

**REAL ESTATE PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

**12233 Choisser Rd.
APN 231-491-15**

THIS AGREEMENT ("Agreement") is entered into this ____ day of December, 2019 ("Agreement Date") by and between the City of Garden Grove, a California municipal corporation ("Seller"), and the undersigned buyer Investel Garden Resorts LLC ("Buyer") for acquisition by Buyer of certain real property described below.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **Agreement to Sell and Purchase.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement, that certain real property ("Property") situated at **12233 Choisser Road** in the City of Garden Grove, County of Orange, State of California, APN 231-491-15, and legally described in Exhibit "A" attached hereto and incorporated herein by reference.
2. **Purchase Price/Settlement Price.** The total purchase price, payable in cash through escrow, shall be the sum of (\$_____) (the "Purchase Price").
3. **Conveyance of Title.** Seller agrees to convey by Grant Deed to Buyer marketable fee simple title to the Property free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases and taxes EXCEPT:
 - A. Real property taxes for the then current tax year, which are a lien not yet due and payable.
 - B. All title exceptions set forth in the Preliminary Title Report obtained pursuant to Section 4.1 below.
 - C. Easements or rights-of-way over the Property for public or quasi-public utility and/or public street purposes, if any.
4. **Title Report and Title Insurance Policy.**
 - 4.1 **Preliminary Title Report.** Seller agrees to obtain and provide Buyer with a Preliminary Title Report issued by Fidelity National Title Company on the property over, under, across and/or upon which the Property lies, together with legible copies of all documents, whether recorded or unrecorded, evidencing exceptions to title referred to therein within five (5) calendar days of the Agreement Date. Seller agrees to pay all costs of said Preliminary Title Report.
 - 4.2 **Title Insurance Policy.** Escrow Agent shall, following recording of deed to Buyer, provide Buyer with a standard owner's CLTA policy of title insurance in the amount of the Purchase Price, issued by Fidelity National Title Insurance Company, showing

fee simple title to the Property vested in Buyer subject only to the exceptions set forth in Paragraph 3 above and the printed exceptions and stipulations in the policy. Seller agrees to pay the premium charged for the standard owner's CLTA policy.

5. **Escrow.** Seller agrees to open an escrow in accordance with this Agreement at _____ [Name, address] ("Escrow Agent"). This Agreement constitutes the joint escrow instructions of Buyer and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

5.1 **Grant Deed.** Seller shall execute and deliver a Grant Deed (the "Grant Deed") to the Escrow Agent at least three (3) days prior to the close of escrow. Buyer agrees to deposit the Purchase Price/Settlement Price as described in Section 2 above upon demand of Escrow Agent. Buyer and Seller agree to deposit with Escrow Agent any additional instruments or funds as may be necessary to complete this transaction.

5.2 **Insurance.** Insurance policies for fire or casualty are not to be transferred, and Seller will cancel its own policies after close of escrow.

5.3 **Escrow Account.** All funds received in this escrow shall be deposited with other escrow funds in a general insured escrow account(s) and may be transferred to any other escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or by wire from the account.

6. **Tax Adjustment Procedure.**

ESCROW AGENT IS AUTHORIZED AND IS INSTRUCTED TO COMPLY WITH THE FOLLOWING TAX ADJUSTMENT PROCEDURE:

6.1 **Delinquent Taxes.** Pay and charge Seller for any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent assessments or bonds against the Property.

6.2 **Proration.** Taxes and/or assessments shall be pro-rated as of the date of the close of escrow.

7. **Escrow Agent Authorization.**

ESCROW AGENT IS AUTHORIZED TO, AND SHALL:

7.1 **Escrow Fees, Charges and Costs.** Seller agrees to pay all of the usual fees, charges and costs which arise in this escrow.

7.2 **Disbursement.** Disburse funds and deliver the Grant Deed when conditions of this escrow have been fulfilled by Buyer and Seller.

- 7.3 Close of Escrow. The term “close of escrow,” if and where written in these instructions, shall mean the date the Grant Deed and other necessary instruments of conveyance are recorded in the office of the Orange County Recorder. Recordation of instruments delivered through this escrow is authorized, if necessary or proper in the issuance of the policy of title insurance.
- 7.4 Time Limits. All time limits within which any matter specified 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.
- 7.5 Time of the Essence. **TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE AS SOON AS POSSIBLE.** If this escrow is not in condition to close by December 31, 2019, any party who then shall have fully complied with its instructions may, in writing, demand the return of its money or property; but if neither party complied, no demand for return shall be recognized until three (3) days after Escrow Agent shall have mailed copies of demand to all other parties at the respective addresses shown in these escrow instructions, and if any objections are raised within the three (3) day period, Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual instructions. If no demands are made, Escrow Agent shall proceed with closing of this escrow on or before December 31, 2019.
- 7.6 Escrow Agent Responsibility. The responsibility of the Escrow Agent under this Agreement is expressly limited to Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 18, 19, 26, and 27 and to its liability under any policy of title insurance issued in regard to this escrow.
8. **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:
- 8.1 Buyer shall have received and approved the Preliminary Title Report and all the exceptions set forth therein. Buyer shall deliver notice of approval or disapproval to Seller within seven (7) calendar days after receipt of the Preliminary Title Report. Failure of Buyer to disapprove the Preliminary Title Report within seven days shall be deemed approval of the Preliminary Title Report.
- 8.2 Seller shall deliver through escrow an executed and recordable Grant Deed sufficient to convey fee title to the Buyer as set forth in Section 5.1.
- 8.3 Seller shall deliver through escrow a duly executed Non-Foreign Transferor Declaration.
- 8.4 Seller shall deliver to Escrow (i) an assignment of leases and rental agreements assigning to Buyer all of the leases and rental agreements for the Property; and (ii) a current rent roll, certified by City as being accurate, including a list of tenant deposits and prepaid and delinquent rents.

- 8.5 Seller shall deliver through escrow such funds and documents as are necessary to comply with Seller's obligations under this Agreement.
- 8.6 Seller is not in default of any of its obligations under the Terms of this Agreement.
- 8.7 Escrow Agent has committed to deliver to Buyer a title insurance policy as required by Section 4 hereof.
9. **Seller's Conditions Precedent to Close of Escrow.** The obligation of Seller to complete the sale of the Property is subject to the satisfaction of the following conditions:
- 9.1 The Buyer is not in default of any of its obligations under the terms of this Agreement.
- 9.2 The Buyer shall have deposited with the Escrow Agent immediately available funds in the amount of the Purchase Price and Settlement Price and the Buyer's costs described herein.
10. **Failure of Conditions Precedent to Closing.** In the event any of the conditions set forth in Sections 8 and 9, above, are not timely satisfied or waived, for any reason other than the default of Buyer or Seller under this Agreement:
- 10.1 This Agreement, the Escrow, and the rights and obligations of Buyer and Seller shall terminate.
- 10.2 In such event, Seller, Buyer, and Escrow Agent shall promptly return all documents and funds which are held by them on the date of said termination to the party who delivered or deposited them hereunder (reduced by, in the case of the party otherwise entitled to such funds, the amount of any cancellation fees required to be paid by such party under Section 11 below).
11. **Cancellation Fees and Expenses.** In the event Escrow terminates because of the notice or failure to satisfy any condition for a reason other than the default of Buyer or Seller under this Agreement, the cancellation charges required to be paid by and to Escrow Agent and the Title Company shall be borne wholly by Seller, and all other charges shall be borne by the party incurring them. In the event Escrow terminates because of the default of Buyer or of Seller, the defaulting party shall be responsible for all cancellation charges required to be paid by and to Escrow Agent and Title Company.
12. **[Reserved].**
13. **Warranties, Representations and Covenants of Seller.** Seller hereby warrants, represents and/or covenants to Buyer that:

- 13.1 Pending Claims. To the best of Seller'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 entity, domestic or foreign.
- 13.2 Encroachments. To the best of Seller's knowledge, there are no encroachments onto the Property by improvements on any adjoining property, nor do any buildings or improvements located on the Property encroach on other properties.
- 13.3 Condition of Property. The property is rented to residential tenants. Prior to the closing of escrow, Seller agrees to operate, maintain, use and repair the Property in substantially the same manner as prior hereto in accordance with Seller's normal course of business (reasonable wear and tear excepted) and not encumber the Property or enter into leases or subleases of the Property (or any portion thereof) that extend beyond the scheduled date of closing, unless any such encumbrance, lease, or sublease is subject to release or termination by Seller on or prior to the scheduled date of closing. Prior to the date of closing, Seller shall maintain and manage the Property at its sole cost and expense, and is entitled to receive and retain any and all rents and lease payments owing or collected from tenants for any period prior to the date of closing. Prior to closing, Seller shall limit all tenants' use of the property to substantially the same manner and type of use undertaken immediately prior to the opening of Escrow.
- 13.4 Seller's Title. Until the close of escrow, Seller shall not do anything which would impair Seller's title to any of the real property.
- 13.5 Conflict with Other Obligation. To the best of Seller'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 restriction, or other agreement or instrument to which Seller or Seller's Property may be bound.
- 13.6 Change of Situation. Until the close of escrow, 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 as of the close of escrow, immediately give written notice of such fact or condition to Buyer.
- 13.7 Authority. Seller is the owner of and has the full right, power, and authority to sell, convey, and transfer the Property to Buyer as provided herein and to carry out Seller's obligations hereunder.
- 13.8 Bankruptcy. Neither Seller nor any related entity is the subject of a bankruptcy proceeding and permission of a bankruptcy court is not necessary for Seller to be able to transfer the Property as provided herein.

- 13.9 Representations and Warranties Survive Close of Escrow. All of the Representations and Warranties of Seller set forth herein shall survive the Close of Escrow.
14. **Warranties, Representations and Covenants of Buyer.** Buyer hereby warrants, represents and/or covenants to Seller that:
- 14.1 Authorization. Buyer represents and warrants that its entry into this Agreement has been duly authorized by all requisite action on the part of Buyer and each person signing this Agreement as or on behalf of Buyer is duly authorized to do so. Buyer further represents that it has full right and authority to enter into this Agreement and consummate the transactions described herein. The execution, consent or acknowledgment of no other person or entity is necessary in order to validate the execution of this Agreement by Buyer or permit the consummation of the transactions described herein.
- 14.2 Conflicting Obligations. Buyer represents and warrants that its entry into this Agreement and the performance of its obligations hereunder does not contravene or constitute breach of any agreement, contract or indenture to which Buyer is a party or by which Buyer or its assets are bound.
- 14.3 Representations and Warranties Survive Close of Escrow. All of the Representations and Warranties of Buyer set forth herein shall survive the Close of Escrow.
15. **Hazardous Waste/Hazardous Substances; "As-Is" Sale.** Buyer is accepting the Property in an "as-is" condition. Buyer shall be responsible for any and all Hazardous Substances or Hazardous Wastes on the Property. As used herein, the terms "Hazardous Substances" and "Hazardous Wastes" shall have the same meaning as under any federal and/or state law or regulation.
16. **Compliance with Environmental Laws.** To the best of Seller's knowledge, the Property complies with all 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 Act, Clean Air Act, Federal Water Pollution Control Act, Solid Waste Disposal Act, Resource Conservation Recovery Act and Comprehensive Environmental Response, Compensation and Liability 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, and the Environmental Protection Agency. Seller has not received any notices of violation of any such laws and regulations.
17. **Broker's Commission.** Seller warrants and represents that it has not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, 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 sale of the Property. Buyer will be solely responsible and liable for its own broker fees and costs. Seller and Buyer agree to and do hereby defend,

indemnify and hold the other harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, which it has employed or who may make such claim in connection with the transaction covered by this Agreement.

18. **Waiver, Consent and Remedies.** Each provision of this Agreement to be performed by Buyer and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and Buyer's performance hereunder, as appropriate, and any breach thereof by Buyer or Seller shall be deemed a material default hereunder. The parties may specifically and expressly waive any portion of this Agreement or any breach thereof through a written amendment signed by both parties, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.
19. **Attorney's Fees.** In the event any declaratory or other legal or equitable action is instituted between Seller, Buyer and/or Escrow Agent in connection with this Agreement, then as between Buyer and Seller, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorney's fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.
20. **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, and addressed to the party for whom intended, as follows:

If to Buyer: Investel Garden Resorts LLC
 12966 Euclid St., Ste. 300
 Garden Grove, CA 92840

If to Seller: City of Garden Grove
 11222 Acacia Parkway
 Garden Grove, CA 92840
 Attention: Real Property Office

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.

21. **Default.** Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the nature of such default. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within fifteen (15) days from the date of the notice or such longer period if the nature of the default is such that more than fifteen (15) days is required to cure such default. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default, which is not cured within the time set forth herein.
22. **Entire Agreement.** This Agreement and its exhibits 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.
23. **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.
24. **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.
25. **Severability.** In the event that any term, covenant, condition or provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or against public policy, the remaining provisions shall continue in full force and effect.
26. **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 Seller.
27. **Binding Upon Successors.** The terms and conditions, covenants and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.
28. **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.
29. **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 their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

30. **Cooperation.** Each party agrees to cooperate with the other in the closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

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

“Seller”

“Buyer”

CITY OF GARDEN GROVE

INVESTEL GARDEN RESORTS LLC

By: _____
City Manager

By: _____

Attest:

By: _____

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

APN: 231-491-15

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF GARDEN GROVE, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 5 OF TRACT NO. 2782, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 89, PAGES 24 AND 25 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THE WESTERLY 30.7 FEET THEREOF.