

JOINT DEVELOPMENT AGREEMENT

among

THE LANCASTER COUNTY CONVENTION CENTER AUTHORITY

THE REDEVELOPMENT AUTHORITY OF THE CITY OF LANCASTER

and

PENN SQUARE PARTNERS

November 9, 2005  
~~October 2, 2005~~

## JOINT DEVELOPMENT AGREEMENT

THIS JOINT DEVELOPMENT AGREEMENT is made and entered into as of the 9 day of ~~October~~<sup>November</sup>, 2005 by and among **THE LANCASTER COUNTY CONVENTION CENTER AUTHORITY**, a body politic and corporate existing under the laws of the Commonwealth of Pennsylvania ("LCCCA"), **THE REDEVELOPMENT AUTHORITY OF THE CITY OF LANCASTER**, a body politic and corporate existing under the laws of the Commonwealth of Pennsylvania ("RACL") and **PENN SQUARE PARTNERS**, a Pennsylvania limited partnership ("PSP").

### WITNESSETH

WHEREAS, LCCCA is a public instrumentality of the Commonwealth of Pennsylvania organized under the Third Class County Convention Center Authority Act, 16 P.S. 2399.1 et seq., as amended, for the purpose, among others, of acquiring, developing, designing, constructing, financing, improving, operating, maintaining and owning a convention center in the City of Lancaster, County of Lancaster, Pennsylvania; and

WHEREAS, RACL is a public instrumentality of the Commonwealth of Pennsylvania organized under the Urban Redevelopment Law, Act No. 385, approved May 24, 1945, P.L. 991, as amended, for the purpose among other things to: 1) promote the elimination of blighted areas and supply decent housing; 2) replan such areas that are certified by the Lancaster City Planning Commission; 3) contract with private, corporate, or governmental entities for the redevelopment of blighted commercial, industrial, or residential areas; 4) acquire properties in blighted areas by purchase, gift, or eminent domain; and 5) contract with private, corporate, or governmental entities desiring to provide funding for the redevelopment of commercial, industrial, or residential properties; and

WHEREAS, LCCCA owns the premises (the "LCCCA Premises") described on Exhibit A attached hereto; and

WHEREAS, PSP owns the premises (the "PSP Premises") described on Exhibit B attached hereto; and

WHEREAS, the LCCCA Premises and the PSP Premises (collectively, the "Project Site") are adjacent to each other and LCCCA and PSP desire to jointly develop and operate the Convention Center and a Hotel in cooperation and coordination with each other on the Project Site; and

WHEREAS, RACL desires to facilitate the financing of the Convention Center and the Hotel, and to that end, will acquire the PSP Premises, participate with the LCCCA in creating a condominium on the Project Site, finance and construct the Hotel and certain common areas for utilization by the Hotel and the Convention Center, and enter into a long term lease in substantially the form attached hereto as Exhibit C ("Hotel Lease") with PSP for the Hotel Unit; and

WHEREAS, LCCCA, RACL and PSP intend to achieve economic efficiencies in the development, construction and operation of the Convention Center and the Hotel by sharing

and jointly using and operating certain facilities, areas and amenities within the Convention Center and the Hotel; and

WHEREAS, LCCCA, RACL and PSP have entered into or intend to enter into agreements in connection with the development and management of the Facilities with a common developer and manager; and

WHEREAS, LCCCA, RACL and PSP desire to enter into this Agreement to further define their relationship in connection with the development, financing, construction and operation of the Convention Center and the Hotel.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

## ARTICLE I

### DEFINITIONS, TERMS AND REFERENCES

1.1 Definitions. In this Agreement and any exhibits, addenda or riders hereto, the following terms shall have the following meanings:

Agencies shall have the meaning set forth in Section 2.1.6 herein.

Agreement means this Joint Development Agreement, complete with all exhibits, addenda or riders attached hereto, as it may be amended, modified or supplemented from time to time.

Approval or Approved means prior written approval of the party hereto from whom such approval is sought, not to be unreasonably withheld, delayed or conditioned.

Architect means Cooper Carry, Inc., of Atlanta, Georgia.

Capital Costs means the fees, expenses and other costs payable as set forth on **Exhibit D** attached hereto.

Capital Structure means the currently anticipated source and structure of funding and financing for the development, finance, and construction of the Facilities described on **Exhibit E** attached hereto.

Capitalized Expenditures means any costs incurred post-opening that should properly be capitalized under Generally Accepted Accounting Principles.

Change Orders means any changes, modifications, amendments or revisions to the Final Plans and Specifications.

Common Elements shall have the meaning ascribed to it in the Condominium Documents.

Completion means substantial completion of each Facility as evidenced by the issuance of a certificate of substantial completion by the architect for such Facility, reflecting a punch list not in excess of industry standards for projects similar to such Facility.

Commercially Reasonable Efforts means good faith efforts considering market conditions, facts and circumstances, risks and rewards, and the business plan for the Project which shall carry out until (i) completion of the activity, (ii) the activity shall no longer be determined to be feasible in the reasonable discretion of the party undertaking the activity, or (iii) the occurrence of a Termination Event.

Condominium means The Penn Square Hotel and Convention Center, a Condominium.

Condominium Association means the Unit Owners Association of the Condominium created by the Condominium Documents.

Condominium Documents means the Declaration of Condominium to be made by RACL and LCCCA prior to commencement of construction of the Convention Center and Hotel, and the plats and plans, by-laws and rules and regulations prepared for the Condominium created thereunder.

Construction Contracts means any and all contracts entered into between LCCCA, RACL and PSP or a third party as agent for LCCCA, RACL or PSP, as the case may be, and the Contractors or subcontractors, as the case may be, for the construction of all or any portion of either Facility.

Contractors means one or more construction managers, general contractors or prime subcontractors under the Construction Contracts, which shall be selected and employed by LCCCA or RACL, with respect to construction of the Convention Center and the Hotel.

Contracts means any and all contracts, agreements, permits, licenses or other documents or instruments, other than the Construction Contracts, entered into between either LCCCA or RACL and a third party to perform all or any portion of the work in connection with the Convention Center and the Hotel.

Convention Center means the planned convention center complex constructed in accordance with the Convention Center Program, which, as of the date of this Agreement, is expected to include, without limitation, approximately 206,000 gross square feet of dedicated space, including two ballrooms, approximately 50,000 square feet of exhibition space, meeting rooms, support pre-function and circulation areas and food service, plus a portion of Common Elements and Shared Space, and supporting back-of-house areas and related FF&E and OS&E.

Convention Center Development Agreement means that certain Professional Services Development Agreement dated December 20, 2001, between LCCCA and Developer,

as the same may be amended, modified, supplemented or replaced, which provides for the engagement by LCCCA of Developer to perform development services in connection with the Convention Center.

Convention Center Management Agreement means that certain Qualified Convention Center Management Agreement dated January 23, 2002, between LCCCA and Manager, as the same may be amended, modified, supplemented or replaced, for the management and operation of the Convention Center.

Convention Center Program means the spatial program for the Convention Center set forth on **Exhibit F** attached hereto.

Convention Center Unit shall have the meaning ascribed to it in the Condominium Documents.

DCED shall mean the Pennsylvania Department of Community and Economic Development, or its successor.

Design Development Budget means the budget of project development costs in sixteen (16) divisions accompanying the Design Development Plans for either Facility.

Design Development Plans means the design development plans for either Facility prepared by the Design Team architect.

Design Team shall have the meaning set forth in Section 2.1.3 herein.

Developer shall mean High Associates, Ltd.

Event of Default shall have the meaning set forth in Section 3.1 herein.

Facility means either the Convention Center or the Hotel, as the context suggests or requires. When used with respect to LCCCA, "Facility" means the Convention Center and, when used with respect to RACL or PSP, "Facility" means the Hotel. "Facilities" means the Convention Center and the Hotel, collectively.

Facility Budget means the Schematic Budget, Design Development Budget or Final Budget, as the context may require.

Facility Program means the Convention Center Program and the Hotel Program.

FF&E means those items of furnishings, fixtures, equipment, accessories and materials for use in the operation of the Convention Center or the Hotel, as applicable.

Final Budget means the final budget for the Facilities based on the Construction Contracts and other Contracts accompanying the Final Plans and Specifications and the soft costs for either Facility.

Final Completion means completion of all punch list items, delivery and installation of all remaining FF&E and obtaining all final permits which remain undone or not complete following Completion.

Final Plans and Specifications means the final plans and specifications including construction drawings for either Facility prepared by the Design Team architect, as amended or supplemented from time to time as provided in this Agreement.

Force Majeure means any of the following which may have a Material Adverse Effect on either Facility or the market in which the Facilities operate (i) an act of God, (ii) acts of war, (iii) acts of terrorism, (iv) civil disturbance, (v) labor disputes among Facility employees or providers of services, material or equipment, (vi) reasonably unforeseeable weather conditions, (vii) reasonably unforeseeable unavailability of materials, supplies or equipment and delays in transportation, (viii) governmental action (including revocation of any license or permit necessary for the development, construction and/or operation of a Facility not caused by the act or omission of the owner of such Facility), or (ix) any other causes, other than downturns in the local or national economy, that are beyond the control of either party hereto.

Historic Structures means those improvements located on the Project Site and commonly referred to as the Watt & Shand Building, the Montgomery House, the Thaddeus Stevens House, the Kleiss Saloon and the Lydia Hamilton Smith Houses, and appurtenances thereto, including, without limitation, the cisterns located to the rear of the Thaddeus Stevens House and the Kleiss Saloon.

Hotel means the hotel, intended to be constructed in accordance with the Hotel Program by RACL and leased and operated by PSP as a Marriott Hotel on the Project Site that will contain approximately two hundred ninety-four (294) guest rooms, and to include guestrooms and suites, retail space, appropriate support facilities such as a restaurant(s), a lounge(s) or bar(s), and supporting back-of-the-house areas, together with a portion of Common Elements and Shared Space such other amenities and features characteristic of a full-service Marriott hotel, including FF&E and OS&E

Hotel Development Agreement means that certain Professional Services Development Agreement dated October \_\_\_\_, 2005, between RACL and Developer, as the same may be amended, modified, supplemented or replaced, which provides for the engagement by RACL of Developer to perform development services in connection with the Hotel.

Hotel Program means the spatial program for the Hotel set forth on **Exhibit G** attached hereto.

Hotel License Agreement means that certain Marriott Hotel License Agreement dated September 25, 2001, between Marriott and PSP, as the same may be amended, modified, supplemented or replaced.

Hotel Management Agreement means that certain Management Agreement dated January 5, 2001, between PSP and Manager, as the same may be amended, modified, supplemented or replaced, for the management and operation of the Hotel.

Hotel Unit shall have the meaning ascribed to it in the Condominium Documents.

IFIP Grant or IFIP Grants shall mean the grant payment or payments to be received pursuant to the IFIP Grant Agreement.

IFIP Grant Agreement shall mean any agreement between the Commonwealth of Pennsylvania, acting by and through DCED, and RACL, pursuant to which RACL is to receive grants for costs of the Hotel and Convention Center under the Infrastructure and Facilities Improvement Program of the Commonwealth of Pennsylvania established pursuant to Pennsylvania Act 23 of 2004.

LCCCA's Authorized Representative means LCCCA's designated representative with authority to make decisions hereunder, or any replacement identified by LCCCA in a written notice to RACL and PSP.

LCCCA's Debt Service means interest, principal and all other costs, fees or charges payable by the LCCCA on account of loans, bonds or other financings under which LCCCA is a payor or obligor.

Manager means Interstate Hotels & Resorts Company, or any successor, assign or replacement thereof.

Marriott means Marriott International, Inc. or any successor, assign or replacement thereof.

Material Adverse Effect means any circumstance or event which individually or in the aggregate could have a material adverse effect on the Convention Center and the Hotel, or either of them, or their development, use, occupancy or operation.

Operating Expenses means the expenses associated with a specific operating department of the Hotel and by extension to comparable expenses and departments of the Convention Center, as such expenses and departments are defined in the USAL.

OS & E means those items of operating supplies and equipment including telephone, computer and other operating systems for use in the operation of the Convention Center or the Hotel, as applicable.

Permits shall have the meaning set forth in Section 2.1.6 herein.

Plans and Specifications means the Schematic Plans, Design Development Plans or Final Plans and Specifications, as the context may require.

Project means the combined Facilities.

Project Budget means the budget set forth in Exhibit D attached hereto.

PSP's Authorized Representative means Mark C. Fitzgerald, Nevin D. Cooley or any replacement identified by PSP in a written notice to LCCCA and RACL.

Quality Standard means the standards of development, construction, use, operation, maintenance, repair and housekeeping for the Facilities in compliance with the requirements of the Hotel License Agreement, including but not limited to standards regarding construction and equipping and daily maintenance and routine upkeep, security, signage, temperature control and lighting of each Facility, more fully described on Exhibit H attached hereto.

RACL's Authorized Representative means RACL's designated representative with authority to make decisions hereunder or any replacement identified by RACL in a written notice to LCCCA and PSP.

Schedule means the master schedule for Completion of the Facilities prepared by Developer and Approved by LCCCA, RACL and PSP. Any and all modifications or amendments to the Schedule shall be subject to the Approval of LCCCA, RACL, Developer and PSP.

Schematic Budget means the budget for either Facility including preliminary estimates of project costs by category and accompanying the Schematic Plans for either Facility.

Schematic Plans means the schematic plans for either Facility prepared by the Design Team architect.

Shared Costs means those items of Capital Costs designated as shared expenses on Exhibit D attached hereto.

Shared Equipment means (i) each item of equipment serving both the Facilities, as shown on the Plans, (ii) any items of equipment serving both Facilities and subsequently designated in writing by the Parties of Shared Equipment, and (iii) each item of equipment subsequently installed in or on the Facilities as a replacement for any Shared Equipment. As of the date hereof, the "Shared Equipment" shall include all engineering equipment, employee dining room equipment, security room equipment, boiler equipment, mechanical room equipment and men's and women's locker room equipment.

Shared Space means those areas designated for common use and access by both the Hotel and Convention Center, other than Common Elements.

Termination Event shall have the meaning set forth in Section 4.1 herein.

USAL means the Ninth Revised Edition of Uniform System of Accounts for the Lodging Industry published by the Educational Institute of the American Hotel and Motel Association.



## ARTICLE II

### JOINT DESIGN AND DEVELOPMENT

2.1 In General. LCCCA, RACL and PSP acknowledge that material and substantial benefits will accrue as a result of, and that the efficient development and construction of each of the Facilities requires, the integration with the development and construction of the other Facility. To that end, LCCCA, RACL and PSP agree to consult, coordinate and cooperate with each other in connection with the design, development, construction and operation of the Facilities, and specifically to do the following:

2.1.1 Joint Development. LCCCA, PSP and RACL have each engaged Developer as the developer for the Convention Center and the Hotel, respectively, and agree to cause Developer to undertake to perform its obligations under the Convention Center Development Agreement and the Hotel Development Agreement so as to attempt to achieve the greatest efficiencies in design and the maximum reduction in construction and operating costs for the Convention Center and the Hotel. In all respects, the parties hereto shall construct their respective Facilities, and the Facilities shall be developed and constructed in compliance with the Facility Program, Quality Standard and all applicable requirements and conditions of the Convention Center Management Agreement, the Hotel Management Agreement and the Hotel License Agreement. PSP shall use commercially reasonable efforts to cause the Hotel License Agreement to be amended, modified, supplemented or replaced as may be required to develop, construct and operate the Hotel under a Marriott flag, as contemplated by this Agreement. All actions taken by RACL under the terms of this Agreement shall be done in consultation and cooperation with PSP as the lessee and operator of the Hotel. To the extent not otherwise provided for in Exhibit D, the parties shall purchase Shared Equipment, the cost of which shall be allocated in accordance with the principles set forth in Sections VI and VII of Exhibit L.

2.1.2 Formation of Condominium. After approval by LCCCA, PSP and RACL of all Construction Contracts and prior to commencement of construction, RACL and LCCCA, as declarants, shall submit the PSP Premises and the LCCCA Premises to the provisions of the Pennsylvania Uniform Condominium Act, 68 Pa. C.S. Section 3101, et seq., and create a condominium to be known as The Penn Square Hotel and Convention Center, a Condominium.

2.1.3 Design Team. LCCCA, PSP and RACL shall consult and coordinate with each other in connection with the direction of the team of design professionals and consultants for the Facilities, including, without limitation, the Architect and professionals providing interior space planning, engineering, structural, mechanical, electrical, HVAC, construction cost estimating, scheduling, value engineering, landscape, traffic, geotechnical, soils, and hydrological and all other services as necessary to implement the design of the Facilities (the "Design Team"). LCCCA, RACL and PSP shall individually engage the Architect and, wherever possible, shall individually engage members of the Design Team to provide services for both Facilities.

2.1.4 Coordination. LCCCA, PSP and RACL agree to coordinate with each other with respect to the selection of Contractors and the negotiation, bidding and award of the terms of all Construction Contracts and Contracts for the Facilities.

2.1.5 Budget, Schedule and Plans. LCCCA, RACL and PSP shall consult and coordinate with each other regarding the Schematic Budget, Design Development Budget, Final Project Budget, Schedule, Schematic Plans, Design Development Plans and Final Plans and Specifications and all required modifications thereto. LCCCA and RACL shall cause the Developer to coordinate, in conjunction with the Architect, the development of the Schematic Plans, Design Development Plans and Final Plans and Specifications for each Facility consistent with this Agreement, the Quality Standard, the Condominium Documents, the Convention Center Development Agreement, the Hotel Development Agreement, the Hotel License Agreement, the Convention Center Management Agreement and the Hotel Management Agreement. LCCCA and RACL shall cooperate with PSP with respect to PSP's efforts to obtain any approval required from Marriott pursuant to the Hotel License Agreement of the Schedule, Schematic Plans, Design Development Plans and/or Final Plans and Specifications for the Convention Center.

2.1.6 Permits and Other Approvals. LCCCA and RACL shall consult, coordinate and cooperate with each other in connection with the processing and pursuing by Developer of all regulatory permits, licenses, authorizations and approvals required by law for the Completion of the Facilities (collectively, the "Permits"), including, without limitation, cooperating with respect to (i) filing of all appropriate applications (including joint applications when appropriate) required by any and all governmental or quasi-governmental agencies, departments or commissions having jurisdiction over the Project or as otherwise necessary to obtain the Permits ("Agencies"), and (ii) presentations before the Agencies and citizen groups or other similar organizations having an interest in the Facilities to the extent deemed necessary by LCCCA, PSP and Developer to obtain the Permits.

2.1.7 Budget Reconciliation. RACL, PSP and LCCCA shall use commercially reasonable efforts commencing immediately with the execution of this Agreement to evaluate design features, including value engineering, for the Project and secure funds specified in Exhibit D in order to ensure that the Final Budget is equal to or less than available funding. Attached as Exhibit D is the Design Development Budget and sources of funds for the Project. The parties acknowledge that the Design Development Budget is based on the Allocation of Capital Costs in Exhibit L as currently estimated by the Contractors and High Associates, Ltd. as the Developer, and is subject to change as the construction documents are completed and the Final Budget is determined.

(a) LCCCA covenants to use commercially reasonable efforts commencing immediately with the execution of this Agreement to implement the following:

- (i) No later than twenty (20) days of receipt of item (v) below, execute one or more forward starting variable to fixed interest rate swaps, to lock in the most favorable interest rates in order to maximize borrowings secured by room tax revenues.

- (ii) Limit the amount of debt service reserve fund requirement to no more than 50% of the first year debt service and use a surety bond in lieu of cash for an amount not less than 50% of such reserve fund.
- (iii) Attempt to increase the amount of interest income obtainable on the remaining cash portion of the reserve fund, capitalized interest fund and Project construction fund.
- (iv) Issue the maximum amount of bonds at such times and in such amounts to attempt to reduce capitalized interest expense.
- (v) Obtain a commitment, for municipal bond insurance or commercial banks letters of credit supporting the Hotel Tax Revenue Bonds issued or to be issued by the Authority.
- (vi) Request Manager to approve reduction of the Authority's projected initial Operating Account Initial Balance from approximately \$1,900,000 to \$1,000,000.

(b) RACL, PSP and LCCCA shall work cooperatively and make commercially reasonable efforts to secure additional funds for the Project by (i) selling naming rights to the Convention Center, (ii) selling air rights above the Hotel Unit and Convention Center Unit, (iii) reducing LCCCA expenditures on parking, (iv) secure inducement from Manager for rights to manage the Condo Association, (v) secure additional State Grants for the Project, all which shall be used in accordance with the terms and conditions of this Agreement.

(c) The parties acknowledge, that in addition to (a) above, additional grants from the Commonwealth of Pennsylvania and the IFIP Grant are required in order to construct the Project.

(d) In the event the Final Budget is less than the available funds shown on Exhibit D, plus any funds secured in 2.1.7 (b), any surplus funds shall be equally allocated to RACL ( to be utilized in accordance with the Hotel Tower Lease Agreement between RACL and PSP) and LCCCA as an additional contingency.

(e) If after pursuing all of the steps outlined hereinbefore in sections 2.1.7 (a) through (c), available funds are insufficient to meet the Final Budget, RACL, PSP and LCCCA shall take all the actions set forth hereinafter in this section 2.1.7(e). PSP, in cooperation with RACL, shall agree to pursue the following actions using commercially reasonable efforts considering prudent business practices : (i) work with RACL and High Associates Ltd. to reduce the developer fee-calculation by eliminating the acquisition cost of the Watt and Shand building as a component of RACL's developer fee calculation, (ii) increase the cash contribution by recalculating the internal rate of return based on revised timing assumptions, i.e. slower start and potentially faster ramp up; however, in no event shall PSP be required to accept an internal rate of return less then 17%. LCCCA shall agree to pursue the following actions using commercially reasonable efforts considering prudent business practices: (i) replace operating reserve with a

working capital line of credit, (ii) fund capital reserve account with additional debt. RACL and LCCCA shall jointly request that the City of Lancaster (i) replace the IFIP reserve fund with a surety bond, (ii) increase dollar amount of the IFIP bond based on lower debt service associated with a lower interest rates to the extent such is available.

(f) In the event that available funds shown on Exhibit D, plus any funds secured in 2.1.7 (b) and (e) exceeds the Final Budget, any surplus funds shall be equally allocated to RACL ( to be utilized in accordance with the Hotel Tower Lease Agreement between RACL and PSP) and LCCCA as an additional contingency.

(g) Until such time as the available funds shown on Exhibit D, plus any funds secured in 2.1.7(b), exceed the Final Budget, the LCCCA shall not expend on parking any sums in excess of the amounts currently reflected for parking in the Design Development Budget.

2.1.8 Change Orders. LCCCA, PSP and RACL each agree not to initiate or Approve any Change Orders that could have a Material Adverse Effect on the Facilities or either of them or on LCCCA or PSP or that could result in a violation of the Quality Standard. LCCCA and RACL shall cooperate with PSP with respect to PSP's efforts to obtain any approval required from Marriott with respect to any Change Order pursuant to the Hotel License Agreement.

2.1.9 Management. LCCCA and PSP have each independently negotiated with and engaged Manager as the manager for the Convention Center and the Hotel, respectively, and agree to cause Manager to undertake to perform its obligations under the Convention Center Management Agreement and the Hotel Management Agreement so as to attempt to achieve the maximum reduction in operating costs for the Convention Center and the Hotel.

2.1.10 Financing. LCCCA, RACL and PSP shall each make a commercially reasonable effort to obtain financing necessary to implement the Capital Structure for the Facilities to be constructed and operated. LCCCA, RACL and PSP shall each advise the others of the status of such efforts to obtain financing.

2.1.11 Conveyance of Convention Center and Hotel Units. Immediately after the recordation of the Declaration of Condominium, the Convention Center Unit shall be conveyed to LCCCA, and the Hotel Unit shall be conveyed to RACL.

2.1.12 Purchase of PSP Premises by RACL. Contemporaneous with the execution of this Joint Development Agreement, RACL and PSP, shall enter into an Agreement to Transfer and Reimbursement Agreement between PSP and RACL substantially in the form attached hereto as **Exhibit I** ("Reimbursement Agreement"). Contemporaneous with such conveyance, and as more fully set out in the Reimbursement Agreement, (i) RACL shall pay to PSP an amount equal to the costs incurred by PSP up to the date of closing or operating, maintaining, repairing, holding, defending, and pursuing the development of the PSP Premises, it being recognized that such costs are necessary precursors to the development of the Hotel Unit and otherwise would have to be incurred by RACL had they been the developer from the time of inception of the Project, and (ii) RACL shall purchase from PSP all plans, specifications and

design documents which have been developed by PSP in connection with the Hotel Unit up to the date of Closing.

2.1.13 LCCCA's Option to Acquire the PSP Premises. Contemporaneous with the execution of this Joint Development Agreement, RACL and LCCCA shall enter into a Purchase Option Agreement substantially in the form attached hereto as **Exhibit J** ("Purchase Option Agreement"), which, among other things, shall grant an option to LCCCA to acquire the PSP Premises, or the Hotel Unit, as the case may be, under terms and conditions specified therein:

2.1.14 Hotel Lease. Immediately upon conveyance of the Hotel Unit to RACL, RACL and PSP shall execute the Hotel Lease.

2.1.15 Non-Opposition. LCCCA, RACL and PSP shall not take any action in the planning, development or construction of the Facilities which would be contrary to the intent and provisions of this Agreement or which could have a Material Adverse Effect on either Facility or the planning, development or construction of the Facilities.

2.1.16 Obligation of PSP to Invest \$10,000,000 in the Hotel. Penn Square Partners ("PSP") shall invest \$10,000,000 in cash (the "Investment") into the Hotel. The Investment shall be used to fund the costs of developing, constructing, furnishing, opening the Hotel, and shall be available to PSP, LCCCA and RACL as follows:

(a) Upon the execution of the Construction Contracts with the necessary prime sub-contractors required to construct the Project in accordance with the Final Budget, PSP shall post an irrevocable Letter of Credit ("LC") issued by a commercial bank ("LC Bank") selected by the mutual agreement of PSP and LCCCA, and containing terms and conditions reasonably agreed to by PSP and LCCCA in an amount equal to the Investment. The LC shall be reduced at the end of each quarter to reflect expenditures made in accordance with the succeeding paragraphs. The LC shall be irrevocable and remain in place until the earlier of (i) Project substantial completion, or (ii) expenditure of the Investment in accordance with the expenditure schedule (the "Schedule") attached hereto as Exhibit "A", or (iii) termination of the Agreement for reasons other than the occurrence of an Event of Default by PSP. PSP may, from time to time, change the timing and amount of the expenditure schedule if such is necessary to pay for its obligations under the terms and conditions of this Agreement, the Condominium Declaration or the Hotel Lease. The LC shall be reduced dollar for dollar as expenditures of the Investment are made by PSP into the Project.

(b) Interest on the Investment shall belong to PSP and shall not be available for the purposes set forth herein without the consent of PSP to be given only in its sole discretion. Under no circumstances shall draws against the LC exceed \$10,000,000 less actual expenditures made by PSP per the terms of this Section 2.1.16 in the aggregate.

PSP shall be permitted to use the Investment in order to pay for expenditures in accordance with the Schedule, including the purchase of furniture, fixtures and equipment to be installed for use at the Hotel, to pay for soft costs of the nature contemplated by the Schedule and to pay for other costs incurred by PSP included in the Project Budget; the Investment may also be used by PSP to

pay cost overruns. To the extent that the entire Investment is not invested into the Hotel prior to the completion of the Hotel punch list, PSP shall expend the balance of the Investment as follows: (i) within one (1) year of substantial completion of the Hotel punch list, PSP shall invest the remaining funds into additional construction costs, FF&E or OS&E; or (ii) if not completely expended after expiration of one (1) year from substantial completion of the Hotel punch list, then immediately thereafter into reduction of debt secured by the Hotel Unit.

Subject to the provisions of the preceding paragraph, the Investment shall be security for the performance by PSP of all of its obligations to RACL and LCCCA under this Agreement and all other Agreements or documents referred to in this Agreement. In no event shall RACL and/or LCCCA be permitted to access any sum in excess of the aggregate of the Investment during the period.

The Investment may be accessed by LCCCA only in the following manner: LCCCA shall send the LC Bank and PSP a notice of PSP's failure to comply with an obligation of PSP to LCCCA. The notice shall with specificity set forth the nature of the default, the nature of the cure required and provide PSP with fifteen (15) days in which to pay for or cure or, if not capable of being cured within such time period, commence to cure and diligently proceed to complete until cure is effected. If PSP contests the existence of the obligation or the default therein, it may send a notice to the LCCCA that it desires to engage in binding arbitration pursuant to the terms and conditions of Section 8.1 of this Agreement. The decision rendered as a result of the arbitration shall be final and binding on the parties.

(c) The LC Bank shall only honor draws on the LC, upon receipt by the LC, of (i) a written draw request signed by PSP certifying that the amount of the draw is to be used for (A) expenditures in accordance with the Schedule, (B) obligations owed to RACL, which have not been paid or challenged by PSP, in which event RACL shall countersign the draw request, (C) Change Orders for which PSP is responsible under the terms of the Hotel lease, which have not been paid or challenged by PSP, or for which PSP elects to pay or (D) obligations owed to LCCCA, which have not been paid or challenged by PSP in which event LCCCA shall countersign the draw request; (ii) if not within any of the categories specified above, a written draw request signed by both PSP and LCCCA; or (iii) a certificate signed by LCCCA or RACL which includes a certified copy of the arbitration award signed by the arbitrator(s) authorizing the withdrawal in the amount requested.

**2.2 Covenants of LCCCA, RACL and PSP.** LCCCA, RACL and PSP covenant and agree as follows:

**2.2.1 Historic Structures Cost Overruns.** All costs associated with demolition, stabilization and retention of Historic Structures consistent with the scope of work set forth in the Project Budget shall be treated by the parties as Shared Costs.

**2.2.2 Indemnification of RACL.** PSP and LCCCA shall enter into an indemnity agreement with RACL substantially in the form attached hereto as **Exhibit K**.

2.2.3 Allocation of Capital Costs. Allocation principles to be used for allocating Capital Costs are set forth on **Exhibit L** attached hereto.

2.2.4 Allocation of Operating Expenses and Capitalized Expenditures. Allocation principles to be used for allocating Operating Expenses and Capitalized Expenditures incurred in areas used in both operation of the Hotel and Convention Center are set forth on **Exhibit M** attached hereto.

2.2.5 Structure of Relationship Between Construction Managers Retained by RACL and LCCCA. The LCCCA and RACL intend to utilize the services of both Reynolds Construction Management (“RCM”) and High Construction as construction managers. RACL and LCCCA shall enter into a Contract with RCM to serve as the construction manager for the Project; RCM shall engage High Construction as RCM’s subcontractor. Each of RCM and High Construction shall be allocated principal responsibility and decision-making authority with respect to discrete portions of the Project, all in accordance with the terms of the Contracts.

2.2.6 Construction Budget Overruns and Savings. Convention Center costs in excess of the final Project Budget shall be funded by LCCCA; Hotel Costs in excess of the final Project Budget as a result in change in scope or change orders authorized by PSP shall be funded by PSP. All other change orders will be funded by RACL. To the extent that Convention Center costs are in excess of the Final Project Budget and LCCCA sources are insufficient, the LCCCA will fund remaining costs with completion debt to the extent that such financing is available. Savings directly attributable to the Convention Center construction shall belong to the LCCCA; savings directly attributable to the Hotel construction shall belong to RACL in accordance with the terms of the Hotel Tower Lease Agreement; savings attributable to Shared Space construction shall belong to both LCCCA or RACL in accordance with the methodology for sharing costs for Shared Space. All savings realized by RACL shall be used by RACL in accordance with the provisions of the Hotel Lease.

2.3 Communication. LCCCA’s Authorized Representative, RACL’s Authorized Representative and PSP’s Authorized Representative shall communicate and interface with each other on a reasonable, regular and continuing basis and cause to be performed the necessary distribution of information as required to keep each other apprised of the status of the design of the Facilities, Facility Budget, Schedule and Plans and Specifications, including without limitation the distribution of Project meeting minutes when appropriate. LCCCA and RACL shall endeavor to and shall cause Developer to hold joint Project meetings, when appropriate, to review the status of the development of Plans and Specifications, Schedule and Facility Budget, the processing of Permits and the process of development and construction of the Facilities.

## ARTICLE III

### DEFAULT AND REMEDIES

3.1 Default. Subject to the notice and cure provisions of this Section, an “Event of Default” shall occur by any party hereunder if:

3.1.1 Any party fails to comply with any provision or requirement contained or referenced in this Agreement; provided, no default shall occur hereunder unless written notice shall have been given to all parties to this Agreement and ten (10) days shall have elapsed after receipt of such notice without the cure thereof, provided, however, that if such default is not reasonably capable of being cured within such ten (10) day period and if the defaulting party shall have commenced to cure same, no default shall occur so long as such defaulting party continuously and diligently pursues the cure thereof to completion, but in no event to exceed sixty (60) days; or

3.1.2 There shall have occurred an Act of Bankruptcy relating to a party. For the purposes of this Agreement, an "Act of Bankruptcy" shall be deemed to occur if a party shall file a voluntary petition seeking relief under any provision of any federal or state bankruptcy or insolvency statute, or make an assignment for the benefit of its creditors, or apply for or consent to the appointment of a receiver for its assets, or an involuntary proceeding shall be commenced against a party under any bankruptcy, insolvency or similar law seeking the appointment of a trustee or similar official of it or any substantial part of its property, and such involuntary proceeding shall remain undismissed and unstayed for a period of ninety (90) days.

3.2 Remedies. Upon the occurrence and continuation of an Event of Default, the other parties may pursue any one or more of the following remedies, which are cumulative and not exclusive of each other:

3.2.1 Either or both of the non-defaulting parties shall have the right to terminate this Agreement, in which event no party shall have any further duties or obligations under this Agreement.

3.2.2 Either or both of the non-defaulting parties shall have the right to bring an action for specific performance of this Agreement, all parties hereto agreeing that monetary damages are not sufficient to make the other parties whole for a default under this Agreement.

3.2.3 Pursuit by a party hereto of any of the foregoing remedies shall not preclude the pursuit of any damages incurred, or of any of the other remedies available at law or in equity, provided, however, that the parties hereto waive all rights to claim or assert consequential, special and punitive damages in connection with this Agreement and any other Agreement affecting the Project to which they are a party.

3.3 No Waiver. The failure of a non-defaulting party to exercise any right or remedy available to it pursuant to the terms of this Agreement shall not be deemed to be a waiver of such right or remedy or of any of the terms or provisions of this Agreement.

## ARTICLE IV

### TERMINATION

4.1 Termination Event. A "Termination Event" shall occur hereunder if:

4.1.1 An Event of Default occurs hereunder.



4.1.2 The Hotel License Agreement is terminated by either party thereto in accordance with its terms.

4.1.3 The Hotel Management Agreement is terminated by either party thereto in accordance with its terms.

4.1.4 The Convention Center Management Agreement is terminated by either party thereto in accordance with its terms.

4.1.5 The LCCCA provides written notice to RACL and PSP on or before commencement of construction of the Convention Center of LCCCA's intention to abandon the development of the Convention Center in accordance with the Convention Center Program.

4.1.6 RACL or PSP provides written notice to LCCCA on or before commencement of construction of the Hotel of either RACL's or PSP's intention to abandon the development of the Hotel in accordance with the Hotel Program.

4.1.7 The LCCCA, RACL or PSP reasonably determine, after completion of the process prescribed in section 2.1.7 herein, that there are insufficient funds available to complete the construction of the Hotel and Convention Center in accordance with the Final Plans and Specifications.

4.1.8 Any person or entity which is not affiliated with High Industries, Inc. acquires a majority equity interest in and the right to exercise management control over the general partner of PSP.

4.1.9 Foundation construction has not commenced for both the Hotel and Convention Center by August 1, 2006, unless such commencement is prohibited by litigation in which LCCCA, RACL or PSP is a party, whereupon this date shall be extended for a commercially-reasonable period of time beyond the termination of such litigation.

4.2 Right to Terminate. Upon the occurrence of a Termination Event, each party, except a party causing an Event of Default, upon written notice to the others given within ten (10) days after it obtains actual knowledge of the Termination Event, shall have the right to terminate this Agreement whereupon all rights, benefits, duties and obligations of the parties hereunder shall be null and void and no party shall have any further duties and obligations hereunder, except as otherwise provided in this Agreement. The parties shall execute mutual releases confirming the foregoing.

4.3 Marriott Right of First Refusal. PSP has granted to Marriott in the Hotel License Agreement a right of first refusal ("ROFR") to acquire the PSP Premises and the Hotel under circumstances described in the Hotel License Agreement. Such ROFR is also evidenced by a Memorandum Of Right Of First Refusal, dated September 25, 2001 ("Memorandum") recorded in the Land Records of Lancaster County, Pennsylvania. Contemporaneous with the execution of this Agreement, LCCCA and RACL have entered into a Purchase Option Agreement ("Option Agreement") granting LCCCA certain rights to acquire the PSP Premises and the Hotel Unit ("Option"). It is the intent of all the parties hereto that the ROFR shall not in any way adversely

affect any of the rights granted to LCCCA in the Option Agreement. PSP shall take all actions, and execute any documents reasonably requested by the LCCCA to terminate the ROFR or to otherwise have it subordinated in all respects to the rights of the LCCCA in the Option Agreement; provided, however, PSP shall not be required to execute any documents which would place PSP in breach of its obligations to Marriott and provided, further, that PSP shall use commercially reasonable efforts to obtain the signature of Marriott on all such documents. Prior to the expiration of the Option Agreement, or at any time after the exercise of the Option by LCCCA, PSP shall not, under any circumstances, execute any documents, take any action or participate in any conduct that facilitates the exercise of the ROFR by Marriott, except for any actions required to be taken by PSP pursuant to the terms of the Hotel License Agreement.

## ARTICLE V

### INDEMNIFICATION

5.1 Indemnification by LCCCA. LCCCA agrees to defend, protect, indemnify and hold harmless PSP and PSP's partners, members, shareholders, officers, directors, employees and agents from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expense and liability of any kind relating thereto, including reasonable attorneys' fees and costs of suit, arising out of or resulting from any breach or default by LCCCA in the performance of its obligations under this Agreement or any other agreement relating to the development, or construction or operation of the Facilities to which it is a party.

5.2 Indemnification by PSP. PSP agrees to defend, protect, indemnify and hold harmless LCCCA and LCCCA's partners, members, shareholders, officers, directors, employees and agents from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expense and liability of any kind relating thereto, including reasonable attorneys' fees and costs of suit, arising out of or resulting from any breach or default by PSP in the performance of its obligations under this Agreement or any other agreement relating to the development or construction or operation of the Facilities to which it is a party.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of LCCCA. In order to induce RACL and PSP to enter into this Agreement, LCCCA hereby makes the following representations and warranties:

6.1.1 LCCCA is authorized, and has the power, to enter into this Agreement and to perform its obligations under this Agreement.

6.1.2 This Agreement constitutes a valid and binding agreement of LCCCA and is enforceable against LCCCA in accordance with its terms.

6.1.3 This Agreement does not conflict with, constitute a default under or cause LCCCA to be in breach of or in violation of any other agreement or instrument to which LCCCA is bound.

6.2 Representations and Warranties of RACL. In order to induce LCCCA and PSP to enter into this Agreement, RACL hereby makes the following representations and warranties.

6.2.1 RACL is authorized, and has the power, to enter into this Agreement and to perform its obligations under this Agreement.

6.2.2 This Agreement constitutes a valid and binding agreement of RACL and is enforceable against RACL in accordance with its terms.

6.2.3 This Agreement does not conflict with, constitute a default under or cause RACL to be in breach of or in violation of any other agreement or instrument to which RACL is bound.

6.3 Representations and Warranties of PSP. In order to induce LCCCA and RACL to enter into this Agreement, PSP hereby makes the following representations and warranties:

6.3.1 PSP is authorized, and has the power, to enter into this Agreement and to perform its obligations under this Agreement.

6.3.2 This Agreement constitutes a valid and binding agreement of PSP and is enforceable against PSP in accordance with its terms.

6.3.3 This Agreement does not conflict with, constitute a default under or cause PSP to be in breach of or in violation of any other agreement or instrument to which PSP is bound.

## ARTICLE VII

### GENERAL COVENANTS REQUIRED TO COMPLY WITH THE URBAN REDEVELOPMENT LAW AND THE IFIP GRANT

7.1 General Character of the Hotel and Convention Center. Annexed hereto as **Exhibit N** are Design Development plans for the Hotel and Convention Center and other documents showing the type, material, structure and general character of the improvements contemplated to be constructed by the parties to this Agreement in accordance with the terms of this Agreement.

7.2 Covenant to Complete. The parties hereto covenant to proceed with due diligence to undertake and to complete design and construction of the Hotel and the Convention Center within a period not to exceed ten (10) years from the date of this Agreement.

7.3 Project Cost Certification. PSP, LCCCA and RACL agree to provide to each other, and to cause the construction manager and sub-construction manager and each prime sub-contractor performing work on the Hotel and Convention Center to provide or submit to each other, a Project cost certification performed by one or more independent, third-party certified

public accountants establishing the actual total construction costs incurred and paid by RACL, LCCCA, PSP, and each prime contractor in connection with the Hotel and Convention Center. RACL, LCCCA and PSP agree that the receipt of such construction cost certification shall be a condition for receiving a certificate of completion of the Hotel and Convention Center to the extent required by Section 11 of the Urban Redevelopment Law of the Commonwealth of Pennsylvania, as amended, 35 P.S. § 1711. This covenant shall survive termination of this Agreement.

7.4 Third-party Infrastructure Payments; IFIP Grant Repayment. If, during the period in which RACL is receiving IFIP Grants, PSP or LCCCA receives from any party other than RACL or the Commonwealth of Pennsylvania any payments in respect of the cost of infrastructure improvements which are a part of the Hotel and Convention Center for which the IFIP Grants have been awarded, PSP or LCCCA, as applicable, shall pay to RACL a sum equal to such payments and RACL shall, in accordance with the IFIP Grant Agreement, apply the sum so paid to the payment of the debt service on the RACL bonds to be retired from proceeds of the IFIP Grants or, if such bonds have been retired, other bonds issued to finance the Hotel or Convention Center. This covenant shall survive termination of this Agreement.

7.5 Use of Improvements; IFIP Grant Repayment. PSP and LCCCA shall use the Hotel and Convention Center (or the parts thereof to which each such party is legally entitled to use) for purposes intended (consistent with the application for the IFIP Grants) for the whole period of time over which RACL is receiving IFIP Grants, and PSP and LCCCA each shall hold harmless and indemnify RACL for any amounts required to be repaid to the Commonwealth in respect of IFIP Grants by reason of PSP's or LCCCA's failure, respectively, to use the Hotel and Convention Center (or the parts thereof to which each such party is legally entitled to use) for such purposes for the period of time RACL is receiving IFIP Grants. This covenant shall survive termination of this Agreement.

7.6 Change of Use Requires DCED Consent. PSP shall not use the Hotel and LCCCA shall not use the Convention Center for any purpose other than for use as a Hotel and a Convention Center, respectively, during period or time over which RACL is receiving IFIP Grants, without the written consent of RACL and, if required by the IFIP Grant Agreement, the written consent of DCED. This covenant shall survive termination of this Agreement.

7.7 Restriction on Sale, Lease or Other Transfer. PSP and LCCCA covenant and agree that, to the extent required by the Pennsylvania Urban Redevelopment Law, they shall be without power to sell, lease or otherwise transfer their respective interests in the Hotel or the Convention Center, or any part thereof, without the prior written consent of RACL, until RACL shall have certified in writing that the Hotel and Convention Center have been completed. RACL agrees not to withhold such consent unreasonably, and agrees to make such certification promptly following Final Completion. PSP shall not assign its rights under the Hotel Lease, or in any other manner sell, transfer or assign its rights to operate the Hotel, without the written consent of the LCCCA, except that PSP shall not require LCCCA consent in the event that the proposed purchaser, transferee or assignee (i) demonstrates to the reasonable satisfaction of the LCCCA that it has a valid license agreement from Marriott to continue to operate the Hotel under the Marriott flag and intends to do so; or (ii) executes documents in form and content reasonably satisfactory to

LCCCA evidencing its obligations to be bound by the Quality Standard with respect to the maintenance and operation of the Hotel.

7.8 Project Records; IFIP Grant. PSP, LCCCA and RACL shall maintain full, accurate records with respect to the construction, operation and maintenance of their respective portions of the Hotel and Convention Center, and shall cooperate in providing DCED with access to such records, and such similar records as may be maintained by them, and to afford DCED and its authorized employees or agents access to and the ability to inspect all work, invoices, materials and other relevant records at reasonable times and places in connection with DCED's administration of the IFIP Grants. PSP and LCCCA shall furnish to RACL and DCED, upon request, all data, reports, contracts, documents and other information relevant to the Hotel and Convention Center and the IFIP Grants. This covenant shall survive termination or assignment of this Agreement.

7.9 IFIP Grant Cooperation. PSP, LCCCA and RACL shall cooperate in all matters necessary or appropriate to obtain and receive IFIP Grants for the Hotel and Convention Center over the full term for which the Hotel and Convention Center are eligible to receive IFIP Grants, and shall cooperate in having a certified public accountant undertake and submit to DCED a final audit listing all costs of the Hotel and Convention Center and certifying that grant funds were disbursed in accordance with the IFIP Grant Agreement, such audit and certificate to be submitted within 90 days following expiration of the IFIP Grants, or at such other time as shall be required by the IFIP Grant Agreement. This covenant shall survive termination or assignment of this Agreement.

7.10 Payment Bonds or Similar Security. The parties agree that every prime contract for construction, installation, alteration, repair of, or addition to, the Hotel and Convention Center shall, to the extent required by applicable law, or to such further extent as the parties may otherwise agree, contain provisions obligating the prime contractor to prompt payment for all material furnished, labor supplied or performed, rental for equipment employed, and services rendered by public utilities in or in connection with the prosecution of the work or improvement contemplated, and to provide financial security equal to 100% of the contract amount in the form of an appropriate bond from a surety company authorized to do business in Pennsylvania, an irrevocable letter of credit from a federal- or Commonwealth-chartered lending institution, or a restrictive escrow account with a federal- or state-chartered financial institution doing business in Pennsylvania, or other escrow agent Approved by LCCCA, RACL and PSP.

7.11 Nondiscrimination Clause; IFIP Grant. PSP, RACL and LCCCA covenant and agree not to discriminate against any employee or against any person seeking employment or use, sale or lease of any part of the Hotel or Convention Center because of race, creed, color, handicap, national origin, age or sex, and shall cooperate in making appropriate certification of compliance with this covenant to DCED in connection with the IFIP Grants and to any other governmental agency, department or commission, local, state or federal, as may be required.

PSP, LCCCA and RACL further agree, each as to itself and as to each occupant of the facilities acquired or constructed in whole or in part with proceeds of the IFIP Grants and

controlling, controlled by or under common control with it (each, for purposes of this Section, being referred to as a "Contractor"), as follows:

(a) Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other Person because of race, color, religious creed, handicap, ancestry, national origin, age or sex. Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, handicap, ancestry, national origin, age or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this Section.

(b) Contractor shall in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age or sex.

(c) Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

(d) It shall be no defense to a finding of noncompliance with this Section that Contractor had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

(e) Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this Section, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

(f) Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. Noncompliance with this Section will constitute an Event of Default under this Agreement.

(g) Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, RACL or other appropriate governmental agencies, departments or officials, for purposes of investigation to ascertain compliance with the provisions of this Section. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on

reporting forms supplied by RACL or such other appropriate governmental agencies, departments or officials.

(h) Contractor shall actively recruit minority subcontractors and women subcontractors or subcontractors with substantial minority or women representation among their employees.

(i) Contractor shall include the provisions of this Section in every subcontract, so that such provisions will be binding upon each subcontractor.

(j) Contractor obligations under this Section are limited to Contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

## ARTICLE VIII

### MISCELLANEOUS

8.1 Alternative Dispute Resolution. With respect to any dispute under this Agreement, any party may submit such dispute (within five (5) days of the occurrence of such dispute) to a panel of three (3) arbitrators of the American Arbitration Association to conduct a binding arbitration of such dispute in Lancaster, Pennsylvania, with no right of judicial appeal, except as required pursuant to the Uniform Arbitration Act of 1980 (P.L. 693, No. 142), 42 Pa. C.S.A. sections 7302 et seq. (2001) (the "Act"). Each of the three (3) arbitrators shall have at least five (5) years' experience in convention center and hotel design, construction, development, operation, management or ownership, one (1) to be appointed by each party. If the parties have not jointly initiated arbitration within such five (5) days, the arbitration may be initiated by any party by giving notice to the others of the date, which shall be not less than (5) days after delivery of notice. If any party fails to appoint an arbitrator within the specified time, the American Arbitration Association shall select such arbitrator. The parties hereby agree that such arbitration proceeding shall be prosecuted without delay and that such proceeding shall be concluded and decision rendered thereon within thirty (30) days after the commencement thereof, it being recognized and agreed that any delay will materially and adversely affect the Facilities. Any arbitration under this Agreement shall be in accordance with the rules of the American Arbitration Association. The decision of the arbitrators shall be binding upon the parties and no appeal of any kind of the decision shall be made by either party except as required by the Act. The costs and expenses of the arbitration proceedings shall be paid by the non-prevailing party.

8.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns. No party shall assign or transfer any rights hereunder or interest herein without the Approval of the other parties, provided that PSP, without Approval of LCCCA or RACL, may assign this Agreement to any entity in which an affiliate of High Industries, Inc. has an equity interest and exercises management control. Unless specifically stated to the contrary in any

Approval to an assignment, no assignment will release or discharge the assignor from any duty or responsibility hereunder.

8.3 Headings. The headings of Sections and Paragraphs herein are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of this Agreement or any provisions hereof.

8.4 Counterparts. This Agreement may be executed in one or more counterparts having the signatures of the parties and each such counterpart shall, for all purposes, be deemed an original, but all such counterparts shall constitute but one and the same instrument.

8.5 Force Majeure. A delay in or failure of performance by any party hereto shall not constitute a default, nor shall any party be held liable for loss or damage, if and to the extent that such delay, failure, loss or damage is caused by Force Majeure and all times specified for performance in this Agreement shall be extended by the period of delay resulting from the event of Force Majeure.

8.6 Publicity. Except as otherwise required by law, LCCCA, RACL and PSP covenant and agree to furnish to the other parties for prior Approval all announcements to news media regarding the Facilities and to permit and assist each other party to obtain such publicity in connection with the Facilities as such party reasonably desires.

8.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

8.8 Relationship. Neither this Agreement nor any agreements, instruments, documents or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making any party a partner or joint venturer with any other party and each party agrees that it will not make any contrary assertion, contention, claim or counterclaim in any action, suit or other legal proceedings involving any other party. It is also expressly understood and agreed by LCCCA, RACL and PSP that each party may engage in any other business or investment, including the ownership of or investment in real estate and development, operation, financing and management of hotels and that the other parties shall not have rights in and to any such business or investment or the income or profit derived therefrom.

8.9 Notices. Any notice, consent, approval, statement, demand or other communication which is provided for or required by this Agreement must be in writing, given to all parties to this Agreement and may be, at the option of the party giving notice, delivered in person (including delivery by national overnight couriers such as Federal Express) to any party or may be sent by registered or certified U.S. mail, with postage prepaid, return receipt required. Any such notice or other written communications shall be deemed to have been given (i) in the case of personal delivery, on the date of delivery to the person to whom such notice is addressed as evidenced by a written receipt signed by such person, and (ii) in the case of registered or certified mail, three (3) business days following the day it shall have been posted. For purposes of notice or other written communications, the addresses may be changed at any time by written notice given in accordance with this provision:



(a) If to LCCCA:

The Lancaster County Convention Center Authority  
P.O. Box 1622  
Lancaster, PA 17608  
Attention: C. Ted Darcus, Chairman

with a copy to:

Stevens & Lee  
4750 Lindle Road, 3rd Floor  
Harrisburg, PA 17111  
Attention: Christopher M. Cicconi, Esquire

(b) If to RACL:

The Redevelopment Authority of the City of Lancaster  
120 N. Duke Street  
Lancaster, PA 17603  
Attention: Charles H. Simms, Jr., Chairman

with a copy to:

Blakinger, Byler & Thomas, P.C.  
28 Penn Square  
Lancaster, PA 17603  
Attention: Frank P. Mincarelli, Esquire

(c) If to PSP:

Penn Square Partners  
1853 William Penn Way  
Lancaster, PA 17605-0008  
Attention: Nevin D. Cooley, President

with a copy to:

Ballard Spahr Andrews & Ingersoll, LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103  
Attention: Richard R. Goldberg, Esquire

The parties each agree that upon giving of any notice, it shall use its reasonable efforts to advise the others by telephone or telecopier that a notice has been sent hereunder. Such telephonic or telecopier advice shall not, however, be a condition to the effectiveness of notice hereunder.

8.10 Costs and Attorneys' Fees. In any proceeding arising under this Agreement, including any arbitration pursuant to Section 7.1 hereof, the prevailing party(ies) shall be entitled to recover the costs of the proceeding, as well as reasonable attorneys' fees and expenses before and at trial, on appeal, in bankruptcy and in post judgment collection, as such post judgment costs may be awarded by the court.

8.11 Exhibits. All exhibits attached to this Agreement are incorporated into this Agreement by reference thereto. Such exhibits may be updated or otherwise modified from time to time by the agreement of all of the parties.

8.12 Entire and Final Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, superseding all prior agreements or understandings, oral or written, including, without limitation, the Joint Development Agreement between the Lancaster County Convention Center Authority and Penn Square Partners dated December 20, 2001.

8.13 Severability. If any provision of this Agreement or the application of any provision to any person or circumstance is or becomes invalid or unenforceable to any extent, then the remainder of this Agreement and the application of such provisions to any other any other person or circumstances shall not be affected by such invalidity or unenforceability and shall be enforced to the greatest extent permitted by law.

8.14 Recitals. All of the recitals set forth at the outset of this Agreement are incorporated into, and form a material part of, this Agreement.

**[Remainder of this page is blank.]**

IN WITNESS WHEREOF, LCCCA, RACL and PSP have executed this Agreement under seal as of the date first above written.

**LCCCA:**

THE LANCASTER COUNTY CONVENTION  
CENTER AUTHORITY

By: C. Ted Darcus  
C. Ted Darcus, Chairman

**RACL:**

THE REDEVELOPMENT AUTHORITY OF THE  
CITY OF LANCASTER

By: Charles H. Simms  
Charles Simms, Chairman

**PSP:**

PENN SQUARE PARTNERS, a Pennsylvania  
limited partnership

By: Penn Square General Limited Partnership, GP

By: Penn Square General Corporation, its general  
partner

By: Nevin D. Cooley  
Nevin D. Cooley, President

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