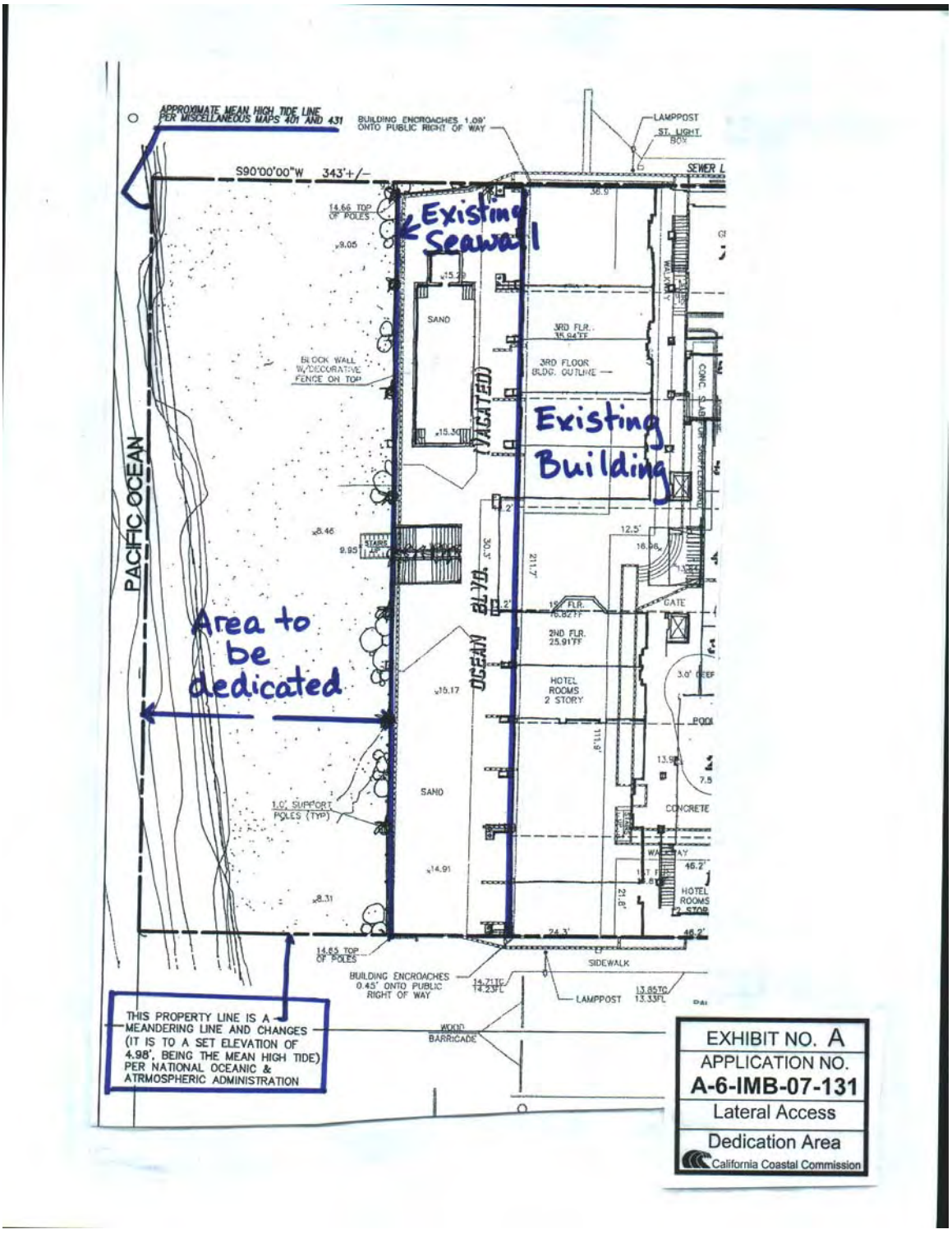
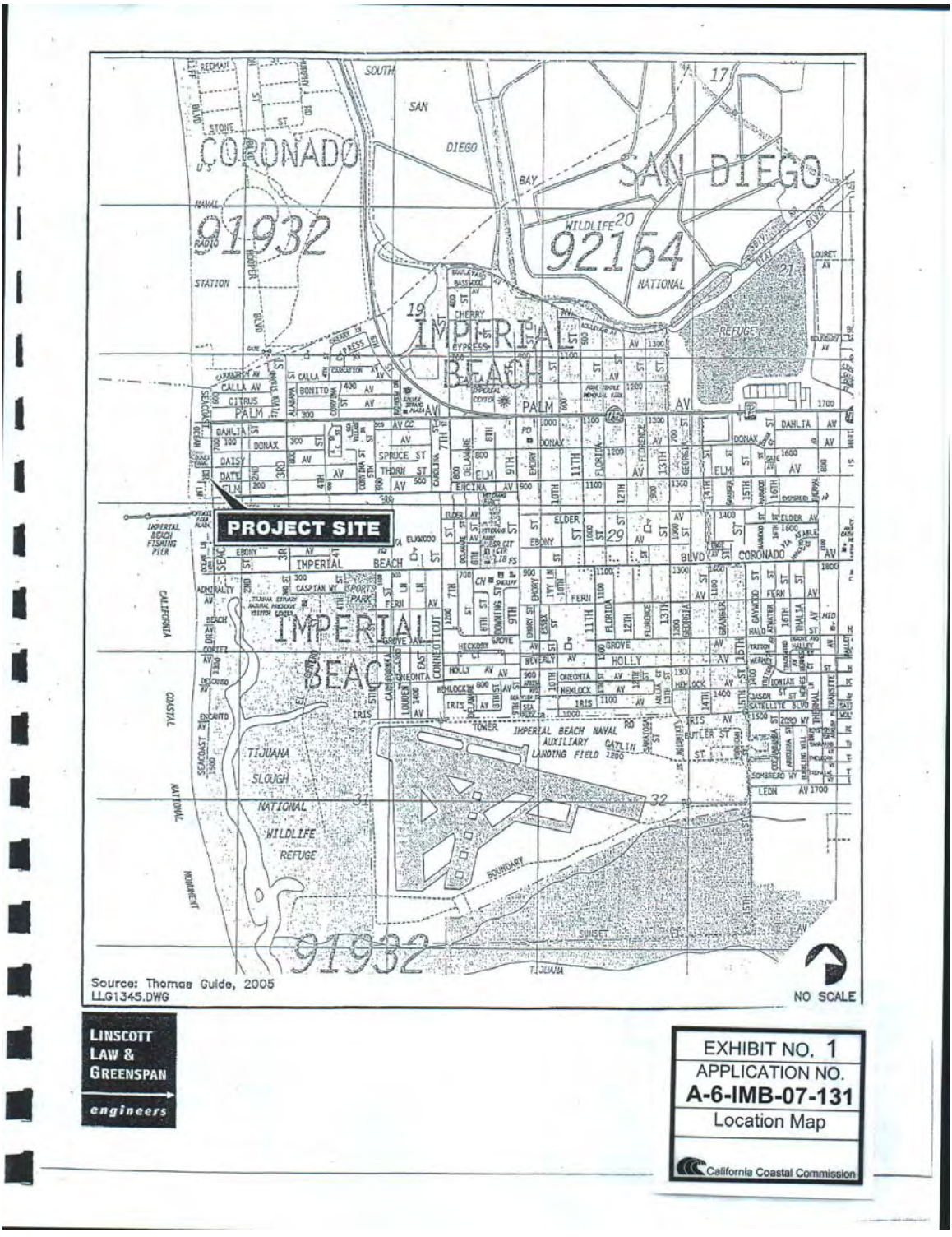
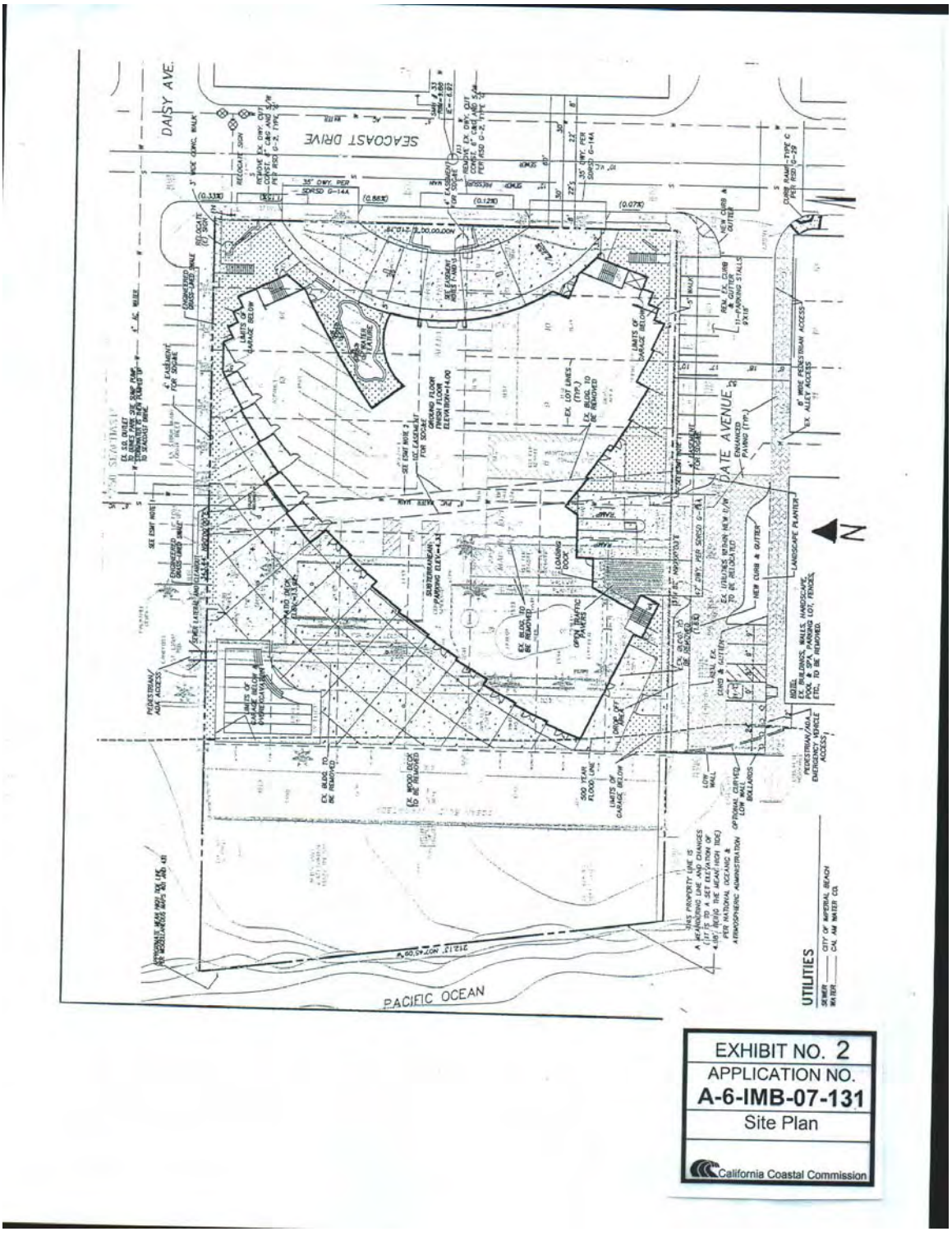

APPROXIMATE MEAN HIGH TIDE LINE PER MISCELLANEOUS MAPS 401 AND 431
BUILDING ENCROACHES 1.08' ONTO PUBLIC RIGHT OF WAY
LAMPPOST
ST. LIGHT BOX
S90°00'00"W 343'+/-
14.66 TOP OF POLES
Existing Seawall
SAND
3RD FLR. 39.84'FF
3RD FLOOR BLDG. OUTLINE
BLOCK WALL W/DECORATIVE FENCE ON TOP
(VACATED)
Existing Building
PACIFIC OCEAN
Area to be dedicated
OCEAN BLVD.
1ST FLR. 16.82'FF
2ND FLR. 25.91'FF
GATE
HOTEL ROOMS 2 STORY
SAND
1.0' SUPPORT POLES (TYP)
CONCRETE
WALKWAY
HOTEL ROOMS 2 STOR
14.65 TOP OF POLES
SIDEWALK
BUILDING ENCROACHES 0.45' ONTO PUBLIC RIGHT OF WAY
LAMPPOST
THIS PROPERTY LINE IS A MEANDERING LINE AND CHANGES (IT IS TO A SET ELEVATION OF 4.98', BEING THE MEAN HIGH TIDE) PER NATIONAL OCEANIC & ATRMOSPHERIC ADMINISTRATION
WOOD BARRICADE
EXHIBIT NO. A
APPLICATION NO.
A-6-IMB-07-131
Lateral Access
Dedication Area
California Coastal Commission



LINSCOTT LAW & GREENSPAN engineers

EXHIBIT NO. 1
APPLICATION NO.
A-6-IMB-07-131
Location Map
California Coastal Commission


DAISY AVE.
SEACOAST DRIVE
DATE AVENUE
PACIFIC OCEAN
N
UTILITIES
EXHIBIT NO. 2
APPLICATION NO.
A-6-IMB-07-131
Site Plan
California Coastal Commission

View from Public Beach Looking Southeast

View from Imperial Beach Pier Looking Northeast

Existing Beach Encroachment To be Removed

EXHIBIT NO. 3
APPLICATION NO.
A-6-IMB-07-131
Existing Hotel Encroachments
California Coastal Commission

Figure 3.2-12
View Corridors from Seacoast Drive

EXHIBIT NO. 4
APPLICATION NO.
A-6-IMB-07-131
Proposed View
Corridors
California Coastal Commission

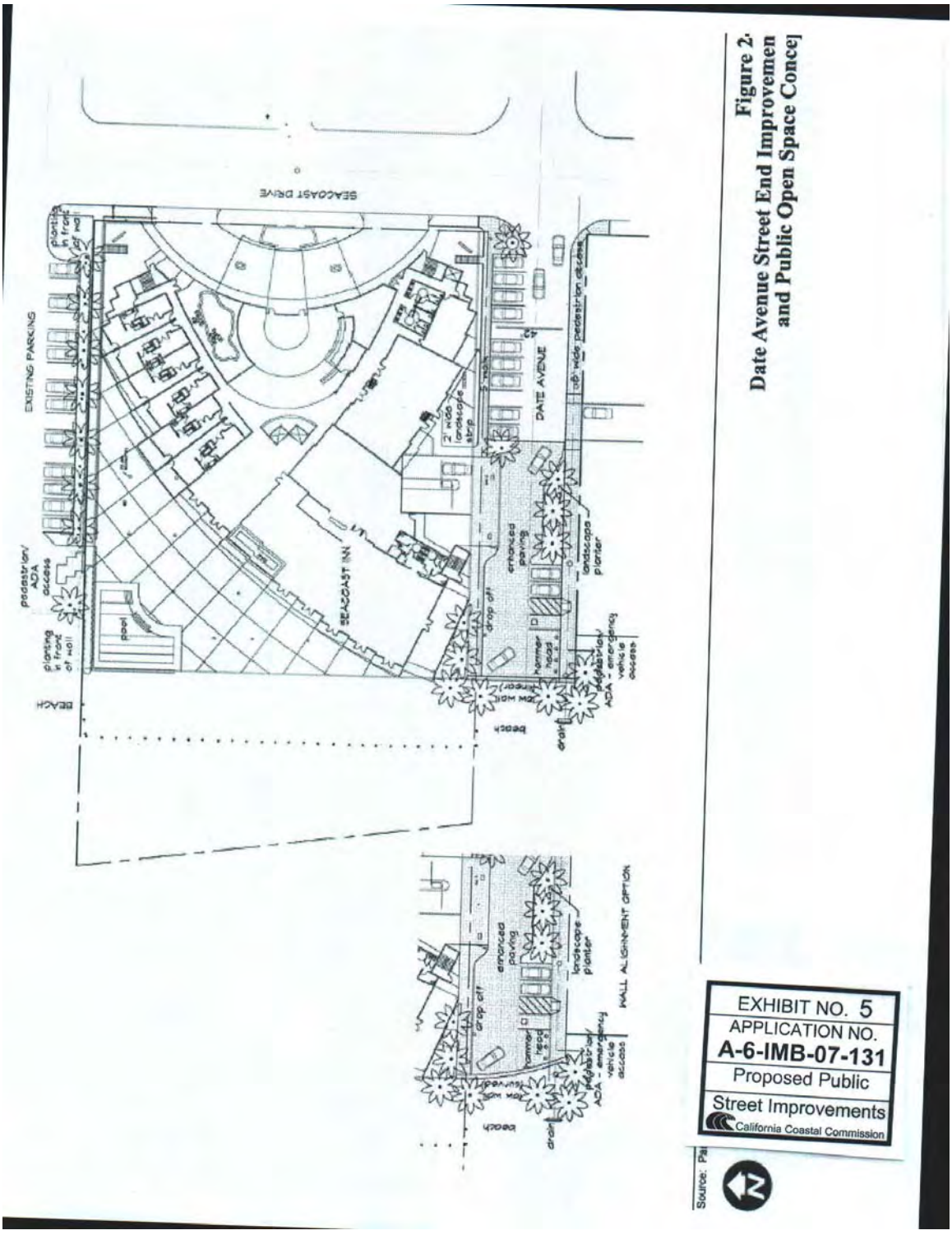


Figure 2: Date Avenue Street End Improvemen and Public Open Space Concep

EXHIBIT NO. 5
APPLICATION NO.
A-6-IMB-07-131
Proposed Public Street Improvements
California Coastal Commission

Source: Pa

IMPERIAL BEACH
CITY COUNCIL
RESOLUTION NO. 2007-6559

EXHIBIT NO. 6
APPLICATION NO.
A-6-IMB-07-131
City Resolution
pg. 1 of 18
California Coastal Commission

RESOLUTION NO. 2007-6559

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING REGULAR COASTAL DEVELOPMENT PERMIT (CP 03-091), DESIGN REVIEW (DRC 03-094), SITE PLAN REVIEW (SPR 03-093), TENTATIVE MAP (TM 03-092), AND ENVIRONMENTAL IMPACT REPORT (EIA 04-034) FOR THE DEMOLITION OF THE EXISTING 38-ROOM SEACOAST INN AND CONSTRUCTION OF A 4-STORY, 78-ROOM HOTEL WITH A SEAWALL, 111 PARKING SPACES, A RESTAURANT, A MEETING ROOM AND RELATED DATE AVENUE STREET END IMPROVEMENTS LOCATED AT 800 SEACOAST DRIVE IN THE C-2 (SEACOAST COMMERCIAL) ZONE. MF 661

APPLICANT: PACIFICA COMPANIES

WHEREAS, on November 21, 2007 and on December 5, 2007, the City Council of the City of Imperial Beach held duly advertised public hearings to consider the merits of approving or denying an application for a Specific Plan (03-095), Regular Coastal Permit (CP 03-091), Design Review (DRC 03-091), Site Plan Review (SPR 03-093), Development Agreement, Tentative Map (TM 03-092), and Environmental Impact Report (EIA 03-034) to demolish an existing 3-story, 38-room Seacoast Inn Hotel and timber seawall, and to redevelop the site as a 4-story, 78-guest room hotel, 40-feet high with 111 parking spaces in a subterranean garage, a restaurant, swimming pool, meeting rooms, and a new vertical seawall to be located 35 feet east of the existing timber seawall. The new hotel would be located landward of the new seawall. Currently private property on the beach to the mean high tide line is proposed to be dedicated as a public beach. The proposed project is located on 1.39 acres (APN 625-262-01-00) at 800 Seacoast Drive in the C-2 (Seacoast Commercial Zone) and is legally described as follows:

Lots 1 to 15, inclusive, in Block 7, in South San Diego Beach, in the City of Imperial Beach, County of San Diego, State of California, according to Map Thereof No. 1071, filed in the Office of the County Recorder of San Diego County, July 6, 1907.

Also all that certain alley in said Block 7 lying and being east of and adjacent to Lots 1 and 7, inclusive, in said Block and West of and adjacent to Lots 8 and 12 in said Block, and also all of the other certain alley of said Block, lying between Lots 8, 9, 10 and 11 on the south and Lots 12, 13, 14 and 15 on the north.

Also all that portion of Ocean Boulevard described as follows:

Commencing at the Southwest Corner of Said Block 7, and running thence Northerly along the West line of said Block as shown upon said Map to the Northwest Corner Thereof; Thence at right angles westerly to the high tide line of said Pacific Ocean; Thence Southerly along said high tide line to a point opposite and directly West of the Southwest Corner of said Block; Thence East to said Southwest Corner of said Block and being all that point of said boulevard lying between said Block 7 and the high tide of Pacific Ocean, and extending in a general Northerly direction from said south line of said Block projected Westerly to said high tide line, to the North line of said Block projected Westerly to said high tide line. Said alleys and said portion of Ocean Boulevard were vacated and closed to public use on December 9, 1908, by an order of the Board of Supervisors of San Diego County, recorded in Book 27, Page 432 and Page 433 of the records of said Supervisors Office.

Except any portion thereof lying below the Mean High Tide Line of the Pacific Ocean.

Together with the reversionary rights, if any, to the centerline of Seacoast Drive, Daisy Avenue, and Date Avenue adjacent Thereto.

Lots 18 and 19, Block 7, Silver Strand Beach Gardens Addition to Imperial Beach, in the City of Imperial Beach, County of San Diego, Sate of California, according to map thereof No. 1902, filed in the Office of the County Recorder of San Diego County, March 25, 1926; Excepting therefrom any portion therefore heretofore or now lying below the ordinary high tide of the Pacific Ocean; and,

WHEREAS, on October 18, 2007, the Design Review Board of the City of Imperial Beach held a duly noticed public meeting and recommended approval of this application for Design Review (DRC 03-094) for to demolish an existing 3-story, 38-room Seacoast Inn Hotel and timber seawall, and to redevelop the site as a 4-story, 78-guest room hotel, 40-feet high with 111 parking spaces in a subterranean garage, a restaurant, swimming pool, meeting rooms, and a new vertical seawall to be located 35 feet east of the existing timber seawall in the C-2 (Seacoast Commercial) Zone, on a site at 800 Seacoast Drive; and

WHEREAS, the City Council of the City of Imperial Beach hereby finds that the project is consistent with the General Plan and the project design of the 78-guest room hotel, 40 feet high is compatible in use with surrounding commercial and residential developments in the vicinity which consist of multiple-story multiple-family residential developments to the north and south, and commercial buildings to the north and east, and, therefore, would be consistent with Policy D-8 of the Design Element of the General Plan which promotes project design harmonious with adjoining residential and surrounding uses; and

WHEREAS, in compliance with the provisions of AB 32, The California Climate Solutions Act of 2006, the potential impacts of the Seacoast Inn project were, to the extent that such impacts were, as directly associated with the project conditions, evaluated in the Draft and Final EIR for the project (reference- Section 3.12 of said EIR). The project applicant has agreed to incorporate: solar panels for direct use, hot water production and other specific measures discussed in the EIR, and

WHEREAS, in compliance with Section 15063 of the California Environmental Quality Act (CEQA) Guidelines, an Environmental Impact Report (EIR) has been prepared for this project and routed for public review from August 15 to October 1, 2007, and submitted to the State Clearinghouse (SCH # 2005101113) in accordance with the requirements of the (CEQA) for agency review, and

WHEREAS, the City Council has considered and heard any and all public testimony regarding the potential environmental impacts associated with this project, and hereby determines that:

1) the Final Environmental Impact Report (SCH # 2005101113) reflects the decision-making body's independent judgment and analysis;

2) the decision-making body has, pursuant to CEQA Guidelines Section 15074(b), considered the information contained in the Draft and Final Environmental Impact Reports (SCH # 2005101113) and the written comments received during the public review period;

3) revisions in the project plans or proposals made by or agreed to by the project applicant, pursuant to CEQA Guidelines Section 15070(b)(1), would avoid the effects or mitigate the effects to a point where no identified significant effects would occur;

4) Upon review of the EIR, the City Council has determined that the submitted Final Environmental Impact Report, inclusive of the Draft EIR and written comments received during the public review period, shall be certified based on substantial evidence, in light of the whole record. This determination is based on the EIR information that the proposed project impacts will not cause a significant effect on the environment as proposed, as conditioned, or as revised: and

5) a Statement of Overriding Considerations is hereby adopted, by the City Council of the City of Imperial Beach, for short-term construction noise levels associated with pile driving and vibration effects. These short-term construction noise impacts, as identified in the Draft and Final EIR, will remain significant and unavoidable.

The City Council hereby finds and determines that these short-term construction noise level impacts shall be mitigated, to the extent possible as specified in the adopted Mitigation Monitoring & Reporting Plan and according to the conditions herein specified, in compliance with Section 15070 of CEQA.

The economic and social benefits of this proposed project as described in the Seacoast Inn Specific Plan outweigh the unavoidable but temporary adverse effects of the project and the effects are found to be acceptable.

WHEREAS, the City Council further finds and offers the following in support of its decision to conditionally approve the project:

SITE PLAN REVIEW FINDINGS:

1. **The proposed use does not have a detrimental effect upon the general health, welfare, safety and convenience of persons residing or working in the neighborhood, and is not detrimental or injurious to the value of property and improvements in the neighborhood.**

The applicant proposes the demolish of an existing 3-story, 38-room hotel and redevelop the site as a 4-story, 78-guest room hotel, 40-feet high with 111 parking spaces in a subterranean garage, a restaurant, swimming pool, meeting rooms, and a new vertical seawall to be located 35 feet east of the existing timber seawall. The new hotel would be located landward of the new seawall. Currently private property on the beach to the mean high tide line is proposed to be dedicated as a public beach. Enhanced street end improvements to Date Avenue along with its new vertical seawall are also proposed.

The 1.39 acre property (APN 625-262-01-00) is located at 800 Seacoast Drive and designated C-2 (Seacoast Commercial Zone) by the General Plan/Local Coastal Plan construction of a 4-story, full service 78-guest room hotel with an undergrounding parking garage.

The project includes the placement of the new hotel buildings and a seawall system that will be installed a minimum of thirty-five (35) feet landward (east) of the applicant's existing timber seawall. A new seawall system will be constructed as a part of the proposed hotel building and conform to the stringline north and south of the subject

property. The height of the building will be required to be no higher than 40 feet, based on average grade methodology, above mean sea level. Coastal engineering reports prepared by Moffatt & Nichol dated November 2005 with an update dated February 2006 provide information regarding wave runup conditions, seawall design, beach sand erosion, scouring, and the avoidance of adverse impacts on neighboring properties. A geotechnical analysis was prepared by TGR Geotechnical date December 24, 2002 with an update dated May 18, 2005. Based on this engineering information, no adverse impacts to adjacent properties would occur.

The proposed hotel use is similar to the other hotel operations within the region, and compatible with other residential uses established nearby. The current timber seawall configuration is further seaward than the adjoining structures both north and south. This existing condition may be impacting the up-and-down coast properties by acting as a barrier for the longshore transport of sediments. The new proposed seawall location is to be located thirty-five (35) feet landward of the existing seawall and should be more in line to an existing seawall north of Dunes Park. The landward shift of the existing seawall should create greater uniformity for shoreline protection. Constructing the new seawall thirty-five (35) feet landward of the existing timber seawall will decrease the encroachment onto the public beach area that currently exists. As such, the project is not expected to have a detrimental effect upon the health, welfare, safety and convenience of persons residing or working in the neighborhood. The on-site parking for the proposed hotel conforms to the requirements specified by the City's Specific Plan Ordinance for off-street parking.

The project building footprint has been set back from its west property line to be more consistent with the City's established stringline of the beach area and thereby, providing enhanced public lateral and horizontal access along the coast. The project is being required to re-dedicate a private beach area for public use and access.

The project building footprint has replaced an existing asphalt parking with a "grand entryway" design element and features that enhances the street level perspective of the project, and provides greater public view access from Dunes Park and properties to the south by its proposed building orientations on the property.

2. **The proposed use will not adversely affect the General Plan/Local Coastal Plan.**

The subject site is located within the Seacoast Commercial (C-2) Zone and land use designation. This zoning classification and land use designation provides for the development of a new hotel development based on Specific Plan requirements pursuant to the City's Specific Plan Ordinance. The Specific Plan Ordinance will permit the construction of a hotel with a maximum roof level height of forty (40) feet and off-street parking, design standards, full-service facilities inclusive of a public restaurant and meeting rooms. This project has provided various technical studies and environmental analysis in compliance with the Specific Ordinance, including an off-street parking study, visual analysis, market-demand analysis, specific design standards, and full-service facilities. Additionally, the maximum building height shall be fifty-four (54) feet from an average grade of fourteen (14) feet from mean sea level. Therefore, the project is determined to be consistent with the City's General/Local Coastal Plan.

3. **The proposed use is compatible with other existing and proposed uses in the neighborhood.**

The subject site is located in the "Seacoast Commercial Area" which encompasses beachfront development along Seacoast Drive from Palm Avenue south to Imperial Boulevard. Within this area, generally commercial and residential developments dominate, and structural types and residential densities vary in character, bulk and scale. The proposed project is compatible with the established two-story and three-story residential and commercial beachfront developments along Seacoast Drive.

The project design relates in bulk, setback and scale to similar multiple-family residential projects developed along Seacoast Drive, north of Imperial Beach Boulevard. The proposed building design provides a visual link with similar existing commercial and high density residential beachfront developments, north and south that incorporate seawalls, beachfront decks, upper level balconies, stucco or wood exterior finish, glass and concrete tile roof materials in their designs. As such, the project is compatible with commercial and residential developments along the City's developed beachfront, Imperial Beach Boulevard to Palm Avenue, and complies with the requirements of the City's Specific Plan Ordinance.

4. **The location, site layout and design of the proposed use properly orients the proposed structures to streets, driveways, sunlight, wind and other adjacent structures and uses in a harmonious manner.**

The proposed hotel buildings will enhance view corridors to the ocean as shown and described in the Final EIR shadow analysis section. No adjacent structures or uses are affected by the proposed building orientation for sunlight, wind or views. Most guest rooms and public areas of the proposed hotel provide views toward the ocean. This project thereby demonstrates proper orientation.

5. **The combination and relationship of one proposed use to another on the site is properly integrated.**

The project represents a redevelopment development on a beachfront site that is predominantly commercial and visitor serving in character. As a visitor serving facility, the hotel provides an important link and relationship to the City's plan for eco-tourism visitor serving facilities, and for the revitalization/redevelopment efforts planned within the Palm Avenue's commercial area. The project is not a mixed-use development; therefore, this finding is not applicable.

6. **Access to and parking for the proposed use will not create any undue traffic problems.**

The hotel's planned subterranean garage provides sufficient parking, per the submitted traffic study analysis provided by the applicant, to meet the peak demands generated by the project. There is adequate back-out area for the cars to maneuver for access/egress onto Date Avenue and Seacoast Drive. Ocean Lane is a low volume local access road. The project proposes to provide 1.43 parking spaces per guest room as recommended by the submitted traffic study, prepared by Linscott, Law & Greenspan Traffic Engineers, and evaluated in the EIR. This meets the parking requirements as specified in the City's Specific Plan Ordinance.

COASTAL PERMIT FINDINGS:

1. **The proposed development conforms to the Certified Local Coastal Plan including Coastal Land Use Policies.**

Shore Processes and Shore Protection

The subject site is situated within the Silver Strand Littoral Cell (SSLC), representing a coastal compartment which contains a complete cycle of littoral (beach) sedimentation, including sand sources, transport pathways and sediment sinks. Recent Army Corps of Engineers studies indicate that erosion problems are most noticeable in Imperial Beach and at Playas de Tijuana. A detailed description of coastal conditions and processes for this project is provided in the coastal engineering reports prepared by Moffatt & Nichols, dated November 2005.

The City of Imperial Beach has approximately 17,600 feet of shoreline, approximately 12,000 feet or 68% of which is either publicly owned or has direct vertical or lateral access. This includes 6,000 linear feet of sandy beach owned by the State of California within the Border Field State Park in the extreme southwest corner of the City. The project represents infill development where shore protection is provided by seawalls and rock revetment, both authorized and unauthorized. However, in 1994, the City of Imperial Beach incorporated new language in its Local Coastal Program that established the construction of vertical seawalls north of Imperial Beach Boulevard. Such shore protection must be shown to be necessary to protect the infill development and must not extend seaward of the western property limits.

The proposed project represents the material impact of this new language on infill development north of Imperial Beach Boulevard. A seawall is proposed to be constructed entirely on the subject site and a minimum of thirty-five (35) feet landward of the existing timber seawall, and in accordance with design standards described in the coastal engineering reports prepared by Alan Alcorn of Moffatt & Nichols dated November 2005. The project is not expected to alter lateral beach access or any portion of beach area for public recreation uses consistent with the certified Local Coastal Plan.

Policy S-11 of the Safety Element of the General Plan/Local Coastal Plan states that new development fronting on Seacoast Drive north of Imperial Beach Boulevard shall incorporate an engineered vertical seawall in its design if it is determined that shoreline protection is necessary. Such a seawall shall be located within the private property of the development and shall be sufficient to protect the development from wave runup and flooding during combined design storm and high tide events. The coastal engineering study presents the justification for the seawall, designed to withstand the 1982-83 winter storms.

Public Access

The subject site is located between the ocean and the first public road, which is Seacoast Drive. Date Avenue is a fifty-three (53) foot wide public street that runs in an east-west direction and intersects Seacoast Drive. Date Avenue also provides public access to the beach area at the existing street end. Public access to the beach is provided from Dunes Park to the north. The hotel project will provide public access to the existing north and south public accessway.

The certified Local Coastal Program contains policies that address street-end improvement standards designed to facilitate beach access. These planned

improvements will include enhanced landscaping and more parking spaces with an ADA space. Given this, and the fact that improved beach street ends are programmed adjacent to the project site, it can be found that there is adequate and enhanced vertical access to the shoreline. Additionally, adequate on-site parking for the hotel will be provided to serve the needs of the development.

The project is in conformity with the public access and public recreation policies in the certified Local Coastal Program and Chapter 3 of the Coastal Act, commencing with Section 30200, because:

a) improved public access to the beach and shoreline is readily available adjacent and to the south and north of the subject site;

b) improved lateral and horizontal coastal access is being provided by having this project set back away from the beach in conformance with the Coastal Commission's stringline development policy, and the project is being required to re-dedicate a private beach area from mean high tide to the new building seawall and associated buildings for public use and access;

c) the new development will be located entirely on private property upland (landward) of the sandy beach;

d) the project protects public access parking opportunities through the provision of 111 on-site parking spaces, as required by the certified Local Coastal Program and in conformance with the City's Specific Plan Ordinance requirements.

Coastal View Access

The beach is not entirely visible from Seacoast Drive given some of the existing hotel development. Public viewing areas are provided at the street ends to the south of the site and from Dunes Park to north. From a position on the beach seaward of the subject site, the proposed hotel seawall, patio, swimming pool, outdoor restaurant area and guest room balconies appear similar to other buildings on this frontage. Additionally, enhanced lateral and horizontal coastal access is being provided by having this project set back away from the beach in conformance with the Coastal Commission's stringline development policy and the re-dedication of the private beach area for public use and access.

Refer to Site Plan Review Finding No. 2 for land use consistency, incorporated here by reference.

Scenic Views: The seawall and the proposed hotel project will not be significantly out of scale with the height of nearby structures. Refer to photo simulation and shadow analysis study in the Draft and Final EIR.

2. **For all development seaward of the nearest public highway to the shoreline, the proposed development meets standards for public access and recreation of Chapter Three of the 1976 Coastal Act and regulations promulgated thereunder.**

The subject site is located between the ocean and the first public road, which is Seacoast Drive. Date Avenue is a fifty-three (53) foot wide public street that runs intersects Seacoast Drive and the beach. The existing hotel development does not allow public access to the beach area. The property owner will provide lateral and horizontal coastal access by having this project set back away from the beach in

conformance with the Coastal Commission's stringline development policy and re-dedicating the private beach for public use.

The certified Local Coastal Program contains policies that address street-end improvement standards designed to facilitate beach access. Given this, and the fact that improved beach street ends are programmed near the site, it can be found that there is adequate horizontal and lateral access to the shoreline. Additionally, adequate on-site parking will be provided to serve the needs of the development.

Section 30252 of the Coastal Act addresses public access, and states in part, "The location and amount of new development should maintain and enhance public access to the coast by providing adequate parking facilities..." This project will provide 111 off-street parking spaces as required by the Specific Plan Ordinance. Additionally, fourteen (14) on-street parking spaces are planned for Date Avenue to replace spaces from Seacoast Drive and provide more parking spaces on Date Avenue then currently exist.

3. **The proposed development meets the minimum relevant criteria set forth in Title 19, Zoning.**

Refer to Site Plan Review findings No.3, 4 and 5 incorporated herein.

4. **For all development involving the construction of a shoreline protective device, a mitigation fee shall be collected which shall be used for beach sand replenishment purposes. The mitigation fee shall be deposited in an interest bearing account designated by the Executive Director of the California Coastal Commission and the City Manager of Imperial Beach in lieu of providing sand to replace the sand and beach area that would be lost due to the impacts of any protective structures.**

The project includes the construction of a vertical seawall. Therefore the project is conditioned to provide the fee in compliance with Section 19.87.050 of the City of Imperial Beach Municipal Code. However, due to an interpretation by the Coastal Commission, this project may not need to pay a fee since the seawall will be placed on private property.

DESIGN REVIEW FINDINGS:

1. **The project is consistent with the City's Design Review Guidelines.**

The design of the project and the landscaping improvements are consistent with the City's Design Review Guidelines as per Design Review Compliance checklist and the findings adopted by the Design Review Board per their Resolution No. 2007-09.

NOW, THEREFORE, BE IT RESOLVED, that Regular Coastal Permit (CP 03-091), Design Review (DRC 03-094), Site Plan Review (SPR 03-093), Tentative Map (TM 03-091) Environmental Impact Report (EIA 04-034) to demolish an existing 3-story, 38-guest room hotel and construct a 4-story, 78-guest room full service hotel, 40-feet-high to roof level height with a new vertical seawall on a 1.39 acre lot at 800 Seacoast Drive in the C-2 (Seacoast Commercial) Zone, are hereby **approved** by the City Council of the City of Imperial Beach subject to the following:

CONDITIONS OF APPROVAL:

A. PLANNING:

General Conditions:

1. Final building permit plans shall indicate and the site shall be developed substantially in accordance with the approved conceptual plans on file in the Community Development Department as of November 1, 2007 and with the conditions adopted herein.
2. The applicant shall submit a licensed surveyor's certificate upon completion of the foundation work that demonstrates proper placement of the structure relative to building setbacks from property lines and a certificate upon completion of framing that demonstrates and ensures that the building does not exceed the maximum roof level height of 40 feet above an average grade of 14 feet mean sea level grade.
3. Approval of this request shall not waive compliance with any portion of the Uniform Building Code and Municipal Code in effect at the time a building permit is issued.
4. Mechanical equipment, including solar collectors and panels or other utility hardware on the roof, ground, or buildings shall be screened from public view with materials harmonious with the building, and shall be located so as not to be visible from any public way. (19.83).
5. No improvements, structural or non-structural, may be placed on the roof deck. Only personal property, which does not obstruct views, is permitted on the roof deck while authorized person(s) are actually present on the roof deck.
6. All landscaped areas, including any in the public right-of-way, shall be maintained, at all times, in a healthy condition, free from weeds, trash, and debris.
7. It shall be the applicant's responsibility to assure that shoreline protection structures on adjacent properties are not damaged during construction on the subject site, and to repair any damage to the adjacent property's shoreline protection structures that may be caused by the construction on the subject site. The construction of temporary slopes shall be shored in compliance with CAL-OSHA requirements.
8. All sand excavated from the project site shall be analyzed for suitability as beach nourishment material. If determined to be suitable, any sand in excess of that required to provide berming along the first level wall shall be used for beach nourishment at such locations as may be determined appropriate by the City for compliance with sand nourishment programs. Local sand, cobbles or armor stones shall not be used for backfill or construction materials. Additionally, the applicant shall remove from the beach and seawall area any and all debris that result from the construction period and dispose of such materials in an acceptable landfill site.
9. Within 60 days following project completion, the applicant shall submit certification by a registered civil engineer verifying that the seawall has been constructed in conformance with the final approved plans for the project.
10. Construction materials or equipment shall not be stored on the beach seaward of the western property line. Equipment shall be removed from the beach at the end of any given work day.
11. A Registered Engineer shall supervise the construction of the seawall.
12. The property owner shall be responsible for maintenance of the permitted seawall. Any debris or other materials which become dislodged after completion through weathering and coastal processes, which impair public access, shall be removed from the beach.

Any future additions or reinforcements may require a coastal development permit. If after inspection it is apparent that repair and maintenance is necessary, the applicant shall contact the City to determine whether such a permit is necessary.

13. The applicant or applicant's representative shall, pursuant to Section 711.4 of the California Fish and Game Code, pay by certified or cashier's check payable to the San Diego County Clerk $2,500 plus a $50 documentary handling fee at the time the Notice of Determination is filed by the City, which is required to be filed with the County Clerk within five working days after project approval becomes final (Public Resources Code Section 21152).

14. Applicant shall pay off any unpaid negative balances in the Project Account Numbers (03-91/03-92/03-93/03-94/03-95/04-034) prior to issuance of building permit and prior to final inspection/certificate of occupancy.

15. The applicant or applicant's representative shall read, understand, and accept the conditions listed herein and shall, within 30 days, return a signed affidavit accepting said conditions.

16. The applicant shall comply and conform to the requirements, specifications, mitigation measures and conditions provided, by separate action or as specified herein, for the City Council approved Development Agreement applicable to this project, the certified Final EIR and Mitigation Monitoring & Reporting Plan, and the Specific Plan applicable to this project.

17. Building design and architectural treatment/style, project amenities and features shall conform and comply with the standards and requirements specified by the Seacoast Inn Specific Plan as adopted by the City Council. No deviation or modification shall be allowed unless prior approval for modifications have been granted by public hearing action by the City Council.

Prior to the Issuance of Construction or Grading Permits or Commencement of Site Work:

18. The applicant shall dedicate an easement over, under, along and across that portion of the property west (seaward) of the proposed seawall from the mean high tide line to the new seawall to the City of Imperial Beach for public use and access by City maintenance and emergency vehicles to the beach.

19. The applicant shall provide the City Community Development Department with a construction schedule in order to commence any site work. All construction activity on the beach shall be scheduled during low tides.

20. The applicant shall submit final plans for the shoreline protection device consistent with the recommendations contained in the Wave Runup engineering report prepared by Moffatt & Nichols dated November 2005 with an and update dated February 14, 2006, and a Geotechnical Study report prepared by TGR Geotechnical December 24, 2002 with an update dated May 18, 2005.

21. The applicant shall submit plans showing the locations, both on and off site that will be used as staging or storage areas for materials and equipment during the construction phase of the project. The staging/storage plan shall be subject to review and written approval of the Community Development Director. The plan shall also note that no work requiring encroachment on the public beach shall be allowed on weekend days between Memorial Day and Labor Day, and during predicted grunion runs, of any year.

Disturbance to the beach more than 10 feet seaward of the existing hotel seawall during construction shall be prohibited except for beach replenishment. Construction activity up

to 10 feet seaward of the existing seawall shall be allowed only for demolition of the existing seawall and for beach restoration. Beach replenishment will be allowed only under conditions stated in the Environmental Impact Report, Section 2.6, or in a beach replenishment program permitted by the U.S. Army Corps of Engineers. During grunion spawning periods forecasted by the California Department of Fish and Game, no construction activity shall be allowed seaward of the new seawall.

22. The applicant shall submit a traffic control plan for the diversion of traffic on Ocean Lane during construction. Ocean Lane shall remain open, except at intersection with Date Avenue, for vehicular traffic, including emergency vehicles during construction of the project. If traffic must be impeded, the applicant must submit a traffic control plan to the Public Works Director for approval at least 10 days prior to closure of Date Avenue and Ocean Lane intersection or closure of Date Avenue at Seacoast Drive.

23. The landowner, if required, shall execute and record a deed restriction in a form and content that is acceptable to the Community Development Director which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from waves during storms and from erosion or flooding, and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the City of Imperial Beach and agrees to indemnify and hold harmless the City of Imperial Beach relative to its approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

24. The applicant shall pay a sand mitigation fee if required which shall be used for beach sand replenishment purposes, in lieu of providing sand to replace the sand and beach area that would be lost due to the impacts of the proposed shoreline protection structure. The mitigation fee shall be deposited in an interest-bearing account designated by the Executive Director of the California Coastal Commission and the City Manager of the City of Imperial Beach. The mitigation fee shall be determined in accordance with Section 19.87.050 of the City of Imperial Beach Municipal Code, in consultation with the California Coastal Commission technical staff.

25. Form 7-B shall be submitted with the Building Permit Application.

26. Identify all BMPs on the site plan or a separate landscape or drainage plan in compliance with Form 7-B of the Storm Water Management Plan.

27. Provide this note on the plans: "All construction wastes shall be collected, stored and disposed of in an approved manner per Caltrans Storm Water Quality Handbook." Show the location of your waste container or dumpster on site. If you intend to set a dumpster in the public right of way an Encroachment Permit is required.

28. Show proposed drainage pattern with high point elevation and flow-lines elevation every 25'.

29. Provide a final soils report from a licensed soils engineer.

30. Locate on the site plan the sewer line for the new dwellings.

31. A final grading / Improvement plan is required for this project and shall be approved by the City Of Imperial Beach Engineer prior to permit issuance.

32. Provide this note on the plans: "BMPs shall be maintained through final inspection. If the building Inspector finds that BMPs are not in place during a regularly scheduled inspection, the inspection will not be complete and a re-inspection fee may be assessed at the discretion of the Building Official."

33. Project building plans shall show and ensure that the hot water tank P.T. discharge pipe is directly connected to the sanitary sewer system or the landscape area. A design that has the water discharge directly into the storm drain conveyance system onto an impervious surface that flows to a public street shall be avoided and would be in violation of the Municipal Storm Water Permit – Order 2001-01.

34. No building roof or landscape water drains may be piped to the street or onto impervious surfaces that lead to the street. A design that has these water discharges directly into the storm drain conveyance system (onto an impervious surface that flows to the street) is in violation of the Municipal Storm Water Permit – Order 2001-01.

35. Require the building foundation elevation be at least 1 foot above gutter line to minimize flooding during storm conditions.

36. Ensure construction design includes adequate storage for trash containers for regular trash, recycled waste, green waste as required by the City Public Works Director.

37. Install survey monuments, as specified and required by Public Works Director, on all property lines and/or adjacent to the property line. Record same with county office of records.

38. Applicant shall incorporate into project design and implement pre- and post construction Best Management Practices (BMPs), inclusive of site design, source control and treatment controls, and verify maintenance provisions through a legal agreement, covenant, CEQA mitigation requirement, and/or the conditions as required by the City Public Works Director.

39. Applicant shall submit for review and approval a Storm Water Pollution and Prevention Plan (SWPPP), project is greater than 1-acre in size, by City Public Works Director.

40. For alley, sidewalk or curb and gutter replacement ensure compliance with San Diego Regional Standard Drawing G-11 in that the "Area to be removed [must be] 5' or from joint to joint in panel, whichever is less." The distance between joints or score marks must be a minimum of 5 feet. Where the distance from "Area to be removed" to existing joint, edge or score mark is less than the minimum shown, "Area to be removed" shall be extended to that joint, edge or score mark.

41. For any work to be performed in the street submit a traffic control plan for approval by Public Works Director a minimum of 10 working days in advance of street work. Traffic control plan is to be per Regional Standard Drawings or Caltrans Traffic Control Manual.

Prior to Final Map Approval for Recordation:

42. The applicant shall dedicate an easement over, under, along and across that portion of the property west (seaward) of the proposed seawall from the mean high tide line to the new seawall to the City of Imperial Beach for public use and access by City maintenance and emergency vehicles to the beach.

Expiration Date:

43. Approval of Regular Coastal Permit (CP 03-091), Design Review (DRC 03-094), Site Plan Review (SPR 03-093), Tentative Map (TM 03-092) and Environmental Impact Report (EIA 04-034) is valid for three years from the date of final action, to **expire** on **December 5, 2010**, unless an appeal is filed to or by the California Coastal Commission. Any such appeal will stay the expiration date until the case is resolved and the permit will expire 3 years from the date the Commission acts on the appeal. In the event that no appeal is filed, conditions of approval must be satisfied, building permits issued, and substantial construction must have commenced prior to the expiration date, **or** unless a time extension is granted by the City pursuant to such a request for extension by the applicant. The applicant is responsible for tracking these expiration dates and shall, if necessary, file a written request for a time extension at least 45 days prior to said expiration dates, either the Coastal Commission decision or the City Council of the City of Imperial Beach Notice of Decision(s).

B. ENVIRONMENTAL CONDITIONS OF APPROVAL:

General:

All mitigation measures, as specified in the Draft and Final EIR Mitigation Monitoring and Reporting Plan (MMRP), shall, at a minimum be initiated or completed, by designated responsible parties.

The following conditions shall also be incorporated into the project as additional requirements to assure conformance or compliance with City regulations, and are in addition to required EIR Mitigation Measures:

Air Quality:

Temporary impacts to air quality associated with construction activities are anticipated. Implementation of the following conditions during construction operations shall be required:

44. Water all active construction areas at least twice daily.
45. Cover all trucks hauling soil, sand, and other loose materials, or require trucks to maintain at least 2 feet of free board.
46. Pave/apply water three times daily, or apply nontoxic soil stabilizers, on all unpaved access roads, parking areas, and staging areas at the construction sites.
47. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction site.
48. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
49. Hydroseed or apply nontoxic soil stabilizers to inactive construction areas. Inactive construction areas are areas that have been previously graded and are inactive for 10 days or more.
50. Install sandbags, silt fences or other erosion control measures to prevent silt runoff to public roadways.
51. Replant vegetation in disturbed areas as quickly as possible.
52. Suspend excavation and grading activity when wind gusts exceed 25 MPH.

Biological Resources:

The following conditions shall be implemented to reduce potential impacts to the Pismo clam and grunion. Although not listed as an endangered or threatened species, the City has implemented a standard protocol for the protection of the Pismo clam and grunion associated with construction activities by incorporating the following:

53. Impacts to Pismo clam shall be mitigated by avoiding vehicle use in the lower intertidal zone, and minimizing vehicle use in the middle intertidal zone (or conduct a survey at the time of construction to verify their absence); and

54. Disturbance to the beach below the high tide line (Mean Higher High Water) during construction shall be prohibited except for beach replenishment. Beach replenishment will be allowed only under conditions stated in the Environmental Impact Report, Section 2.6, or in a beach replenishment program permitted by the U.S. Army Corps of Engineers. During grunion spawning periods forecasted by the California Department of Fish and Game, no construction activity shall be allowed seaward of the new seawall.

Geology:

The following geotechnical conditions shall be required in the planning and implementation of the project:

55. A comprehensive geotechnical evaluation, including development-specific subsurface exploration and laboratory test, shall be conducted prior to design and construction if previous studies need to be updated. The purpose of the subsurface evaluation shall evaluate the subsurface conditions in the area of the proposed structures and to provide information pertaining to the engineering characteristics of earth materials at the project site. From the data, recommendations for grading/earthwork, surface and subsurface drainage, foundations, pavement structure sections, and other pertinent geotechnical design considerations shall be formulated and submitted to City Building Official for approval.

56. Vibration induced settlement due to driving of sheet piles may occur during the construction of the seawalls. Nearby structures and pavement may experience distress due to the induced settlements. A vibration monitoring plan, in accordance with 2007 California Building Code requirements, shall be developed and implemented during construction of the sheet pile seawalls. The purpose of the plan would be to document construction induced vibrations and is subject to the approval of the City Building Official and/or Public Works Director prior to issuance of building or grading permits.

57. A baseline geotechnical reconnaissance shall be performed at each of the nearby structures to document pre-construction distress features, if any. Such an evaluation may include manometer surveys, crack measurements, and photographic/video documentation.

58. During construction, nearby structures shall be monitored for distress and/or settlement that may occur as a result of construction. Upon completion, a final evaluation of the nearby structures shall be performed, and the results compared with the initial baseline findings.

59. Liquefiable soils may be present on the site. The confirmation of their presence (or absence) shall be done through subsurface exploration (e.g. drilling) and laboratory testing.

60. Loose surficial soils that are not suitable for structural support in their current state are present on the sites. The loose surficial soils shall be mitigated by their removal during site grading. Much of the soils should be suitable for reuse as compacted fill.

61. The project has a potential for strong ground motions due to earthquakes. Accordingly, the potential for relatively strong seismic accelerations shall be considered in the design of proposed improvements.

Hydrology and Water Quality:

The potential for impacts to water quality would primarily occur as a result of construction activities. The following measures shall be implemented prior to initiation of construction activities:

62. Prior to City approval of construction permits, the final grading and drainage plans will be reviewed for compliance with SUSMP.

63. The proposed project includes a subterranean parking garage; therefore, excavation below the street level elevation may intercept the groundwater table. An updated geotechnical report shall be required prior to construction to ensure the appropriate measures are implemented. Temporary construction dewatering may be required during excavation. The applicant shall be responsible for obtaining an appropriate permit(s) for construction dewatering.

64. Project shall adhere to the Water Pollution Control Plan (WPCP) prepared by Landmark Consulting Engineers as conditioned and approved by the City of Imperial Beach including Construction and Permanent Best Management Practices (BMP) and other requirements pursuant to the City's Standard Urban Storm Water Mitigation Plan (SUSMP).

65. In order to provide the appropriate protection to the project site in case of a flood event, the applicant shall be required to Implement Flood Hazard Reduction Standards established for construction in order to assure protection from flooding (Imperial Beach Municipal Code 15.50.160).

66. In addition to building permits, a flood hazard area development permit may need to be obtained from the City Engineer prior to commencement of any construction (Imperial Beach Municipal Code 19.32.020).

Noise:

It is anticipated that the project will create temporary noise impacts associated with construction activities. During construction, equipment and material transport will generate temporary noise, which could be a significant increase in levels for the adjacent residents. Therefore, the following conditions shall also be incorporated into the project as additional requirements to assure conformance or compliance with City regulations, and are in addition to required EIR Mitigation Measure:

67. To further deter construction noise from adjacent properties, the applicant shall be responsible for notifying residents and businesses within a 300-foot radius prior to shoring or pile driving activities.

68. Additionally, construction activities associated with implementation of pile driving shall be limited to the hours of 8 a.m. to 5 p.m., Monday through Friday.

69. The applicant shall notify all residents within 500 feet of the project site prior to pile driving activities. The applicant shall also incorporate the best available technology acoustical dampering features during pile driving or drilling, including but not limited to

the installation of a ten (10) foot high sound attenuating wall at the property perimeters. Other Best Management Practices for construction noise abatement shall be employed, to the extent feasible, by the contractor throughout the construction phase, including limiting equipment warm-up to no more than fifteen (15) minutes prior to start of daily construction activities.

C. BUILDING:

70. This project is subject to all Model Codes, State Codes and City Ordinances adopted by the City of Imperial Beach, including but not limited to the applicable 2007 California Building and Mechanical Code requirements for building design, ADA access for swimming pool and all areas of the hotel, garage ventilation, building sprinkler systems, alarm system, elevator access and controls.

71. Applicant shall submit a complete set of construction documents for building permit review including complete architectural, structural, civil, mechanical, electrical, plumbing, energy calculations and landscape/irrigation plans.

72. The project shall be fully fire sprinklered in accordance with NFPA 13 requirements and include an alarm system in conformance with NFPA 72 requirements and Knox box located near the main entry or specified by the Fire Department.

73. Building design shall comply with the Uniform Fire Code or the IFC requirements, if adopted by the City and applicable to this project.

74. Building design plans shall note that all elevator sizes and controls shall comply with the 2007 California Building Code requirements.

75. Building design and amenities shall conform to the requirements and specifications as adopted by the City Council for the Seacoast Inn Specific Plan, Development Agreement and EIR Mitigation Monitoring & Reporting Plan for this project.

D. PUBLIC WORKS:

76. For alley, sidewalk or curb and gutter replacement ensure compliance with San Diego Regional Standard Drawing G-11 in that the "Area to be removed [must be] 5' or from joint to joint in panel, whichever is less." The distance between joints or score marks must be a minimum of 5 feet. Where the distance from "Area to be removed" to existing joint, edge or score mark is less than the minimum shown, "Area to be removed" shall be extended to that joint, edge or score mark.

77. Relocate and replant, to the extent possible, existing Palm trees out of the public rights-of-way, including Seacoast Drive and/or Date Avenue. Applicant may incorporate any removed Palm trees into the landscape design for Seacoast Drive or Date Avenue.

78. Applicant shall remove sidewalk on Seacoast Drive frontage and construct an 8-foot-wide sidewalk with a design that conforms to the constructed sidewalk adjacent to Dunes Park and to the proposed improvements for Date Avenue. These sidewalk improvements must comply with applicable ADA accessibility requirements and applicable design criteria.

79. Remove existing driveway approach on Seacoast Drive and replace with new curb, gutter, and sidewalk, wherever not coincident with the new driveway approach, per Regional Standard drawings G-2 and G-7.

80. Applicant shall install new driveway approach(es) on Seacoast Drive in accordance with Regional Standard Drawing G-14A or an alternative meeting ADA accessibility requirements and as approved by City Public Works Director. Asphalt cuts for said installation shall conform to the requirements and satisfaction of the City Public Works Director.

81. All street work construction requires a Class A contractor to perform the work. Street repairs must achieve 95% sub soil compaction. Asphalt repair must be a minimum of four (4) inches thick asphalt placed in the street trench. Asphalt shall be AR4000 ½ mix (hot).

82. In accordance with I.B.M.C. 12.32.120, applicant must place and maintain warning lights and barriers at each end of the work site, and at no more than 50 feet apart along the side thereof from sunset of each day until sunrise of the following day, until the work is entirely completed. Barriers shall be placed and maintained not less than three feet high.

83. Advise the property owner that he/she must institute "Best Management Practices" to prevent contamination of storm drains, ground water and receiving waters during both construction and post construction. The property owner or applicant must provide the following documents to the City of Imperial Beach following before project may begin work:

- A certification of intent to comply with storm water requirements – Form 7-A.
- A checklist of selected BMPs and location of the BMPs on project plans for review by the City – Form 7-B and Table 7-3
- Certification of intent to maintain selected BMPs – Form 7-B.
- A Storm Water Management Plan –Form 7-B.

84. Additionally these BMP practices shall include but are not limited to:

- Contain all construction water used in conjunction with the construction. Contained construction water is to be properly disposed in accordance with Federal, State, and City statutes, regulations and ordinances.
- All recyclable construction waste must be properly recycled and not disposed in the landfill.
- Water used on site must be prevented from entering the storm drain conveyance system (i.e., streets, gutters, alley, storm drain ditches, storm drain pipes).
- All wastewater resulting from cleaning construction tools and equipment must be contained on site and properly disposed in accordance with Federal, State, and City statutes, regulations, and ordinances.
- Erosion control - All sediment on the construction site must be contained on the construction site and not permitted to enter the storm drain conveyance system. Applicant is to cover disturbed and exposed soil areas of the project with plastic-like material (or equivalent product) to prevent sediment removal into the storm drain system

85. Any disposal/transportation of solid waste/construction waste in roll-off containers must be contracted through EDCO Disposal Corporation unless the hauling capability exists integral to the prime contractor performing the work.

E. PUBLIC SAFETY:

86. **Provide a note on the plans stating:** "Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and from any alley that fronts the property. Lettering shall be a minimum of four (4) inches high, with a minimum ¾ inch stroke, on a contrasting background." CFC Section 901.4.4

87. **Provide a note on the plans stating:** "All electric, gas, and water meters shall be clearly marked to indicate the unit or portion of the building they serve."

88. No on-street parking shall be allowed in Ocean Lane, south of Date Avenue.

Appeal Process under the California Code of Civil Procedure (CCP): The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

PROTEST PROVISION: The 90-day period in which any party may file a protest, pursuant to Government Code Section 66020, of the fees, dedications or exactions imposed on this development project begins on the date of the final decision.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its regular meeting held on the 5th day of December 2007, by the following roll call vote:

AYES:	**COUNCILMEMBERS:**	**MCLEAN, MCCOY, WINTER, JANNEY**
NOES:	**COUNCILMEMBERS:**	**NONE**
ABSENT:	**COUNCILMEMBERS:**	**NONE**
DISQUALIFIED:	**COUNCILMEMBERS:**	**BRAGG (DUE TO POTENTIAL CONFLICTS OF INTEREST)**

James C. Janney
JAMES C. JANNEY, MAYOR

ATTEST:

Jacqueline M. Hald
JACQUELINE M. HALD, CMC
CITY CLERK

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and correct copy of Resolution No. 2007-6559 – A Resolution of the City of Imperial Beach, California, APPROVING REGULAR COASTAL DEVELOPMENT PERMIT (CP 03-091), DESIGN REVIEW (DRC 03-094), SITE PLAN REVIEW (SPR 03-093), TENTATIVE MAP (TM 03-092), AND ENVIRONMENTAL IMPACT REPORT (EIA 04-034) FOR THE DEMOLITION OF THE EXISTING 38-ROOM SEACOAST INN AND CONSTRUCTION OF A 4-STORY, 78-ROOM HOTEL WITH A SEAWALL, 111 PARKING SPACES, A RESTAURANT, A MEETING ROOM AND RELATED DATE AVENUE STREET END IMPROVEMENTS LOCATED AT 800 SEACOAST DRIVE IN THE C-2 (SEACOAST COMMERCIAL) ZONE. MF 661.

Jacqueline M. Hald
CITY CLERK

12/6/07
DATE

IMPERIAL BEACH CITY COUNCIL ORDINANCE NO. 2007-1061 WITH DEVELOPMENT AGREEMENT

Received
DEC 13 2007
California Coastal Commission
San Diego Coast District

EXHIBIT NO. 7
APPLICATION NO.
A-6-IMB-07-131
Ordinance & Develop.
Agreement pg. 1 of 49
California Coastal Commission

ORDINANCE NO. 2007-1061

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH AND IMPERIAL COAST LIMITED PARTNERSHIP OF A GENERAL PARTNERSHIP OF PACIFICA HOSPITALITY GROUP, INC. MF 661

WHEREAS, the California Government Code, Section 65864 et seq. authorizes local agencies to enter into a property development agreement with any person having a legal or equitable interest in real property for development of such real property in order to establish certain development rights in the real property; and

WHEREAS, on July 7, 2004, the City Council of the City of Imperial Beach adopted Chapter 19.89 enacting procedures and requirements for the consideration of Development Agreements pursuant to Section 65864; and

WHEREAS, the City Council of the City of Imperial Beach ("City") desires to enter into this Development Agreement ("Agreement") with Imperial Coast Limited Partnership ("Developer") for the purpose of and related to the development of real property known as the "Seacoast Inn Development Project" ("Project"); and

WHEREAS, the Developer is a corporation organized under the laws of the State of California and owns in fee that real property, 1.39 acres, more specifically described as Assessor's Parcel Number 625-262-01, located at 800 Seacoast Drive (the "Site") in the City of Imperial Beach; and

WHEREAS, the Developer intends to develop the real property as a seventy-eight (78) guest suite full-service resort hotel on an existing 1.39 acres site located at 800 Seacoast Drive in compliance with land use policies and regulations as set forth in the City's General Plan and in the project Specific Plan (GPA 03-093), and with the terms and conditions set forth in this Ordinance and the related Development Agreement document; and

WHEREAS, a Final Environmental Impact Report ("EIR") SCH 2005101113 has been prepared for the Project and certified by the City Council of the City of Imperial Beach on December 5, 2007 in accordance with the provisions and requirements of the California Environmental Quality Act (CEQA); and

WHEREAS, this Final EIR having been certified by the City Council of the City of Imperial Beach did identify significant effects on the environment of the proposed hotel project, and indicated the manner in which those significant effects are to be mitigated to a level of insignificance or avoided whenever feasible to do so; and

WHEREAS, a Statement of Overriding Considerations was adopted by the City Council of the City of Imperial Beach for short-term construction noise levels associated with pile driving and vibration effects that would not be mitigated to a level below significance; and

WHEREAS, this certified Final EIR includes a Mitigation Monitoring & Reporting Program, as required by CEQA, specifying mitigation measures to be completed and responsible parties for purposes of monitoring and reporting of each Mitigation Measure; and

WHEREAS, the Developer and City have agreed to enter into this Agreement for purposes of providing additional terms, conditions and enforcement provisions for the Project development and implementation of project-related mitigation measures or conditions of approval related to the Project; and

WHEREAS, environmental effects associated with the Project, which are also applicable to this Agreement, have been identified, evaluated and mitigated per CEQA requirements in the Final EIR (SCH 2005101113) and based on applicable findings herein.

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

SECTION 1. This Development Agreement (attached as Exhibit A) by and between the City Council of the City of Imperial Beach and Imperial Coast Limited Partnership of a General Partnership of Pacifica Hospitality Group, Inc. is adopted, subject to the following findings, terms and conditions to read as follows:

FINDINGS:

Development Agreement: The City Council, hereby, determines that the Agreement, complies with the findings set forth herein:

Finding:

1. Consistent with the objectives, policies, general land uses and programs specified in the general plan, the local coastal plan and any applicable specific plan;

General Plan and Local Coastal Plan Consistency: The City Council has, based on recommendations of the City's Community Development Director and City Manager, determined that the Development Agreement is consistent with the Goals and Objectives of the City's General Plan. This determination is made based on the following:

The City's Land Use Element of the General Plan specifies Goals and Objectives that the Seacoast Drive Commercial Corridor (C-2/MU-2) shall serve as a visitor-serving pedestrian-oriented commercial area.

The Project is a redevelopment and expansion of an existing 38 guest room hotel into a full-service, 78 guest room resort hotel. This expanded guest room capacity will provide new opportunities for visitor/tourism services to the City, and will complement the City's adopted eco-tourism strategies that will enhance opportunities for the in-town Federal Preserve and State Park facilities.

Finding:

2. Compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located.

The Land Use Element of the General Plan and the Local Coastal Plan specify that the Seacoast Drive Commercial Corridor should provide a stimulus for the

revitalization of commercial developments along the corridor and enhance the overall design features and appearance in a manner consistent with the "classic California Beach Community" theme and motif.

The Project is proposing the redevelopment and expansion of an existing 38 guest room hotel into a full-service, 78 guest room resort hotel, which has been reviewed by the City's Design Review Board and determined to be consistent with a California Beach Community architectural style and appearance. The Project increases opportunities for visitor-serving facilities and usage by increasing the number of rooms and providing new public and visitor serving facilities.

The Project is providing enhancement to beach and coastal access, horizontal and vertical, through a re-dedication of a private beach area for public benefit and use and by coordinating private development improvements with public street end improvements for Date Avenue, including sidewalks and parking spaces.

Finding:

3. Provides for the public convenience and will not adversely affect the health, safety and general welfare or the orderly development of the property or the preservation of property values.

The Land Use Element of the General Plan specifies that the Seacoast Drive Commercial Corridor should provide a stimulus for the revitalization of commercial developments along the corridor and enhance the overall design features and appearance in a manner consistent with the "classic California Beach Community" theme and motif.

The Project applicant has prepared a Specific Plan in accordance with State and City regulations. The Project is consistent with Specific Plan regulations by providing for a general plan consistency analysis, a set of policies, an environmental review, design review and a set of requirements and diagrams based on various technical studies that support the Specific Plan for the subject property and its proposed development as a full-service hotel operation, with the dedication of a private beach area for public benefit and use, by providing design and architectural features that reduce carbon footprints in accordance with State public policy as described by AB 32, and improvement of existing property value by new building construction and development as a full-service hotel to serve the community of Imperial Beach.

Environmental Review:
Finding:

4. There are no new significant or unavoidable environmental impacts, and no new information concerning environmental impacts applicable to this Agreement.

The Final EIR (SCH 2005101113) has been certified by the City Council with specific findings and a Statement of Overriding Consideration for the Project. This Final EIR evaluated impacts for traffic and parking, land use, noise, aesthetics, biological resources, cultural resources, hydrology, water quality, hazardous materials, climate change, air quality, geology and coastal process and public services. Furthermore,

the Final EIR contained an analysis of project alternatives, cumulative impacts and a detailed Mitigation Monitoring & Reporting Program for the Project applicable to this Agreement. The City Council has independently considered and certified with specified findings at a City Council public hearing on December 5, 2007, the Final EIR (SCH 2005101113) for the Project and determined that any environmental impacts associated with this Agreement are the same as those evaluated for the Project.

CEQA regulation, Section 15153, specifies that a Lead Agency may use a single EIR prepared for another project, such as the subject Agreement, when such circumstances and impacts are essentially the same as those described and evaluated in an earlier EIR.

The City has reviewed an Initial Study for this Agreement and has determined that there are no changes in the environmental setting, in any significant impacts, any alternatives and any mitigation measures related to this Agreement that would require additional environmental analysis.

TERMS AND CONDITIONS:

The terms and conditions specified in the Development Agreement are hereby incorporated by reference. All terms and conditions of said Agreement shall be completed as specified unless otherwise modified or amended by action(s) of the City Council at a public hearing conducted in accordance with procedures and requirements specified by State law and City Ordinance.

Recordation: Within ten days after the City enters into the development agreement, the City Clerk shall have the agreement recorded with the County Recorder.

If the parties to the agreement or their successors in interest amend or cancel the agreement as provided in Government Code Section 65868, or if the City terminates or modifies the agreement as provided in Government Code Section 65865.1 for failure of the applicant to comply with good faith with the terms or conditions of the agreement, the City Clerk shall have notice of such action recorded with the County Recorder. (Ord. 2004-1018 § 1 (part), 2004)

SECTION 2: The City Council of the City of Imperial Beach hereby declares that should any section, paragraph, sentence, phrase, term or word of this Ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared invalid.

SECTION 3: The City Clerk is directed to prepare and have published a summary of this ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Imperial Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code section 36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach, California, held the 21st day of November 2007; and thereafter **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Imperial Beach, California, held on the 5th day of December 2007, by the following roll call vote:

AYES:	**COUNCILMEMBERS:**	**MCLEAN, MCCOY, WINTER, JANNEY**
NOES:	**COUNCILMEMBERS:**	**NONE**
ABSENT:	**COUNCILMEMBERS:**	**NONE**
DISQUALIFIED:	**COUNCILMEMBERS:**	**BRAGG** (DUE TO POTENTIAL CONFLICTS OF INTEREST)

James C. Janney
JAMES C. JANNEY, MAYOR

ATTEST:

Jacqueline M. Hald
JACQUELINE M. HALD, CMC
CITY CLERK

APPROVED AS TO FORM:

James P. Lough
JAMES P. LOUGH
CITY ATTORNEY

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and correct copy of Ordinance No. 2007-1061 – An Ordinance of the City Council of the City of Imperial Beach, California, APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH AND IMPERIAL COAST LIMITED PARTNERSHIP OF A GENERAL PARTNERSHIP OF PACIFICA HOSPITALITY GROUP, INC. MF 661.

Jacqueline M. Hald
CITY CLERK

12/6/07
DATE

EXHIBIT A
to Ordinance No. 2007-1061

RECORDING REQUESTED BY
CITY OF IMPERIAL BEACH

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383 - Benefits City)

AND WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF IMPERIAL BEACH
825 IMPERIAL BEACH BOULEVARD
IMPERIAL BEACH, CALIFORNIA 91932

SPACE ABOVE THIS LINE FOR RECORDERS USE

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF IMPERIAL BEACH AND IMPERIAL COAST LIMITED PARTNERSHIP RELATIVE TO THE DEVELOPMENT KNOWN AS *THE SEACOAST INN DEVELOPMENT PROJECT*

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this _____ day of ____December___, 2007 (the "Effective Date"), by and between Imperial Coast Limited Partnership, a California limited partnership ("Developer"), and the City of Imperial Beach, a municipal corporation ("City"), pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of the State of California.

RECITALS:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 *et seq.* of the California Government Code (the "Development Agreement Legislation").

B. The Development Agreement Legislation authorizes the City to enter into a property development agreement with any person having a legal or equitable interest in real property for the development of such real property in order to establish certain development rights in the real property.

C. This Agreement is voluntarily entered into in consideration of the benefits to and the rights and obligations of the parties on the basis of the facts cited herein, understanding and intentions of the parties and in reliance upon the various representations and warranties contained herein.

D. Developer is a limited partnership organized under the laws of the State of California and is in good standing thereunder.

E. Developer owns in fee that certain parcel of land (the "Project Site" or "Subject Property") as more specifically described in Exhibit "A", attached hereto.

F. Developer intends to develop the Project Site as a seventy-eight (78) guest suite, beach resort hotel.

G. The Project Site is located in the City and consists of a total of approximately 1.39 acres of land.

H. The Project Site is located at 800 Seacoast Drive, Imperial Beach, California (APN No. 625-262-01-00).

I. The General Plan designates the area in which the Subject Property is located as Seacoast Commercial (C-2). The Seacoast Inn Specific Plan ("Specific Plan") provides for the Subject Property to be developed for hotel and ancillary uses under the guidelines established in the Specific Plan, adopted concurrently with this Agreement by Ordinance No. 2007-1060.

J. Developer seeks to comply with conditions of approval and develop the Subject Property in accordance with the anticipated land use policies and regulations set forth in the City's General Plan, the Specific Plan, and with the terms and conditions of this Agreement.

K. Developer shall not receive any density increases for the Project (hereinafter defined), and the City has approved this Project in a manner consistent with existing rules and regulations governing maximum density and hotel unit totals established by the Specific Plan for the Project for the term of this Agreement, thus ensuring that appropriate facilities and services are planned and implemented.

L. Pursuant to California Government Section 65865 of the Development Agreement Legislation, a City may establish procedures and requirements for the consideration of development agreements. The City, under Imperial Beach Municipal Code ("IBMC") Chapter 19.89 ("Development Agreement Ordinance") has adopted such procedures and requirements and the parties hereto desire to enter into such a development agreement pursuant thereto.

M. For the reasons recited herein, the City has determined that the Project is a development for which this Agreement is appropriate under the Development

Agreement Legislation and Enacting Ordinance.

N. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project Site, assure progressive installation of necessary improvements, provide public services appropriate to each stage of development of the Project Site, ensure attainment of the maximum effective utilization of resources within the City at the least economic cost to its citizens, and otherwise achieve the purposes for which the Development Agreement Legislation was enacted.

O. In exchange for the benefits to the City, contained herein, the City has taken or will take all reasonable actions required so that Developer may begin and consummate development of the Project, including the approval, adoption or issuance of necessary development permits, and the future ministerial approval of building plans and ministerial issuance of final maps, appropriate building permits, lot line adjustments, and other necessary or desired approvals and entitlements which are consistent with the development requirements of the Project (collectively, the "Ministerial Approvals").

P. In exchange for the benefits to City, Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, including the Specific Plan, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded Developer by Government Code Section 65865.3.

Q. It is the intent of the parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with CEQA, the Development Agreement Legislation, the Development Agreement Ordinance and conditions of the various Development Approvals required for this Project.

R. The terms of this Agreement support the vital and best interests of the City by insuring the development of the Project, which will provide additional sales tax and transient occupancy tax revenue for the City.

S. The City has an expressed interest in ensuring the provisions of regional and community level infrastructure, and in pursuing the use of development agreements as a method whereby a level of assurance can be achieved concerning the service demands within the Seacoast Commercial Zone and surrounding areas impacted by the Development so that long-range plans for needed infrastructure can be developed and implemented.

T. This Agreement is made and entered into in consideration of the mutual covenants and in reliance upon the various representations and warranties contained herein. The parties acknowledge that, in reliance on the agreements, representations and warranties contained herein, Developer will take certain actions, including making substantial investments and expenditures of monies, relative to the Project Site and the development thereof.

U. City and Developer desire to enter into a binding agreement for purposes of (i) identifying the terms, conditions, and regulations for the construction of the Project, certain components of which constitute a Planned Development (as defined in Civil Code Section 1351(k); (ii) setting forth a payment schedule for the Developer's payment to the City of certain amounts designed to compensate the City for lost transient occupancy tax ("TOT") during the construction phase of the Project; (iii) setting forth a payment schedule for the Developer's payment to the City of TOT and payments made in lieu of TOT that the City would receive based on expected hotel occupancy as defined hereunder; (iv) payments made to mitigate impacts of the Project on the community; (v) setting forth the extent to which Developer may construct, develop, use and operate the Project and (vi) setting forth Developer and City obligations.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Legislation, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

AGREEMENT:

SECTION 1. GENERAL ACKNOWLEDGMENTS.

The parties acknowledge that: (a) the City, which has an adopted General Plan, has entered into this Agreement pursuant to the Development Agreement Legislation and its police power in order to address public health and safety and general welfare concerns including those relating to the amount, density, intensity and timing of development within the Subject Property and the need for public facilities and infrastructure in connection with the Subject Property and other property in the area; (b) there is a certain authority under the police power to address public health and safety concerns that cannot be legally relinquished or restricted by this Agreement and that such authority intended to be reserved and hereby is reserved to City hereunder, provided that to the extent possible it shall be construed as to provide Developer with the assurances intended by this Agreement; and (c) nothing herein shall be construed to limit or restrict the exercise by the City of its power of eminent domain.

SECTION 2. GENERAL PROVISIONS.

2.01 Property Description. The legal description of the Subject Property is specifically set forth on Exhibit "A" attached hereto and made a part hereof.

2.02 Location of Subject Property. The Subject Property is located in the City and consists of a total of approximately 1.39 acres.

2.03 Effective Date. This Agreement has been entered into by the parties as of the date and year first above-written, and shall be effective as of such date ("Effective Date"); provided, however, that if a referendum election is duly and lawfully held on the Enacting Ordinance and said ordinance is disapproved, this Agreement shall be null

and void as of the date of the final declaration by the City Council of the disapproval by the referendum election of the Enacting Ordinance.

2.04 Term. The term of this Agreement shall commence upon the Effective Date and shall extend thirty-five (35) years thereafter, unless said term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties. The City and Developer agree that the term of this Agreement is necessary in order to permit the orderly and planned development of the Project.

2.05 Expiration of Term. Following the expiration of said term, this Agreement, except for those terms and provisions that are specified to survive the termination of this Agreement, shall be deemed terminated and has no further force and effect without the need of further documentation from the parties hereto.

2.06 Time Is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

2.07 Enforceability of Agreement. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in any of the "Existing Rules" (defined in Section 4.04 infra) which changes, alters or amends the Existing Rules applicable to the development of the Project Site at the time of the approval of this Agreement as provided by Government Code Sections 65866 and 65867.5. This Agreement shall not prevent City from denying or conditionally approving any subsequent development project application by a third party not a successor-in-interest hereto on the basis of such existing or new rules, regulations and policies.

2.08 Further Assurances. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

2.09 Singular and Plural; Gender. As used herein, and except where the context requires otherwise, the singular of any word includes the plural and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and vice versa.

2.10 Covenants Run With The Land. All of the terms, provisions, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors, and assigns, and all other persons or entities acquiring all or any portion of the Subject Property, or any interest therein, whether by operation of law or in any manner whatsoever, and the rights thereof shall inure to the benefit of such parties and their respective heirs, successors and assigns.

2.11 Enforcement of Covenants. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California.

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

SECTION 3. DEFINITIONS.

Reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.

3.01 Approvals. Any and all permits or approvals of any kind or character required under the terms of this Agreement to develop the Subject Property in the manner as described herein.

3.02 Building Ordinances. Those building standards, of general application and not imposed solely with respect to the Subject Property, in effect from time to time that govern building and construction standards, including, without limitation, the City's building, plumbing, electrical, mechanical, grading, underground parking, sign, and fire codes.

3.03 CEQA. CEQA means the California Environmental Quality Act, California Public Resources Code section 21000, et seq., and the State CEQA Guidelines, (California Code of Regulations, title 14, section 15000, et seq.), as each is amended from time to time.

3.04 City. City of Imperial Beach, County of San Diego, State of California.

3.05 Development. The subdivision or improvement of the Subject Property for purposes of constructing the structures, improvements and facilities comprising the Project including, without limitation: grading, the construction and installation of infrastructure and public facilities related to the Project whether located within or outside the Subject Property; the construction of structures and buildings; and the installation of landscaping; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof. As part of the development review process, the structures to be constructed at the Subject Property shall be measured to determine height by using the average grade of the parcel as set out in the Specific Plan applicable to the Subject Property. The measurement method established in IBMC Section 19.04.400 shall not be applicable to the Subject Property.

3.06 Development Agreement Legislation. Sections 65864 through 65869.5 of the California Government Code, as it exists on the Effective Date.

3.07 Development Approval(s). Site-specific permits and other entitlements to use of every kind and nature approved or granted by the City in connection with the Development including, but not limited to: subdivision approvals (including tentative maps, vesting tentative maps, final maps, parcel maps and map waivers), development permits, conditional use permits, specific plans, coastal permits, variances, grading permits, building permits and occupancy permits.

3.08 Development Fees. All City adopted fees and monetary exactions that are designed to pay for new or expanded public facilities needed to serve, or to mitigate the adverse effects of a given development project and that are imposed by the City as a condition of approval of discretionary or ministerial permits for, or in connection with the implementation of, that development project. The term "development fees" does not include processing fees and charges as described in this Agreement. The term "development fees" also does not include requirements that development be served by a public utility even if that public utility imposes a capital improvement fee or similar charge as a condition of providing service. All development fees shall be deposited in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, and shall be spent solely for the purpose for which the fee was collected, pursuant to California Government Code Section 66006.

3.09 Director. The "Director" is the Director of the Community Development Department of the City of Imperial Beach.

3.10 Enacting Ordinance. The "Enacting Ordinance" is Ordinance No. 2007-1061 enacted by the City Council on December 5, 2007, approving this Agreement. The Enacting Ordinance is adopted pursuant to IBMC Chapter 19.89, governing development agreement procedures. IBMC Chapter 19.89 is attached hereto and incorporated herein by reference as Exhibit "B".

3.11 Exactions. To the extent any exactions are authorized for this Project and in addition to the development fees set out above in Section 3.08, all project-specific exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-site or off-site improvements, construction requirements for public improvements, facilities, or services imposed in connection with the development of or construction on the Subject Property, whether such requirements constitute subdivision improvements, mitigation measures in connection with environmental review of any project, or impositions made under any applicable ordinance or in order to make a project approval consistent with the anticipated land use policies of the City's General Plan, including the Certified Local Coastal Plan.

3.12 Existing Land Use Ordinances and Plans. The Land Use Ordinances

in effect as of the Effective Date of this Agreement are attached hereto and incorporated herein by reference as Exhibit "C".

3.13. General Plan. The City of Imperial Beach General Plan as duly adopted by the City Council. The General Plan also includes the certified Local Coastal Plan as approved by the City Council.

3.14 Land Use Ordinances. The ordinances, resolutions, codes, rules, regulations and official policies of City, governing the development of the Subject Property, including but not limited to, the permitted uses of land, the density and intensity of use of land, exactions, and the timing of development, all as applicable to the development of the Subject Property. Specifically, but without limiting the generality of the foregoing, Land Use Ordinances shall include the City's General Plan, the Local Coastal Plan, the City's Zoning Code, the applicable Specific Plan and the City's Subdivision Code. The term Land Use Ordinances does not include Regulations relating to the following: the conduct of business, professions and occupations generally; taxes and assessments; the control and abatement of nuisances; Owners' Association Covenants, Conditions and Restrictions and other permits and the conveyances of rights and interests that provide for the use of or entry upon public property; and any exercise of the power of eminent domain.

3.15 Owner-Investor. A person who owns one or more units or unit interests of the Project hotel pursuant to purchase from the Developer. "Owner-Investor" includes the assignees and successors-in-interest of an original purchaser, subject to the condition that the assignment or transfer of the unit(s) or unit interest(s) complied with the terms and conditions of this Agreement and the applicable covenants, conditions, and restrictions ("CC&Rs"). Unit ownership may be of specific units (guest rooms) in fee or of units in general, such as in the form of a property interest in a unit that is not of a specific unit but otherwise provides the same rights and obligations as if the Owner-Investor owned a specific unit ("unit interest").

3.16 Persons. As used herein, any reference to or use of the word "person" shall mean, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.

3.17 Project. The condominium-hotel and conference center commercial development and associated amenities, and on-site and off-site improvements, contemplated by or embodied within the Specific Plan to be constructed on the Subject Property, as the same may hereafter be further refined, enhanced or modified pursuant to the provisions of this Agreement, as shown in the Specific Plan.

3.18 Project Site. Shall have the same meaning as "Subject Property".

3.19 Regulations. Constitutions, statutes, City ordinances and codes, City resolutions and official policies of the City that are applicable to the Project shall constitute the Regulations applicable to the Project.

3.20 Subject Property. That real property described in Exhibit "A" attached hereto and made a part hereof. Shall also have the same meaning as "Project Site".

3.21 Certain Other Terms. Certain other terms shall have the meanings set forth for such terms in this Agreement.

SECTION 4. GENERAL DEVELOPMENT OF THE PROPERTY.

4.01 Project. The Project is defined and described in the Specific Plan which specifies all of the following aspects of the Project: (i) proposed uses of the Subject Property, (ii) height and size of buildings to be constructed on the Subject Property, (iii) density and intensity of use of the property, and (iv) requirements for reservation or dedication of portions of the Subject Property for public purposes.

4.02 General Development. Any Development of the Project on the Project Site shall be conducted in accordance with the terms and conditions of this Agreement.

4.03 Future Approvals. The City hereby agrees that land uses set forth in the New Development Permits are approved or will be approved pursuant to the terms of this Agreement, provided that Developer satisfactorily complies with all preliminary procedures, actions, payments and criteria applicable as of the Effective Date and generally required of developers by the City for processing applications for developments at such time. City agrees to grant and implement the necessary land use, zoning, site plan or subdivision approvals and to grant other approvals and permits, including the Ministerial Approvals, that will accomplish or facilitate development of the Project Site for the uses and to the density or intensity of development described and shown in the New Development Permits and/or this Agreement pursuant to those rules, regulation policies and conditions in force on the Effective Date.

4.04 Applicable Rules, Regulations and Official Policies. Except as otherwise provided in this Agreement, the rules, regulations, official policies, and conditions of approval governing the permitted uses of the Project Site, the density or intensity of use, and the design, improvement, construction, building and occupancy standards and specifications applicable to the Project and the Project Site shall be those in force on the Effective Date ("Existing Rules"). The City shall have the right to impose reasonable conditions in connection with such subsequent discretionary permit actions which are not deemed Ministerial Approvals, but such conditions and actions shall not prevent development of the Project as contemplated by this Agreement and the Development Approvals, or place burdensome or restrictive measures on Developer in connection with the development of the Project.

4.05 Amendment to Applicable Ordinances. In the event the City Zoning Code is amended by the City in a manner, which provides more favorable site development standards than those in effect as of the Effective Date, Developer shall have the right to notify City in writing of its desire to be subject to the new standards for

the remaining term of this Agreement. If City agrees, by resolution of the City Council or by action of a City official whom the City Council may designate, such new standards shall become applicable to the Subject Property. Should City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall have no further application to the Subject Property, but Developer may notify City and City may agree by resolution to apply such amended new standards to the Subject Property.

4.06 Application of New Rules, Regulations and Policies. This Agreement shall not prevent City in subsequent actions applicable to the Subject Property from applying new rules, regulations and policies which do not conflict with those rules, regulations, and policies applicable to the Subject Property and set forth herein; nor shall this Agreement prevent City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

4.07 Approval of Subsequent Tentative and Final Maps. Although the Existing Land Use Ordinances and Plans shall determine the standards for granting or withholding approval of tentative, vesting tentative and final tract maps, the procedures for processing approval of all such maps shall be governed by such ordinances and regulations as may be applicable at the time of submission of such maps to the City.

4.08 Changes in State and Federal Rules and Regulations. Nothing in this Agreement shall preclude the application to the development of the Subject Property of changes in the City's laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations as provided in Government Code Section 65869.5.

4.09 Processing Fees. This Agreement shall not be construed to limit the authority of the City to charge processing fees for land use approvals, building permits or other similar permits or entitlements which are in force and effect on a City-wide basis at the time application is made for such permits or entitlements.

SECTION 5. PERIODIC REVIEW.

5.01 Annual Review. City shall conduct a review of this Agreement in the manner set forth in Section 5 (Periodic Review). City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least once every 12-month period from the Effective Date.

5.02 Procedure. Such annual review shall be conducted in accordance with the City's duly adopted development agreement procedures ("Development Agreement Procedures"), found in IBMC Chapter 19.89, as amended, which are attached hereto as Exhibit "B".

5.03 Notice. City shall notify Developer in writing of the date of review at least

thirty (30) days prior thereto.

5.04 Good-faith Compliance. During each annual review, Developer is required to demonstrate good faith compliance with the terms of this Agreement.

5.05 Production of Documents and Other Evidence. Developer agrees to furnish such reasonable evidence and adequate documentation of good faith compliance as the City, in the exercise of its reasonable discretion, may require.

5.06 Cost of Annual Review. The actual costs incurred by City in connection with the annual review shall be borne by Developer.

SECTION 6. RIGHTS AND OBLIGATIONS OF DEVELOPER.

6.01 Contributions. In consideration of City entering into this Agreement, Developer has agreed to comply with the applicable provisions of the Specific Plan in developing the Project and to perform certain obligations and provide certain contributions set forth therein, which City acknowledges will have an overall benefit to the public and surrounding area, including but not limited to those benefits set out under this Section 6 (Rights and Obligations of Developer).

6.02 Certain Conditions of Development and Off-site Improvements. The Project is subject to the following conditions of development, in addition to the Conditions of Approval, which are set forth in Exhibit "E", attached hereto:

Public Improvements:

(a) Developer shall, upon the earlier of the issuance of building permits or filing of the final map, convey and dedicate to the City for public beach access and use a portion of Ocean Lane (Boulevard) extending easterly from the high tide line of the Pacific Ocean to the seawall of the new hotel, which will be located thirty-five (35) feet east (landward) of the existing seawall.

(b) Developer shall, upon the earlier of the issuance of building permits or filing of the final map, convey and dedicate to the City sufficient right-of-way necessary to accommodate the proposed Date Avenue street end improvements. Balconies fronting Date Avenue shall be allowed to project over the dedicated right-of-way, and beyond the newly established property line, a distance equal to the width of the required right-of-way dedication.

(c) Developer shall provide and construct required public right-of-way improvements on Seacoast Drive and shall also provide recessed stairways and/or access ways to Date Avenue and to Dunes Park as designed and shown in the approved Site Plan (Exhibit "D") to allow for improved public access to the beach. Improvements along Seacoast Drive shall be designed to be compatible with and to compliment the existing sidewalk improvements at Dunes Park to the north of the

project and the public improvements proposed for Date Avenue. Landscaping shall be provided along the Seacoast Drive frontage as shown on the approved Landscape Plan component of the Specific Plan. Every effort shall be made by the Developer to save and reuse the existing palm trees currently located on Seacoast Drive within the on-site landscaping of the project. Off-site Improvements shall include construction of curb, gutter, driveways and sidewalk of eight (8) feet in width meeting applicable Regional Standard Drawings. All such improvements shall meet applicable Americans with Disability Act (ADA) requirements as well as the recommendations of the Landscape Design Guidelines for Seacoast Drive (dated October 4, 1999) and the Seacoast Drive Phase III Street Improvement Project with respect to lighting, landscaping and sidewalk improvements. If additional right-of-way is necessary to construct ADA compliant driveways along Seacoast Drive, the applicant shall dedicate the necessary right-of-way to construct these driveways. All proposed off-site improvements shall be incorporated into off-site improvement drawings (D-sheets) and shall be submitted to the City for review and approval by the City Engineer, the Public Works Director and the Community Development Director prior to issuance of a building permit.

(d) Developer shall be required to construct new shoreline protection devices at locations approved by the City Engineer and City Council.

(e) Developer shall eliminate any existing encroachments into public rights-of-way on the north and south property lines.

Hotel Facilities:

(f) Developer shall provide an expanded visitor serving hotel facility with a minimum of 78 guest rooms, and ancillary uses, such as a full service fine dining restaurant, and conference center open to the public and hotel guests. Said facilities shall be accessible to the public from the primary hotel access from Seacoast Drive, the beach area and Date Avenue.

(g) Developer shall ensure and provide for operation of the hotel as a full-service visitor serving facility, which is inclusive of but not limited to: maid service, room service, year-round centralized room reservation system for all guests and Owner-Investors, conference facilities, restaurant and ancillary services.

(h) Owner-Investor room stays shall be governed by terms and conditions specified in this Agreement and the Specific Plan.

(i) Hotel design and construction shall incorporate "green building" development concepts, inclusive of but not limited to: bio-filtration of storm water runoff areas, energy conservation measures, rooftop design treatments or landscaping to minimize or eliminate heating and cooling losses and use of solar panels as may be required by the City and State law.

(j) The Developer shall, in accordance with Section 6.09 of the Agreement, record Covenants, Conditions and Restrictions ("CC&Rs") against the Subject Property. All hotel guest rooms shall be bound by a single set of CC&Rs as well as the conditions of approval set forth in this Agreement, and those of the California Coastal Commission ("CCC") if any, to ensure that guest rooms will function as traditional guest rooms under hotel management. The restrictions shall be recorded on or against every deed, title, or interest for every guest room and cannot be altered or removed without approval from the City and from CCC, if CCC staff determines CCC approval is warranted.

(k) The Developer shall make reasonable efforts to coordinate advertising of the hotel in a manner consistent with the City's established Eco-tourism Program.

(l) The Developer or any successor-in-interest as hotel owner-operator shall maintain the legal ability to ensure compliance with the conditions of this Section at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these conditions comply. Each Owner-Investor is jointly and severally liable with the hotel owner-operator for violations of the conditions herein.

(m) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&R's and similar documents, shall notify potential buyers that Owner-Investors are jointly and severally liable with the hotel owner-operator for any violations of the conditions in this Section.

(n) The Developer, any successor-in-interest as hotel owner-operator, and each future Owner-Investor shall obtain, prior to sale of individual guest rooms or unit interests, a written acknowledgement from the buyer of the limitation on occupancy, use, and reservation of the guest rooms or unit interests.

(o) The Developer and any successor-in-interest as hotel owner-operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The records shall be sufficient to demonstrate compliance with the restrictions and requirements set forth in Section 6.09 of the Agreement regarding hotel operations and guest room use and occupancy. The Developer and any successor-in-interest as hotel owner-operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten (10) years and shall be made available to the auditor named below and, upon request, to the Director, and the CCC Executive Director—if his action is warranted as determined by CCC—if the CCC has determined its involvement is warranted. Within thirty (30) days of commencing hotel operations, the Developer and any successor-in-interest as hotel owner-operator shall submit notice of commencement of hotel operations to the Director, and the CCC Executive Director—if his action is warranted as determined by CCC.

(p) On the first anniversary of the commencement of hotel operations, and exactly every year thereafter, the Developer and any successor-in-interest as hotel owner-operator shall retain an independent auditing company to perform an audit to evaluate compliance with the restrictions and requirements set forth in Section 6.09 of the Agreement regarding hotel operations and guest room use and occupancy. The audit shall evaluate compliance by the hotel owner-operator and Owner-Investors during the prior one-year period. The Developer and any successor-in-interest as hotel owner-operator shall obtain written approval from the Director, and the CCC Executive Director—if his action is warranted as determined by CCC—of the independent auditor before the auditor is retained. Such approval shall be sought at least three (3) months before the deadline for retaining an auditor (the first anniversary of hotel operations). The Developer and any successor-in-interest as hotel owner-operator shall require the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Director and the CCC Executive Director—if warranted as determined by CCC—within six (6) months after the conclusion of each one-year period of hotel operations. After five (5) years, the one-year audit period may be extended to two (2) years upon written approval of the Director and the CCC Executive Director—if warranted as determined by CCC. The Director, and the CCC Executive Director—if his action is warranted as determined by CCC, may grant such approval if each of the previous audits revealed compliance with the relevant restrictions and requirements of Section 6.09.

(q) Developer and any successor-in-interest as hotel owner-operator shall submit a quarterly report to the City documenting that the project is in conformance with the City's TOT requirements.

(r) If the hotel owner and hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally liable for violations of the conditions of this Section.

(s) PRIOR TO OCCUPANCY OF THE APPROVED UNITS, the Developer and any successor-in-interest as hotel owner-operator shall submit for review and written approval by the Director, and the CCC Executive Director—if his action is warranted as determined by CCC, a plan specifying how the Developer and any successor-in-interest as hotel owner-operator will implement the requirements herein. The plan must include, at a minimum, the sale contract, grant deed, CC&Rs and the rental program agreement entered into between Owner-Investors and the hotel owner-operator that will be used to satisfy the conditions. The plan must demonstrate that the Developer has established mechanisms that provide the Developer and any successor-in-interest as hotel owner-operator adequate legal authority to implement the requirements of this condition. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the conditions of this Section including deeds and CC&R's shall be reported to the Director, and the CCC Executive Director—if his action is warranted as determined by CCC. No change to any documents noted above pertaining to compliance with and enforcement of the conditions of this Section shall occur without the written approval of the Director, and

the CCC Executive Director—if his action is warranted as determined by CCC.

6.03 Nexus/Reasonable Relationship Challenges. After reviewing the Certified Environmental Impact Report and accompanying approvals, the Developer consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies or programs required by the Existing Land Use Regulations or this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

6.04 Cooperation By Developer. Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder, and cause Developer's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefore.

6.05 Other Governmental Permits. Developer shall apply in a timely manner for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Subject Property as may be required for the development of, or provision of services to, the Project. The City will use reasonable efforts to assist the Developer in securing necessary permits and entitlements from other public entities with jurisdiction over this Project.

6.06 Reimbursement for City's Efforts on Behalf of Developer. To the extent that City, on behalf of and when requested by Developer, attempts to enter into binding agreements with other entities (e.g. San Diego Unified Port District) in order to assure the availability of certain permits and approvals or services necessary for development of the Project as described in this Agreement, Developer shall reimburse City for all costs and expenses incurred in connection with seeking and entering into any such agreement. Any fees, assessments or other amounts payable by City pursuant to any such agreement described herein shall be borne by Developer except where Developer has notified City in writing, prior to City entering into such agreement, that it does not desire for City to execute such agreement. City shall use its best efforts to notify Developer fifteen (15) days prior to entry of an agreement or expending funds on behalf of the Developer under this Section.

6.07 Right to Develop. Subject to the terms, conditions, and covenants of the Agreement, including the Schedule of Performance set forth in Exhibit "F" attached hereto, Developer's right to develop the Project in accordance with the Specific Plan shall be deemed vested upon the Effective Date, which vesting shall expire upon the earliest of the following occurrences: (a) termination of this Agreement; (b) an uncured default by Developer of this Agreement; (c) the issuance of a certificate of occupancy for the Project; or (d) the date set forth in the Schedule of Performance in which the Developer was required to have completed the development of all improvements for the Project. Except for the expiration set forth in clause (a) of the preceding sentence, the

expiration of the vesting right set forth in the preceding sentence shall not terminate the obligations of Developer under this Agreement.

The development fees and exactions applicable to the Project are those that are in effect as of the Effective Date, as modified by Section 10.02, which are the following: (i) sewer capacity fees (IBMC Chapter 13.05) and (ii) school impact fees (IBMC Chapter 15.46). The imposition of the school impact fees is subject to the determination by the appropriate school districts that the fees are applicable to the Project. No new development fees or exactions adopted after the Effective Date shall be applicable to the Project unless required to be imposed by State or Federal law.

Notwithstanding anything in this Agreement to the contrary, the Project shall remain subject to:

(a) the Existing Rules;

(b) all amendments or modifications to Existing Rules after the Effective Date and all ordinances, regulations, rules, laws, plans, policies, and guidelines of the City and its City Council and all other City commissions, and committees enacted or adopted after the Effective Date (collectively "New Laws"), except such New Laws which would materially impair Developer's ability to develop the Project in accordance with the Specific Plan unless such New Laws are adopted by the City on a City-wide basis and applied to the Site in a non-discriminatory manner, such New Laws are required by a non-City entity to be adopted by or applied by the City (or if optional the failure to adopt or apply such non-City law or regulation would cause City to sustain a loss of funds or loss of access to funding or other resources), or are New Laws the City reserves the right to apply under this Agreement, including but not limited to Sections 6.08 (Additional Applicable Codes and Regulations) and 10.04 (Other Fees and Charges);

(c) all subsequent development approvals and the conditions of approval associated therewith, including but not limited to site development permits, project tract maps and building permits; and

(d) the payment of all development fees and exactions in the categories and in the amounts as required at the time such fees and exactions are due and payable which may be at the time of issuance of the building permits, or otherwise as specified by applicable law, as existing at the time such fees are due and payable.

6.08 Additional Applicable Codes and Regulations. Notwithstanding any other provision of this Agreement, City also reserves the right to apply the following to the development of the Project:

(a) Building, electrical, mechanical, fire and similar building codes based upon uniform codes adopted in, or incorporated by reference into the Imperial Beach Municipal Code, as existing on the Effective Date or as may be enacted or

amended thereafter, applied on a City-wide basis.

(b) In the event of fire or other casualty requiring partial or total reconstruction of any building, nothing herein shall prevent the City from applying to such reconstruction the requirements of the City's building codes in a manner consistent with IBMC Section 19.76.050, to the extent applicable to all development projects in the City.

6.09 Recordation of Covenants, Conditions and Restrictions and Establishing the Seacoast Inn Owners' Association. Prior to, and as a condition of, the City's issuance of any building permits for the Development, the Developer shall submit to the City, obtain approval thereof, and record, Covenants, Conditions and Restrictions ("CC&Rs") against the Subject Property which, in addition to the obligations set forth in the Conditions of Approval, shall (i) establish an association of Owner-Investors (the "Seacoast Inn Owners' Association"); (ii) provide for the Seacoast Inn Owners' Association's payment of the City's Transient Occupancy Tax; (iii) provide for the rental of each of the units in the Project on behalf of Seacoast Inn Owners' Association members, through a centralized reservation system; and (iv) contain a prohibition against the conversion of any units into residences allowing residential occupancy on the Subject Property. In addition, the CC&Rs shall include the following requirements:

(a) No portion or fraction of the Project may be converted to a time-share, full-time occupancy condominium, apartment, or any other type of project that differs from the proposed 78 guest room hotel. Owner-Investors and hotel operator guarantee that the Subject Property shall remain in usage and operations as a commercial hotel and shall not be converted to time-share or full-time occupancy condominium, apartment, or other similar form of residential use. This requirement will survive the termination of this Agreement.

(b) The hotel operator shall market and advertise all 78 units of the Project to the general public. The Seacoast Inn Owners' Association will utilize a centralized reservation system under the operation of a unified on-site hotel operator to manage the reservations for all guest rooms. Pacifica Host, Inc., the hotel operation division of Pacifica Companies and its successors in interest will operate this system. City shall have the reasonable right to approve any new operator of the centralized reservation system to be assured that the Project remains in operation as a commercial hotel.

(c) The Project's proposed restaurant and conference center will be available for use to the general public, as well as to hotel guests, subject to the hotels' schedule of charges that are in effect at the time of usage.

(d) The Seacoast Inn Owners' Association shall provide for room and maid service to all guest rooms.

(e) Each guest room/unit interest shall be restricted so as to limit its

reservation, use, or occupancy by an Owner-Investor to a maximum of ninety (90) days in any calendar year, with no stay exceeding twenty-five (25) consecutive days and which stay must be immediately preceded by a fifty (50) day period during which the guest room/unit interest is not reserved or used by an Owner-Investor. Furthermore, this use period limitation shall be unaffected by multiple owners or the sale of a guest room/unit interest to a new owner during the calendar year, meaning that all such owners of any given guest room/unit interest shall be collectively subject to the use restriction as if they were a single, continuous owner.

(f) When not reserved, used, or occupied by Owner-Investor(s), guest rooms shall be available for rental by the hotel operator on the same basis as traditional hotel rooms and room availability shall not be conditioned on a renter's willingness to rent any additional guest room.

(g) Owner-Investors shall not discourage rental of their guest rooms or create disincentives meant to discourage rental of their guest rooms.

(h) All guest rooms, regardless whether Owner-Investor-owned, shall be rented at the same or comparable rate to that charged by the hotel operator for hotel rooms of a similar class or amenity level.

(i) The hotel operator's management duties shall include the booking of reservations through the rental agent, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing the units for use by guests/Owner-Investors. The keys shall be electronic and created upon each new occupancy to control the use of the guest rooms.

(j) The Seacoast Inn Owners' Association shall be required to pay to the City the Transient Occupancy Tax ("TOT") for all units that are occupied, regardless of the occupant (i.e. whether Owner-Investor or hotel guest).

(k) The Seacoast Inn Owners' Association or hotel operator shall maintain records of usage by Owner-Investors and renters and rates charged for all guest rooms, and shall be responsible for reporting TOT based on records of use for all guest rooms.

(l) The hotel operation, including its physical components, shall be owned by a viable hotel operator, and if sold, then only to a viable hotel operator.

(m) The City shall be a third party beneficiary to the CC&Rs and shall have the right to enforce the provisions of the CC&Rs referenced herein.

(n) Any amendments or modifications to the CC&Rs shall require City approval, which approval the City has the right to reasonably withhold. Amendments or modifications shall be subject to approval by the California Coastal Commission in the manner found in Section 6.02(j).

Developer shall develop CC&Rs, subject to approval by the City and the State of

California Department of Real Estate that will be recorded against all individual properties and property interests. Any hotel operating agreement entered into by the Developer or the Seacoast Inn Owners' Association shall include all of the conditions listed in this section. This Section shall survive the termination of this Agreement.

6.10 Owner-Investor Development Prospectus. Developer will provide a copy of the Owner-Investor development prospectus to the City prior to commencement of the guest room sales program.

SECTION 7. OBLIGATIONS OF CITY.

In consideration of Developer entering into this Agreement, City has agreed to the following with respect to the development of the Project Site:

7.01 Processing. Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by Developer of the Project Site in accordance with the Specific Plan, Coastal Development Permit, Site Plan Review and Design Review Permits, including, but not limited to, the following:

(a) the holding of all required public hearings; and

(b) the processing and approval of all Ministerial Approvals and related matters as necessary for the completion of the development of the Project. In this regard, Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder as required by the Existing Rules and shall cause Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents.

7.02 Standard of Review. The rules, regulations and policies that apply to any Ministerial Approvals that must be secured prior to the construction of any portion of the Project shall be the Existing Rules. The City shall approve any Ministerial Approval, including without limitation a building permit, within a reasonable period of time after application is made therefore.

7.03 Contract Services. If requested by Developer, at Developer's expense, City shall obtain outside contractual services as necessary to ensure prompt processing of all development approvals.

SECTION 8. AMENDMENTS.

8.01 Amendment by Mutual Consent. This Agreement may be amended from time to time by mutual consent of the original parties or their successors in interest, with City's costs payable by amendment applicants, in accordance with the provisions of Government Code Sections 65867 and 65868 and provided that: (i) any amendment to this Agreement which does not relate to the term, permitted uses, density or intensity of

use, height or size of buildings, provisions for reservation and dedication of land, conditions, terms, restrictions and requirements relating to subsequent discretionary actions, monetary contributions by Developer or any conditions or covenants relating to the use of the Subject Property, shall not require notice or public hearing before the parties may execute an amendment hereto; and (ii) any other amendment of this Agreement shall follow the City's adopted procedures and requirements for the consideration of development agreements.

8.02 Amendment Exemptions. Any amendment of the City's land use regulations that, pursuant to this Agreement, is applicable to the property, including, but not limited to, an amendment to the General Plan and zoning ordinances, shall not require an amendment to this Agreement. Instead, any such amendment shall be deemed to be incorporated into this Agreement at the time that such amendment is approved.

8.03 Amendment of Development Permits. Upon the written request of Developer, the Development Permits described in 7.01, above, may from time to time be amended or modified in the manner set forth in this Agreement and applicable State and City laws.

SECTION 9. TRANSFERS AND ASSIGNMENTS.

9.01 City's Intent. Developer has demonstrated, and the City finds that Developer possesses, the experience, reputation and financial resources to develop and maintain the Subject Property in the manner contemplated by this Agreement. It is because of such qualifications, which assure the development of the Subject Property to a high quality standard contemplated by the General Plan that the City is entering into this Agreement. Accordingly, restrictions on the right of Developer to assign or transfer the rights and privileges contained in this Agreement are necessary in order to assure the achievement of the objectives of the City's anticipated General Plan and this Agreement.

9.02 Developer's Right to Assign or Transfer. Developer may assign or transfer any of its rights or interests under this Agreement subject to consent of City, which consent shall not be unreasonably withheld, delayed or conditioned except as specifically described in this Section 9.

9.03 Restriction on Assignment Does Not Constitute an Unreasonable Restraint on Alienation. Developer agrees that the restriction on its right to transfer any of its rights or interests under this Agreement is not repugnant or unreasonable in that such a restriction is a material inducement to the City to enter into this Agreement since the restriction reserves for the City the power to prevent the transfer of any of the rights and obligations hereunder to an unreliable party.

9.04 Restriction on Assignment Shall Not Prevent Developer From Conveying the Subject Property. The parties agree that the restriction on assignment

without consent is limited solely to those certain vested rights created under this Agreement and such restriction shall not affect Developer's right to convey the Subject Property itself.

9.05 Request Procedure. City shall administer the provisions of this Section through its Director. Developer shall notify the Director and the City Manager in writing of its request for City's consent to an assignment or transfer under this Section, together with a statement that if the Director does not notify Developer within forty-five (45) days of receipt of the request, the request will be deemed approved.

9.06 45 Day Period. If, within such 45-day period the Director does not so notify Developer, the request for consent shall automatically be deemed approved and no further action by Developer or the City shall be necessary. If, within such 45-day period, the Director notifies Developer that the request will be considered and acted upon by City, Developer shall furnish such additional information as the Director may reasonably request at the time of such notice, and City shall proceed to consider and act upon the Developer's request for City's consent to the proposed assignment or transfer. Except as provided in Section 9.07, failure by the City to act within thirty (30) days of giving such notice or of receiving the additional requested information shall automatically be deemed an approval of the request.

9.07 City Council Approval. In the event the Director determines that the assignment or transfer should be acted upon by the City Council, and the Director so notifies Developer within fifteen (15) days of giving the notice or receiving the information described herein, the matter shall be referred to the City Council. The City Council shall have forty-five (45) days from the date of such notice to approve or deny the requested transfer or assignment. Failure of City to act within the forty-five (45) day period shall automatically be deemed an approval of the request.

9.08 Assignment. The management control and responsibility of Developer and the expertise, competence, and financial strength of Developer are integral components of the consideration for City entering into this Agreement. In order to preserve such consideration for City and for City to receive full value, the parties hereto agree that the occurrence of any of the following events constitute, for purposes of this provision, an assignment:

(a) A change in the composition of ownership interests in and control of Developer, the result of which diminishes Ashok (Ash) Israni's ownership interest to less than fifty-one percent (51%).

(b) A change in the composition of ownership interests in and control of the Subject Property such that Developer's legal interest or equity in the Subject Property is reduced to less than fifty-one percent (51%), excluding individual investor interest transfers.

9.09 Minor Assignments. The following transfers shall be considered minor

assignments, which shall not require City consent: changes in the composition of ownership interests in and control of Developer, the result of which does not diminish Ashok (Ash) Israni's ownership interest to less than fifty-one percent (51%).

9.10 Notice of Proposed Assignment. Developer must provide City with adequate evidence that the proposed assignee, buyer or transferee is qualified using the standards and conditions described in this Section, and ability to comply with these standards and conditions will be the test of reasonableness.

9.11 Conditions and Standards. The conditions and standards referred to above are as follows:

(a) Such assignee or transferee possesses the experience, reputation and financial resources to cause the Subject Property to be developed and maintained in the manner contemplated by the City's General Plan and this Agreement;

(b) Such assignee or transferee enters into a written assumption agreement, in form and content satisfactory to the City Attorney, expressly assuming and agreeing to be bound by the provisions of this Agreement;

(c) Such assignment or transfer will not impair the ability of City to achieve the objectives of its general Plan and this Agreement;

(d) Good cause exists for Developer to make such assignment or transfer. For purposes of this subsection, good cause shall include but is not limited to such causes as business reorganizations, financing arrangements for the development of the Subject Property, and exigent circumstances creating the need to generate capital to offset material business losses.

9.12 Financing Exemption. Mortgages, deeds of trust, sales and lease-backs, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Subject Property are permitted without the consent of the City, provided the City receives prior notice of such financing (including the name and address of the lender and the person or entities acquiring any such secured interest) and Developer retains the legal and equitable interest in the Subject Property and remains fully responsible hereunder. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

9.13 Notice of Assignment. Upon receiving approval of an assignment, Developer shall provide City with written notice of such assignment and as part of such notice the assignee must execute and deliver to City an assumption agreement in which the name and address of the assignee is set forth and the assignee expressly and unconditionally assumes the obligations of all the provisions set forth in the Agreement.

9.14 Unapproved Assignments. If City reasonably makes the determination

not to consent to the assignment or transfer of the rights and privileges contained in this Agreement, and Developer conveys the Subject Property to a third party, in whole or in part, Developer shall remain liable and responsible for all of the duties and obligations of this Agreement.

9.15 Notice of Sale of Subject Property. Developer shall give written notice to the city, within ten (10) days after close of escrow, of any sale or transfer of any portion of the Subject Property required herein, specifying the name or names of the purchaser, the purchaser's mailing address, the amount and location of the land sold or transferred, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given.

SECTION 10. PAYMENTS TO CITY BY DEVELOPER.

10.01 General. During the term of this Agreement, Developer or the Seacoast Inn Owners' Association shall make the payments to City described in this Section 10.

10.02 Sewer Capacity Fee. Developer shall pay to the City a sewer capacity fee in the amount of Two Thousand Five Hundred Dollars ($2,500.00) per equivalent dwelling unit (EDU) for the cost of the Project's impacts on the environment and sewer system infrastructure.

10.03 Transient Occupancy Tax (TOT) Offset. During construction, Developer shall be required to pay to the City an offset fee that is the equivalent of the lost TOT that would have been otherwise paid to the City. The amount of the offset fee shall be the average TOT paid for the applicable quarter (*i.e.* January – March) of the previous three (3) years. The offset fee shall be paid for each day throughout the period of construction, commencing from the time of application for demolition permit up to the time a Certificate of Occupancy is issued.

10.04 Other Fees and Charges: Assessment Appeals. Except for the development fees and exactions set forth in Section 6, above, nothing set forth in this Agreement is intended or shall be construed to limit or restrict the City's authority to impose its existing, or any new or increased fees, charges, levies, or assessments for the development of the Project Site, or to impose or increase, subject to the required procedure, any taxes applicable to the Project Site including but not limited to transient occupancy taxes, provided nothing set forth herein is intended or shall be construed to limit or restrict whatever right Developer might otherwise have to challenge any fee, charge, levy, assessment, or tax imposed. Developer shall timely pay all applicable fees, charges, levies, assessments, and special and general taxes validly imposed in accordance with the Constitution and the laws of the State of California.

Section 11. DELAYS IN PERFORMANCE.

11.01 Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, Developer and City shall be excused for performance of their obligations hereunder during any period of delay caused by acts of God or civil

commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder.

However, with respect to Developer's obligation under Section 10.03 (payment of TOT offset fee), the following shall not constitute a Permitted Delay: strikes, picketing, or other labor disputes, or shortage of materials or supplies.

11.02 Third Party Actions. Any court action or proceeding brought by any third party to challenge this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of all or any portion of the Project, whether or not Developer is a party to or real party in interest in such action or proceeding, shall constitute a Permitted Delay under this Section.

11.03 Notice of Permitted Delays. If written notice of such delay is given to either party within (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

SECTION 12. DEFAULT.

12.01 Events of Default. Subject to any extensions of time by mutual consent in writing, and subject to the provisions of the Section regarding Permitted Delays, the failure or unreasonable delay by either party to perform any material term or provision of this Agreement for a period of thirty (30) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

12.02 Notice of Default. Any Notice of Default given hereunder shall specify in detail the nature of the alleged Event of Default and the manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

12.03 Cure Period. During the time periods herein specified for cure of an Event of Default, the party charged therewith shall not be considered to be in default for purposes of termination of this Agreement, institution of legal proceedings with respect thereto, or issuance of any building permit with respect to the Project.

12.04 General Default Remedies. After notice and expiration of the 30-day period without cure, the non-defaulting party shall have such rights and remedies

against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement pursuant to Government Code Section 65868 or seek mandamus, specific performance, injunctive or declaratory relief.

12.05 Remedies Cumulative. Any rights or remedies available to non-defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement shall be distinct, separate and cumulative rights and remedies available to such non-defaulting party and none of such rights or remedies, whether or not exercised by the non-defaulting party, shall be deemed to exclude any other rights or remedies available to the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.

12.06 Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.

12.07 No Damages Relief. The parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the parties agree that in no event shall either party be entitled to recover monetary damages against the other party for breach of this Agreement.

12.08 Developer Default. No building permit shall be issued or building permit application accepted for any structure on the Subject Property after Developer is determined by City, to be in default of the terms and conditions of this Agreement, and until such default thereafter is cured by the Developer or is waived by City.

12.09 Waiver. All waivers must be in writing to be effective or binding upon the waiving party, and no waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party shall not constitute waiver of such party's right to demand strict compliance by such other party in the future.

12.10 Scope of Waiver. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time specified in such express waiver.

12.11 Attorneys' Fees. Should legal action be brought by either party for breach of this Agreement or to enforce any provision herein, the prevailing party in any such suit or proceedings shall be entitled to a reasonable award of attorneys' fees and costs in addition to any other award made in such suit or proceeding. Reasonable attorneys' fees of either party shall be based on comparable fees for private attorneys

practicing in San Diego County.

12.12 Venue. In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of San Diego or where appropriate, in the United States District Court, Southern District of California, San Diego, California.

SECTION 13. TERMINATION.

13.01 Effect of Termination. Upon termination of this Agreement, the rights, duties and obligations of the parties hereunder shall, subject to the following provisions, cease as of the date of such termination.

13.02 Termination by City. If City terminates this Agreement because of Developer's default, then City shall retain any and all benefits, including money or land received by City hereunder.

SECTION 14. RELATIONSHIP OF PARTIES.

14.01 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project Site is a separately undertaken private development.

14.02 Independent Contractors. The parties agree that the Project is a private development and that neither party is acting as the agent of the other in any respect hereunder.

14.03 No Joint Venture or Partnership. City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

14.04 No Third Party Beneficiaries. The only parties to this Agreement are Developer and City. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.

14.05 Ambiguities or Uncertainties. The parties hereto have mutually negotiated the terms and conditions of this Development Agreement and this has resulted in a product of the joint drafting efforts of both parties. Neither party is solely or independently responsible for the preparation or form of this agreement. Therefore, any ambiguities or uncertainties are not to be construed against or in favor of either party.

SECTION 15. APPLICABLE LAW.

This Agreement shall be construed and enforced in accordance with the laws of

the State of California.

SECTION 16. SUPERSEDURE OF SUBSEQUENT LAWS OR JUDICIAL ACTION.

The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new law (including any laws of the City, when so required by state or federal law) or decision issued by a court of competent jurisdiction, enacted or made after the Effective Date which prevents or precludes compliance with one or more provisions of this Agreement. Immediately after enactment of any such new law, or issuance of such decision, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement other than all new laws enacted by the City.

SECTION 17. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement or potential subsequent development approvals, should any be obtained, the parties hereby agree to cooperate in defending said action or proceeding.

SECTION 18. HOLD HARMLESS AGREEMENT.

Developer hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from, any and all claims, costs and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Developer's or Developer's contractors', subcontractors', agents or employees' operations under this Agreement, whether such negligent operations be by Developer or by any of Developer's contractors, subcontractors, agents or employees. City shall retain the right to select the attorney of its choice to defend any action requiring a defense under this section.

SECTION 19. INDEMNIFICATION.

Developer shall defend, indemnify and hold harmless City and its agents, officers and employees against and from any and all liabilities, demands, claims, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), which any or all of them may suffer, incur, be responsible for or pay out as a result of or in connection with any challenge to the legality, validity or adequacy of any of the following: (i) this Agreement; (ii) the environmental impact report prepared in connection with the adoption of the Project; and (iii) the proceedings undertaken in connection with the adoption or approval of any of the above. City shall retain the right to select the attorney of its choice to defend any action requiring a defense under this section.

SECTION 20. NOTICES.

Any notice or communication required hereunder between City or Developer shall be in writing, and may be given either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

To City:

Community Development Director
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, California 91932

(Notices to City Manager can be sent to the same address)

To Developer:

Imperial Coast Limited Partnership
1785 Hancock Street, Suite 100
San Diego, California 92110
Attn: Deepak Israni

SECTION 21. EXHIBITS.

21.01 Designation of Exhibits. The reference to a specified Exhibit in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation.

Exhibit Designation	Description
Exhibit A	Property Description of the Subject Property
Exhibit B	Development Agreement Procedures Ordinance
Exhibit C	Existing Land Use Ordinances
Exhibit D	Site Plan
Exhibit E	Conditions of Approval
Exhibit F	Schedule of Performance

21.02 Incorporation by Reference. All exhibits are deemed incorporated by reference into this Agreement.

SECTION 22. SEVERABILITY.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

SECTION 23. RECORDATION.

In order to comply with Section 65868.5 of the Development Agreement Legislation and the Enacting Ordinance, the parties do hereby direct the City Manager to cause a copy of this Agreement to be recorded with the County Recorder of the County, within ten (10) days after passage by the City of the Enacting Ordinance.

SECTION 24. ENTIRE AGREEMENT.

This Agreement and the Exhibits attached hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement and the Exhibits hereto, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits hereto.

SECTION 25. COUNTERPARTS.

This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

The Rest of This Page is Intentionally Left Blank

Executed at Imperial Beach, California on _____

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement for the Seacoast Inn Development Project to be executed as of the date written above.

City of Imperial Beach

By: _____
Jim Janney, Mayor

Imperial Coast Limited Partnership
see notes below

By: _____
[Name of Officer, Title]

By: _____
[Name of Officer, Title]

APPROVED AS TO CONTENT:

By: _____

APPROVED AS TO FORM:

By: _____
James P. Lough, City Attorney

ATTEST:

By: _____
Jacque Hald, City Clerk

*Notes: If the Developer is a Corporation, then this document must be executed by the Corporation's Chief Executive Officer, President or Vice-President, on the one hand, and the Corporations' Chief Financial Officer, Treasurer, Assistant Treasurer or Secretary on the other hand. Developer's signature must be notarized.