibility studies, surveys, assessments and/or reports of the Property, at Buyer's expense ("**Due Diligence Activities**").

5.4 **No Representation or Warranty By Seller.** Buyer acknowledges and agrees that, except as otherwise specifically set forth herein, neither Seller nor any of its respective agents, employees or contractors has made any warranty or representation regarding the condition of the Property.

6. **Escrow Process.** This Agreement, together with the escrow instructions prepared by Escrow Agent and executed by Buyer and City, constitute the joint escrow instructions of Buyer and City, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. To the extent any inconsistencies between this Agreement and the escrow instructions exist, the terms of this Agreement shall govern.

6.1 **Grant Deed.** City shall execute and deliver into the Escrow a duly executed and acknowledged grant deed ("**Grant Deed**") for the Property, in the form substantially similar to that attached hereto as Exhibit "B" conveying to Buyer all of Seller's interest in the Property. Buyer agrees to deposit the balance of the Purchase Price upon demand of Escrow Agent, and Buyer and City each agree to deposit with Escrow Agent any additional instruments and funds as may be necessary to complete this transaction.

6.2 **Insurance.** Insurance policies for fire or casualty are not to be transferred, and City will cancel its own policies after Close of Escrow.

6.3 **Escrow Account.** All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s). All disbursements shall be made by check or wire transfer from such account.

7. **Tax Adjustment Procedure.** Escrow Agent shall pay and charge City for unpaid delinquent property taxes and/or penalties and interest thereon, if any, and for any delinquent assessments or bonds against the Property due as of the Close of Escrow. Escrow Agent shall prorate property taxes and assessments for the current fiscal year, if any.

8. **Escrow Agent Authorization.** Seller and Buyer agree that Escrow Agent is authorized to, and shall take the following actions:

8.1 **Escrow Fees and Charges, and Related Costs.** Charge Seller and Buyer 50% each for all Escrow fees, charges, and related costs. All other closing costs and fees shall be allocated in the customary manner accounted for in Orange County, California.

8.2 **Disbursement.** Disburse funds, record the Grant Deed, and deliver the Buyer's Title Policy to Buyer, when conditions of the Escrow have been fulfilled by Buyer and City.

8.3 **Time Limits.** Any and all time limits within which any matter specified herein is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.

8.4 **Escrow Agent Responsibility.** The responsibility of the Escrow Agent under this Agreement is expressly limited to Sections 1, 2, 3, 4, 6, 7, 8, 9 and 10 of this Agreement.

8.5 **Tax Requirements.** Escrow Agent shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

8.6 **Transfer Taxes.** To the extent that transfer taxes are applicable to the sale of this Property, City shall be fully responsible for said taxes.

9. **Conditions Precedent to Close of Escrow.**

9.1 **Buyer's Conditions Precedent to Close of Escrow.** The obligation of the Buyer to complete the purchase of the Property is subject to the satisfaction of the following conditions:

(a) City shall have delivered to Escrow Agent a duly executed and acknowledged Grant Deed as set forth in Section 6.1, plus the fees and costs as set forth in Section 8.1 and 8.6.

(b) City shall have delivered to Escrow Agent such other documents as are necessary to comply with City's obligations under this Agreement.

(c) City shall, if necessary, deliver a bill of sale conveying personal property to Buyer.

(d) Title Company shall have committed to deliver to Buyer the Buyer's Title Policy as required by Section 4.3 hereof.

(e) Buyer shall not have terminated this Agreement except as otherwise specifically permitted by the provisions of this Agreement.

(f) City shall not be in default of any of its obligations under the terms of this Agreement, and all representations of City herein shall be true and correct.

9.2 **City's Conditions Precedent to Close of Escrow.** The obligation of City to complete the sale of the Property is subject to the satisfaction of the following conditions:

(a) The Buyer shall not be in default of any of its obligations under the terms of this Agreement, and all representations of Buyer herein shall be true and correct.

(b) The Buyer shall have deposited with the Escrow Agent immediately available funds in an amount equal to the balance of the Purchase Price, plus the fees and costs as set forth in Section 8.1.

(c) The Buyer shall have executed all documents required hereunder and delivered such documents to Escrow Agent.

(d) The City shall not have terminated this Agreement except as otherwise specifically permitted by the provisions of this Agreement.

(e) The City shall have approved, in its sole discretion, any assignment of this Agreement by Buyer, which assignment occurs prior to the Close of Escrow.

10. **Closing Statement.** City instructs Escrow Agent to release a copy of City's closing statement to Buyer, and Buyer instructs Escrow Agent to release a copy of Buyer's closing statement to City, at least two (2) business days prior to the Close of Escrow.

11. **Warranties, Representations and Covenants of City.** City hereby warrants, represents, and/or covenants to Buyer that:

11.1 **Authority.** City is a general law city lawfully existing under the laws of the State of California, and that, as of the Close of Escrow, City will have the full right and authority and will have obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. The execution, performance and delivery of this Agreement by City has been fully authorized by all requisite actions on the part of City.

11.2 **Pending Claims.** Except as previously disclosed to Buyer, to the best of City's knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law or in equity, before any court or governmental agency, domestic or foreign.

11.3 **City's Title.** Until the Close of Escrow, City shall not do anything which would impair title to the Property.

11.4 **Conflict with Other Obligation.** To the best of City's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which City or the Property may be bound.

11.5 **Bankruptcy.** City is not the subject of a bankruptcy proceeding.

11.6 **Governmental Compliance.** The City has not received any notice from any governmental agency or authority alleging that the Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by City following the Effective Date, City shall notify Buyer within ten (10) days of receipt of such notice; City then, at its option, may either elect to perform the work or take the necessary corrective action prior to the Close of Escrow or refuse to do so, in which case City shall notify Buyer of such refusal and Buyer shall be entitled to either close Escrow with knowledge of such notice(s) or terminate this Agreement. If, following the receipt of such notice(s), Buyer elects not to close Escrow, then this Agreement and the Escrow shall automatically terminate, the Deposit shall be returned to Buyer and neither party shall have any further rights, obligations or liabilities hereunder.

11.7 **Right to Possession.** Except as otherwise set forth in this Agreement, no person, firm, partnership or corporation other than City will have the right to possess the Property, or any portion of it, as of the Close of Escrow.

11.8 **Change of Situation.** Until the Close of Escrow, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true as of the Close of Escrow, immediately give written notice of such fact or condition to Buyer. Such exception(s) to a representation shall not be deemed a breach by City hereunder, but shall constitute an exception which Buyer shall have a right to approve or disapprove. If Buyer elects to close Escrow following disclosure of such information, City's representations and warranties contained herein shall be deemed to have been made as of the Close of Escrow, subject to such exception(s). If, following the disclosure of such information, Buyer elects not to close Escrow, then this

Agreement and the Escrow shall automatically terminate, the Deposit shall be returned to Buyer and neither party shall have any further rights, obligations or liabilities hereunder.

11.9 **Limitation.** The warranties of Section 12 and this Section 11 are limited by the default and remedies provision of Section 18.

11.10 **Limited Representations and Warranties.** Except as expressly set forth in this Agreement, Buyer acknowledges and agrees that City has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, verbal or written, past, present or future, of, as to, concerning or with respect to: (a) the value, nature, quality or condition of the Property, including, without limitation, the water, soil and geology; (b) the income to be derived from the Property; (c) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon; (d) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property; or (e) any other matter with respect to the Property. Buyer further acknowledges and agrees that having been given the opportunity to review the Property Information and conduct Due Diligence Activities on the Property, except as set forth in this Agreement, Buyer is relying solely on Buyer's own investigation of the Property and not on any information provided or to be provided by City. Buyer further acknowledges and agrees that any information provided on behalf of City with respect to the Property was obtained from a variety of sources and that, except as set forth in this Agreement, City has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information, Buyer further acknowledges that, except as set forth in this Agreement, the sale of the Property as provided for herein is made on an "As-Is, Where-Is, and With All Faults " condition and basis.

12. **Warranties, Representations, and Covenants of Buyer.** Buyer hereby warrants, represents, and/or covenants to City that:

12.1 **Authority.** Buyer is a limited liability company organized, validly existing and in good standing under the laws of the State of California; this Agreement and all documents executed by Buyer are and at the time of Close of Escrow will be duly authorized, executed and delivered by Buyer and are and at the time of Close of Escrow will be enforceable against Buyer in accordance with their respective terms.

12.2 **No Conflict.** To the best of Buyer's knowledge, 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 the Buyer is a party or by which it is bound.

12.3 **Bankruptcy.** Buyer is not the subject of a bankruptcy proceeding.

12.4 **Change of Situation.** Until the Close of Escrow, Buyer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true as of the Close of Escrow, immediately give written notice of such fact or condition to City.

13. **Condition of the Property.**

13.1 **Hazardous Materials.** As used in this Agreement, the term "Hazardous Materials" shall mean any hazardous or toxic substance, material, or waste

which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6,95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6,7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, et seq. (42 U.S.C. §6903) or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, et seq.

13.2 Compliance with Environmental Laws. To the best of City's knowledge, the City has not received any notice from any governmental agency that the Property is not in compliance with any applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environmental Quality Act, and the rules, regulations, and ordinances of the City of Garden Grove, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus. For the purposes of this Section, "the best of City's knowledge" shall mean the actual knowledge of the employees of the City who manage the Property, and documents in the City's files, and shall not require City to obtain any environmental reports, consult with any environmental professionals, or conduct any testing of the soils or groundwater on the Property.

13.3 As-Is Sale. Except as otherwise expressly provided in this Agreement, the physical condition, possession or title of the Property is and shall be delivered from City to Buyer in an "as-is, where-is, and with all faults" condition, with no warranty expressed or implied by City, including without limitation, the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Property for the use or development purposes intended hereunder.

Except as otherwise expressly provided in this Agreement, the Buyer, on behalf of itself and its successors and assigns, hereby waives, releases and discharges forever the City and its employees, elected and appointed officials, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising

out of or in any way connected with the condition of the Property, and any Hazardous Materials on the Property, however they came to be placed there, except that arising out of the negligence of City or Successor Agency, or either of their misconduct.

The Buyer, on behalf of itself and its successors and assigns, acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"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."

As such relates to this Section 13.3, the Buyer, on behalf of itself and its successors and assigns, hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Buyer's Initials

Buyer's Initials

14. **Loss or Damage to Property.** Risk of loss resulting from any material condemnation or eminent domain proceeding which is commenced or has been threatened before the Close of Escrow, and risk of loss to the Property due to fire, flood or any other cause before the Close of Escrow, shall remain with Seller. If before the Close of Escrow the Property or any portion thereof shall be materially damaged, or if the Property or any material portion thereof shall be subjected to a bona fide threat of condemnation or shall become the subject of any proceedings, judicial, administrative or otherwise, with respect to the taking by eminent domain or condemnation, then Seller shall notify Buyer of such occurrence and Buyer may terminate this Agreement by written notice to Seller given promptly after Buyer receives notice of the damage or taking from Seller, in which event the Deposit shall be returned to Buyer.

15. **Broker Commissions.**

15.1 **Seller's Broker.** Seller shall be responsible for paying any fees or commissions owed to any broker representing Seller in this transaction pursuant to a separate written agreement ("**Seller's Broker**"). Upon Close of Escrow, Escrow Agent is authorized and instructed to pay Seller's Broker a commission in an amount specified by Seller in separate instructions to Escrow Agent.

15.2 **Buyer's Broker.** Buyer acknowledges and represents that it is represented by Harry Pflueger of Maxim Hotel Brokerage ("**Buyer's Broker**") in this transaction. Upon Closing, Escrow Agent is authorized and instructed to pay Buyer's Broker a commission in the amount equal to five percent (5.0%) of the Purchase Price, or Fifty Five Thousand Dollars (\$55,000), to be deducted from the balance of the proceeds due Seller, as specified in the Closing statements.

15.3 **No Other Broker's Commissions.** Buyer and Seller each represent to the other that, except for the fees and commissions payable pursuant to Sections 15.1 and 15.2, above, no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement. Each party agrees to and does hereby indemnify and hold the other free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in connection with this Agreement.

16. **Attorney's Fees.** In the event any declaratory or other legal or equitable action is instituted between the parties in connection with this Agreement, then as between Buyer and City, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

17. **Notices.** Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party, or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, or shall be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth below, or to such other addresses as are specified by written notice given in accordance herewith, or shall be transmitted by facsimile to the number for each party set forth below, or to such other numbers as are specified by written notice given in accordance herewith. All notices, demands, or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given 24 hours after the date of deposit with the commercial courier; and those given by facsimile shall be deemed given on the date of facsimile transmittal.

If to City: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attn: City Manager
Fax: (714) 741-5044

With a copy to: Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626
Attn: James H. Eggart
Fax: (714) 415-1162
Email: jeggart@wss-law.com

If to Buyer: Investel Harbor Resorts LLC
c/o SCG America
11999 Harbor Boulevard
Garden Grove, CA 92840
Attn: Danny Wei, Executive Vice President
Email: dannywei@scgamerica.com

With a copy to: Greenberg Traurig LLP
3161 Michelson Drive, Suite 1000
Irvine, CA 92612
Attn: Eudeen Chang and Carrie Risatti
Fax: (949) 732-6501

If to Escrow Agent: First American Title Insurance Company, National
Commercial Services
18500 Von Karman Avenue, Suite 600
Irvine, California 92612
Attn: Patty Beverly
Fax: 877-478-3007
Email: pbeverly@firstam.com

Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed fully delivered and received forty-eight (48) hours after mailing as provided above.

18. **Default/Remedies.**

18.1 **Default by Buyer.** If Buyer shall default in its obligation to close hereunder, Buyer agrees that Seller shall have the right to have the Escrow Agent deliver the Deposit to Seller as liquidated damages to recompense Seller for time spent, labor and services performed, and the loss of its bargain.

THE DEPOSIT SHALL BE ACCEPTED BY SELLER AS LIQUIDATED DAMAGES AND NOT AS A PENALTY AND SHALL CONSTITUTE SELLER'S SOLE AND EXCLUSIVE REMEDY FOR A BREACH HEREOF BY BUYER. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT. FURTHER, UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, BUYER AND SELLER AGREE THAT THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS PARAGRAPH REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WILL INCUR AS A RESULT OF SUCH FAILURE; PROVIDED, HOWEVER, THIS PROVISION SHALL NOT LIMIT SELLER'S RIGHTS TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES, NOR WAIVE OR AFFECT SELLER'S RIGHTS AND BUYER'S INDEMNITY OBLIGATIONS UNDER OTHER SECTIONS OF THIS AGREEMENT. IN ADDITION, BUYER DESIRES TO

LIMIT THE MONETARY DAMAGES FOR WHICH IT MIGHT BE LIABLE HEREUNDER AND BUYER AND SELLER DESIRE TO AVOID THE COSTS AND DELAYS THEY WOULD INCUR IF A LAWSUIT WERE COMMENCED TO RECOVER DAMAGES OR OTHERWISE ENFORCE SELLER'S RIGHTS. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. THE PARTIES HAVE SET FORTH THEIR INITIALS BELOW TO INDICATE THEIR AGREEMENT WITH THE LIQUIDATED DAMAGES PROVISION CONTAINED IN THIS SECTION.

SELLER'S INITIALS

BUYER'S INITIALS

18.2 **Default by Seller.** If Seller defaults in its obligation to sell and convey the Property to Buyer pursuant to this Agreement, Buyer's sole remedy shall be to elect one of the following: (a) terminate this Agreement, in which event Buyer shall have the right to have the Escrow Agent deliver the Deposit to Buyer; or (b) file a civil action for specific performance (but not for damages in addition thereto), provided that any suit for specific performance must be brought within ninety (90) days of Seller's default, to the extent permitted by law, Buyer waiving the right to bring suit at any later date or for damages. In addition, notwithstanding any other provision of this Agreement, should this Agreement be invalidated for any reason by a third party legal action, Buyer shall have no legal recourse for damages or other legal or equitable remedy other than to be excused from performance of the Agreement.

18.3 **Survival and Limitation for Breach of any Seller Warranty.** The representations and warranties of Seller contained herein shall survive the Close of Escrow for a period of six (6) months (the "**Survival Period**") and any claim for breach thereof must be commenced, if at all, within the Survival Period.

19. **Entire Agreement.** This Agreement and the exhibits attached hereto constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

20. **Captions.** The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

21. **Governing Law.** This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which when executed shall, regardless of the date of its execution and delivery, be deemed an original, and all counterparts together shall constitute one and the same instrument.

23. **Invalidity of Provision.** If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

24. **Waiver.** The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

25. **Amendments.** No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by Buyer and City.

26. **No Third Party Beneficiaries.** This Agreement is entered into for the sole benefit of Seller and Buyer, and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

27. **Time of Essence.** Time is of the essence of each provision of this Agreement.

28. **Binding Upon Successors.** The terms, conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

29. **Assignment.** Buyer may not assign its rights or obligations under this Agreement without the prior written consent of City.

30. **Authority to Execute.** Each person executing this Agreement on behalf of a party hereto warrants and represents that he/she is duly authorized to execute this Agreement on behalf of the entity for which he/she is signing and that such party is bound to the rights and by the obligations set forth in this Agreement by such signature.

31. **Administration.** This Agreement shall be administered and executed by City's City Manager, or his/her designated representative, following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City Manager (or his/her authorized representative). The City Manager shall have the authority but not the obligation to issue interpretations, waive provisions, extend time limits, execute the Grant Deed and all other documents on behalf of the City that are required in conjunction with the Escrow, and/or enter into minor amendments of this Agreement on behalf of the City, so long as such actions do not change purpose and intent of the Agreement as approved by the City Council or materially reduce the proceeds due to the City pursuant to the Agreement. All other amendments shall require approval of the City Council.

32. **Recitals.** The Recitals above are hereby incorporated into this section as though fully set forth herein and each party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

CITY/SELLER:
City of Garden Grove, a municipal corporation

By: _____
Scott C. Stiles
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

BUYER:
Investel Harbor Resorts LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Garden Grove, County of Orange, State of California, described as follows:

Parcel 1 as shown on Exhibit "B" of that certain Lot Line Adjustment No. LLA-15-02 recorded October 11, 2002 as Instrument No. 200-885172 of Official Records.

End of Legal Description

APN: 233-171-23

EXHIBIT "B"

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

Investel Harbor Resorts LLC
Attn: Danny Wei
11999 Harbor Boulevard
Garden Grove, CA 92840

APN: 233-171-23

(Space above this line for Recorder's Use Only)

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **CITY OF GARDEN GROVE**, a municipal corporation ("Grantor"), hereby grants **INVESTEL HARBOR RESORTS LLC**, a California limited liability company ("Grantee"), that certain real property (the "Property") located in the City of Garden Grove, County of Orange, State of California, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference, subject to all existing recorded and unrecorded leases, easements, restrictions and covenants of record.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of _____.

GRANTOR

CITY OF GARDEN GROVE, a municipal corporation

By: _____
Scott C. Stiles, City Manager

ACKNOWLEDGEMENT

State of California

County of _____) SS

On _____ before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person (s) whose names (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 is true and correct.

Witness my hand and official seal.

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Garden Grove, County of Orange, State of California, described as follows:

Parcel 1 as shown on Exhibit "B" of that certain Lot Line Adjustment No. LLA-15-02 recorded October 11, 2002 as Instrument No. 200-885172 of Official Records.

End of Legal Description

APN: 233-171-23

EXHIBIT “C”

RIGHT OF ENTRY AND ACCESS AGREEMENT

THIS RIGHT OF ENTRY AND ACCESS AGREEMENT (herein called this “Agreement”) is made and entered into as of _____, 2016, by the CITY OF GARDEN GROVE (herein called “Grantor”), and INVESTEL HARBOR RESORTS LLC (herein called “Grantee”).

WITNESSETH:

WHEREAS, Grantor is the owner of the real property more particularly described on Exhibit A, attached hereto and incorporated herein by reference (herein called the “Property”);

WHEREAS, concurrently with the execution of this Agreement, Grantor and Grantee contemplate entering into a Purchase and Sale Agreement and Joint Escrow Instructions related to the Property (the “Purchase Agreement”);

WHEREAS, Grantee has requested the right of entry upon and access to the Property for the purpose of preparing a survey, undertaking tests, inspections and other due diligence activities (herein called the “Due Diligence Activities”) in connection with the proposed acquisition by Grantee of the Property;

WHEREAS, Grantor has agreed to grant to Grantee, and Grantee has agreed to accept from Grantor, a non-exclusive, revocable license to enter upon the Property to perform the Due Diligence Activities in accordance with the terms and provisions of this Agreement;

WHEREAS, Grantor and Grantee desire to execute and enter into this Agreement for the purpose of setting forth their agreement with respect to the Due Diligence Activities and Grantee’s entry upon the Property.

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee do hereby covenant and agree as follows:

1. Access by Grantee.

(a) Subject to Grantee’s compliance with the terms and provisions of this Agreement, until the earlier to occur of (i) the Close of Escrow; or (ii) the earlier termination of this Agreement, Grantee and Grantee’s agents, employees, contractors, representatives and other designees (herein collectively called “Grantee’s Designees”) shall have the right to enter upon the Property for the purpose of conducting the Due Diligence Activities, following reasonable notice to Grantor.

(b) Grantee expressly agrees that in the event the Property is altered or disturbed in any manner in connection with the Due Diligence Activities, Grantee shall return the Property to the condition existing prior to the Due Diligence Activities to the extent reasonably practicable.

(c) Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, damages, losses, costs and expenses (including, without limitation, attorneys' fees and expenses and court costs, but expressly excluding consequential and punitive damages) suffered, incurred or sustained by Grantor as a direct result of, the conduct of any Due Diligence Activities on the Property by Grantee or any of Grantee's Designees, including, without limitation, any alterations or disturbance of the Property. Notwithstanding anything else contained herein, in no event shall Grantee have any obligation to indemnify, defend or hold harmless Grantor for any claims, liabilities, damages, losses, costs and expenses directly resulting from Grantee's negligence.

(d) Grantor does not assume any risk, liability or responsibility or duty of care as to Grantee or Grantee's Designees when they are on the Property to conduct any Due Diligence Activities. Grantee acknowledges and agrees that Grantee and Grantee's Designees enter the Property and Due Diligence Activities thereon at their own risk.

2. Liens and Lien Waivers. In conducting any Due Diligence Activities, Grantee shall not permit any liens to attach to the Property by reason of the exercise of its rights hereunder, and Grantee shall indemnify Grantor from and against any claims or demands for payment, or any liens or lien claims made against Grantor or the Property as a result of the Due Diligence Activities. Upon receipt of a written request from Grantor, Grantee will use reasonable efforts to obtain and provide Grantor with lien waivers following completion of the Due Diligence Activities from each and every contractor, material man, engineer, architect and surveyor who might have lien rights, in form and substance reasonably satisfactory to Grantor and its counsel, if any.

3. Insurance. Grantee shall, and shall cause all of Grantee's Designees performing the Due Diligence Activities to, procure or maintain reasonable worker's compensation and liability insurance in a form and amount reasonably satisfactory to Grantor covering each of the Due Diligence Activities.

4. Successors. To the extent any rights or obligations under this Agreement remain in effect, this Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

5. Limitations. Grantor does not hereby convey to Grantee any right, title or interest in or to the Property, but merely grants the specific rights and privileges hereinabove set forth.

6. Notices. Whenever any notice, demand, or request is required or permitted under this Agreement, such notice, demand, or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or shall be sent by nationally recognized commercial courier for next business day delivery, to the addresses set

forth below the respective executions of the parties hereof, or to such other addresses as are specified by written notice given in accordance herewith, or shall be transmitted by facsimile to the number for each party set forth below their respective executions hereof, or to such other numbers as are specified by written notice given in accordance herewith. All notices, demands, or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given 24 hours after the date of deposit with the commercial courier; and those given by facsimile shall be deemed given on the date of facsimile transmittal. Nonetheless, the time period, if any, in which a response to any notice, demand, or request must be given, shall commence to run from the date of receipt of the notice, demand, or request by the addressee thereof.

7. Governing Law. This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of California.

8. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be executed and sealed, all the day and year first written above.

GRANTOR:
City of Garden Grove

By: _____
Scott C. Stiles, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

GRANTEE:
Investel Harbor Resorts LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____