

**PROFESSIONAL SERVICES DEVELOPMENT AGREEMENT**

**between**

**THE LANCASTER COUNTY CONVENTION CENTER AUTHORITY,  
as Owner,**

**and**

**HIGH ASSOCIATES, LTD., a Pennsylvania limited liability company,  
as Developer**

---

**TABLE OF CONTENTS**

|   | <u>Page</u> |
|---|-------------|
| <b>ARTICLE 1. DEFINITIONS, TERMS AND REFERENCES.....</b>                      | <b>2</b>    |
| 1.1 <u>Definitions</u> .....  | 2           |
| <b>ARTICLE 2. PROJECT DEVELOPMENT .....</b>                                   | <b>6</b>    |
| 2.1 <u>Existing Agreement Superseded</u> .....                                | 6           |
| 2.2 <u>Developer’s Duties and Obligations; Owner’s Authority</u> .....        | 7           |
| 2.3 <u>Convention Center Standards of Design</u> .....                        | 7           |
| 2.4 <u>Joint Design</u> .....   | 7           |
| 2.5 <u>Development Services</u> .....   | 7           |
| 2.6 <u>Funding and Payment</u> .....  | 13          |
| 2.7 <u>Authorized Representatives</u> .....                                   | 13          |
| <b>ARTICLE 3. DEVELOPMENT FEE AND EXPENSES .....</b>                          | <b>14</b>   |
| 3.1 <u>Development Fee</u> .....  | 14          |
| 3.2 <u>Reimbursement of Developer’s Expenses and Reimbursable Costs</u> ..... | 14          |
| 3.3 <u>Payment</u> .....  | 14          |
| 3.4 <u>Calculation</u> .....  | 14          |
| 3.5 <u>Procedures</u> .....   | 14          |
| 3.6 <u>Early Termination</u> .....  | 15          |
| 3.7 <u>Full Payment</u> .....   | 15          |
| <b>ARTICLE 4. DEFAULT AND REMEDIES.....</b>                                   | <b>15</b>   |
| 4.1 <u>Default</u> .....  | 15          |
| 4.2 <u>Remedies of Owner and Developer</u> .....                              | 16          |
| 4.3 <u>No Waiver</u> .....  | 16          |
| <b>ARTICLE 5. TERMINATION.....</b>  | <b>16</b>   |
| 5.1 <u>Termination Event</u> .....  | 16          |
| 5.2 <u>Right to Terminate</u> .....   | 16          |
| 5.3 <u>Disposition of Work Product Upon Termination</u> .....                 | 17          |
| 5.4 <u>Termination Fee</u> .....  | 17          |
| <b>ARTICLE 6. REPRESENTATIONS AND WARRANTIES.....</b>                         | <b>17</b>   |
| 6.1 <u>Representations and Warranties of Developer</u> .....                  | 17          |
| 6.2 <u>Representations and Warranties of Owner</u> .....                      | 17          |

**ARTICLE 7. MISCELLANEOUS ..... 18**

7.1 Alternative Dispute Resolution ..... 18

7.2 Successors and Assigns ..... 18

7.3 Headings ..... 18

7.4 Counterparts ..... 19

7.5 No Liability ..... 19

7.6 Payment Defaults ..... 19

7.7 Force Majeure ..... 19

7.8 Access ..... 19

7.9 Permits ..... 19

7.10 Publicity ..... 19

7.11 Governing Law ..... 20

7.12 Relationship ..... 20

7.13 Notices ..... 20

7.14 Costs and Attorneys' Fees ..... 21

7.15 Entire and Final Agreement ..... 21

7.16 Cooperation ..... 21

7.17 Severability ..... 21

**EXHIBITS**

A Project Program

**PROFESSIONAL SERVICES DEVELOPMENT AGREEMENT**

THIS PROFESSIONAL SERVICES DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the 9<sup>th</sup> day of November 2005, by and between **THE LANCASTER COUNTY CONVENTION CENTER AUTHORITY**, a body politic and corporate existing under the laws of the Commonwealth of Pennsylvania ("Owner"), and **HIGH ASSOCIATES, LTD.**, a Pennsylvania limited liability company ("Developer").

**WITNESSETH**

WHEREAS, Owner is a public instrumentality of the Commonwealth of Pennsylvania (the "Commonwealth") 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 (the "City"), County of Lancaster (the "County"), Pennsylvania; and

WHEREAS, Owner believes that the general welfare and economic development, stability and prosperity of the people of the City, the County and the Commonwealth are directly dependent upon the continual encouragement, promotion, attraction, development, stimulation, growth and expansion of business, commerce and tourism; and

WHEREAS, Owner also believes that the attraction of conventioners, business travelers, tourists, vacationers, and other visitors to the City and the County encourages, fosters and stimulates such general welfare and economic development, stability and prosperity for citizens of the City, the County and the Commonwealth and generally serves as a valuable asset to the City, the County, the Commonwealth and its and their citizens, merchants and business interests; and

WHEREAS, the Redevelopment Authority of the City of Lancaster is a body politic and corporate existing under the laws of the Commonwealth of Pennsylvania ("RACL"); and

WHEREAS Owner and RACL have agreed to subject property owned by each of them to a Condominium Declaration (the "Condominium Declaration") known as the Penn Square Hotel and Convention Center, a Condominium to be recorded in the Land Records of Lancaster County (the "Condominium") in accordance with their agreement; and

WHEREAS, Owner will own the premises known as Unit 1 as described in the Condominium (the "Convention Center Premises"); and

WHEREAS, RACL will own the premises known as Unit 2 as described in the Condominium (the "Hotel Premises"); and

WHEREAS, Owner plans to construct the Convention Center on the Convention Center Premises; and

WHEREAS, RACL plans to construct the Hotel on the Hotel Premises; and

WHEREAS, Developer is experienced in the development and re-development of commercial real estate ventures; and

WHEREAS, Developer is familiar with the requirements for development of both the Convention Center and the Hotel and the design and operational efficiencies that can be obtained through the use of a common developer; and

WHEREAS, RACL and Hotel Operator have engaged the services of Developer pursuant to that certain Development Agreement dated 11/19/05; and

WHEREAS, Owner and Developer previously entered into a Professional Services Development Agreement dated December 20, 2001 ("Existing PSDA"); and

WHEREAS, Owner desires to terminate the Existing PSDA and re-engage Developer per the terms of this Agreement to render professional development services to Owner in connection with the development of the Convention Center.

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 1.

### 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 2.4.4 herein.

Agreement means this Professional Services 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 shall mean Cooper Carry Architects, Inc., 3520 Piedmont Road, NE Suite 100, Atlanta, Georgia 30505.

Budget/Schedule Response Letter shall have the meaning set forth in Section 2.4.3 herein.

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

City shall have the meaning set forth in the recitals hereto.

Commonwealth shall have the meaning set forth in the recitals hereto.

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

Concealed Conditions means latent, subsurface or otherwise concealed physical conditions which materially differ from those normally encountered and generally recognized as inherent in construction activities of the character provided for in the Contracts and Construction Contracts.

Convention Center shall have the same meaning as set forth in the Condominium Declaration.

Construction Contracts means any and all contracts entered into between Owner and the Contractors for the construction of all or any portion of the Project.

Contractors means one or more construction manager, general contractor or prime contractors under the Construction Contracts, which shall be selected and employed by Owner.

Contracts means any and all contracts, agreements, permits, licenses or other documents or instruments, other than the Construction Contracts, entered into between Owner and a third party to perform all or any portion of the Work.

County shall have the meaning set forth in the recitals hereto.

Design Development Budget means the budget of Project development costs in sixteen (16) divisions prepared by Developer and accompanying the Design Development Plans.

Design Development Plans means the design development plans prepared by the Architect.

Design Team shall have the meaning set forth in Section 2.4.1 herein.

Developer's Authorized Representative means Thomas D. Smithgall or any replacement identified by Developer in a written notice to Owner.

Developer's Expenses and Reimbursable Costs means documented, actual costs and expenses properly incurred by Developer on Owner's behalf with respect to the development of the Project, such as (i) reasonable travel and subsistence expenses, (ii) fees paid for securing the approval of Agencies, and (iii) reasonable expenses for reproduction and handling of Schematic Plans, Design Development Plans and Final Plans and Specifications, all in amounts

equal to or less than the amounts set forth in the Final Project Budget for such categories of expenses and costs, or as otherwise Approved by Owner.

Development Fee shall have the meaning set forth in Section 3.1 herein.

Draws shall have the meaning set forth in Section 2.5 herein.

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

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

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 the Project prepared by the Architect, as amended or supplemented from time to time as provided in this Agreement.

Final Project Budget means the final budget for the Project based the Construction Contracts and other Contracts prepared by Developer and accompanying the Final Plans and Specifications.

Final Project Schedule means the final schedule for the development and construction period of the Project prepared by the Developer and accompanying the Final Plans and Specifications.

Force Majeure means any of the following which may have a Material Adverse Effect on the Project or market in which the Project operates (i) an act of God, (ii) acts of war, (iii) acts of terrorism, (iv) civil disturbance, (v) labor disputes among Project 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 the Project not caused by the act or omission of the Developer), or (ix) any other causes, other than downturns in the local or national economy, that are beyond the control of Developer.

Hotel means the hotel, intended to be developed by the Owner and Hotel Operator as a Marriott Hotel on the Hotel Premises that will contain approximately two hundred ninety-four (294) guest rooms, and to include, at the discretion of the Hotel Owner, 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 such other amenities and features characteristic of a full-service Marriott hotel.

Hotel Development Agreement means that certain Hotel Development Agreement dated as of \_\_\_\_\_ between Hotel Owner, Hotel Operator and Developer, as the same

may be amended, modified, supplemented or replaced, which provides for the engagement by Hotel Owner and Hotel Operator of Developer to perform development services in connection with the Hotel.

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

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

Hotel Operator means Penn Square Partners, a Pennsylvania limited partnership.

Hotel Owner shall have the meaning set forth in the recitals hereto.

Joint Development Agreement shall have the meaning set forth in the recitals hereto.

Material Adverse Effect means any circumstance or event which individually or in the aggregate could have a material adverse effect on the Project.

Owner's Authorized Representative means Owner's designated representative with authority to make decisions hereunder, or any replacement identified by Owner in a written notice to Developer, each of which should be subject to Approval by Developer.

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

Plans and Specifications Response Letter shall have the meaning set forth in Section 2.4.5 herein.

Prime Rate means the "prime rate" as published in *The Wall Street Journal* under the heading "Prime Rate" on the "Money Rates" page, or in the event *The Wall Street Journal* ceases publication or ceases to publish the prime rate, as published in a comparable publication in which the prime rate is readily ascertainable and Approved by Owner and Developer.

Project means the Premises, the Convention Center and the FF&E, together with landscaping, hardscaping and other amenities and features to be included in the Plans and Specifications.

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

Project Permits shall have the meaning set forth in Section 2.4.4 herein.

Project Program shall have the meaning set forth in Section 2.2 herein.



Project Schedule means each schedule for Completion of the Project as prepared by Developer and Approved by Owner and Hotel Owner, including the Final Project Schedule. Any and all modifications or amendments to the Project Schedule shall be subject to the Approval of Owner, Developer and Hotel Owner.

Schematic Budget means the budget for the Project including preliminary estimates of Project Costs by category prepared by Developer and accompanying the Schematic Plans.

Schematic Plans means the schematic plans prepared by the Architect.

Sketch Budget means the area and volume budget for the Project prepared by Developer and accompanying the Sketch Plans.

Sketch Plans means the initial conceptual plans prepared by the Architect.

Termination Event shall have the meaning set forth in Section 5.1 herein.

Work means obtaining all applicable building permits and other governmental approvals and consents and approvals requested for the Project; preparing the Plans and Specifications and the Project Budget; consulting with Owner with respect to the selection of the Architect, interior designers, contractors (including the Prime Contractors) and engineers; recommending and consulting with Owner with respect to the selection of landscaping, lighting, kitchen, laundry systems, mechanical, electrical, signage and other consultants; administering and monitoring the Construction Contract and all Contracts; consulting with and making recommendations to Owner with respect to purchasing the FF&E; managing, administering and monitoring the construction and installation of the Hotel and the FF&E and the professional services directly related thereto including, without limitation, to the extent not already fully obtained or performed, all design services, all planning activities and budget preparation, as well as the administration and oversight of all related technical and engineering services; all as necessary to cause Final Completion of the Project in accordance with the Plans and Specifications. "Work" shall not include financial advisory services, legal services, services related to pre-opening and marketing of the Project and services generally relating to operations of the Project.

## ARTICLE 2.

### PROJECT DEVELOPMENT

2.1 Existing Agreement Superseded. The Existing PSDA is hereby terminated immediately and replaced in its entirety by this Agreement on the date hereof.

2.2 Developer's Duties and Obligations; Owner's Authority. Owner, by this Agreement, does hereby appoint and constitute Developer as its exclusive independent contractor to act on Owner's behalf as Developer of the Project and for the purposes expressly set forth in this Agreement, and Owner agrees that, until this Agreement is rightfully terminated after the occurrence of a Termination Event or an Event of Default or by mutual agreement of Owner and Developer, it shall not, directly or indirectly, perform or otherwise arrange for the performance by third parties of Developer's duties and obligations hereunder.

2.3 Convention Center Standards of Design. Owner and Developer acknowledge and agree that the Convention Center shall be developed as a first-class urban convention center facility and that it shall be developed generally in accordance with the spatial program and the preliminary cost estimate set forth on Exhibit "A" attached hereto and made a part hereof by this reference (the "Project Program").

2.4 Joint Design. Owner and Developer acknowledge that the efficient development and construction of the Project requires integration with the development and construction of the Hotel and related amenities. Developer shall undertake to perform its obligations under this 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.

2.5 Development Services. Developer, on behalf of Owner, shall perform, accomplish and complete, or cause to be performed, accomplished and completed, in accordance with and as limited by this Agreement, the development services consisting of the following:

2.5.1 Design Team. Developer shall assist Owner in assembling a team of design professionals for the Project, which shall include the Architect (the "Design Team"). In this role, Developer shall coordinate requests for and organize proposals, coordinate consultant interview meetings, and assist Owner in negotiating the necessary contractual relationships with the Design Team, including, without limitation, professionals providing architectural, 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 Project.

2.5.2 Design Process. Developer shall in conjunction with the services of the Design Team and Contractors (i) coordinate and manage the design process, including all appropriate Design Team meetings, design direction and approvals, schedules, budgets and such other miscellaneous coordination as may be required to undertake the bidding and construction of the Project, and (ii) advise and coordinate in conjunction with Owner presentations before the Agencies and citizen groups or other similar organizations having an interest in the Project to the extent deemed necessary by Owner and Developer in connection with the design process.

2.5.3 Budget and Schedule. Developer shall prepare the Sketch Budget, Schematic Budget, Design Development Budget, Final Project Budget and the Project Schedule and all required modifications thereto, all of which shall be subject to the Approval of Owner, as more fully described below. Developer shall submit to Owner for Owner's Approval the Sketch

Budget together with the initial Project Schedule within six (6) months after the date of this Agreement and, thereafter, Schematic Budget together with an updated Project Schedule, Design Development Budget together with a second updated Project Schedule, and Final Project Budget together with the Final Project Schedule when the same have been completed (but with respect to the Final Project Budget and final Project Schedule, in no event later than thirty (30) days prior to commencement of construction of the Convention Center). Owner shall communicate its Approval or disapproval to Developer in writing (the "Budget/Schedule Response Letter") of (i) the Sketch Budget and/or the initial Project Schedule within twenty (20) days after submission, (ii) the Schematic Budget and/or updated Project Schedule within twenty (20) days after submission, (iii) the Design Development Budget and/or second updated Project Schedule within twenty (20) days after submission, and (iv) the Final Project Budget and/or the Final Project Schedule within thirty (30) days after submission. If Owner fails to submit the Budget/Schedule Response Letter within such twenty (20) day period, or such thirty (30) day period, as the case may be, the items submitted shall not be deemed Approved. In the event that Owner disapproves of the proposed Sketch Budget, Schematic Budget, Design Development Budget, Final Project Budget and/or any Project Schedule, in whole or in part, such reasons for disapproval shall be set forth in the Budget/Schedule Response Letter, or if Owner failed to deliver the Budget/Schedule Response Letter, then Owner shall immediately thereafter notify Developer in writing of the reasons for disapproval. Developer shall, thereafter, cause the Architect and other required Design Team members and consultants to modify the proposed Sketch Budget, Schematic Budget, Design Development Budget, Final Project Budget and/or applicable Project Schedule, as the case may be, to be consistent with the comments of Owner as set forth in the Budget/Schedule Response Letter. The proposed modified Sketch Budget, Schematic Budget, Design Development Budget, Final Project Budget and/or applicable Project Schedule shall be resubmitted to Owner and Owner and Developer shall have ten (10) days from the date of such resubmission to reach agreement. If Owner and Developer fail to reach agreement within such ten (10) day period, then such dispute shall be submitted to binding arbitration in accordance with Section 7.1 hereof. The Project Schedule shall automatically be extended by one day for each day beyond the twenty (20) day period or thirty (30) day period, as the case may be, in which Owner fails to submit the Budget/Schedule Response Letter and for each day any disputes under this Section 2.4.3 are being arbitrated. Developer shall update the Project Budget and Project Schedule during the construction process as necessary to reflect Change Orders, events of Force Majeure and current revisions in the projections of estimated funds available, time for Completion and the recordation of actual Developer's Expenses and Reimbursable Costs as such are incurred, and whenever Developer shall become aware of circumstances substantially affecting the Project Budget or Project Schedule. Developer shall submit a close-out Project Budget to Owner's Authorized Representative at the time of Completion of the Project. Notwithstanding anything contained herein, the parties acknowledge that the Sketch Budget, the Schematic Budget, and the Design Development Budget are completed and approved.

2.5.4 Project Permits and other Approvals. Developer shall analyze, process and pursue the issuance of all regulatory permits, licenses, authorizations and approvals required by law for the Completion of the Project (collectively, the "Project Permits") and use commercially reasonable efforts to obtain any approvals required from Hotel Owner, Manager, Marriott and any lenders providing financing for the Convention Center or the Hotel. Pursuit of the Project

Permits shall include, without limitation (i) filing of all appropriate applications 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 Project Permits (“Agencies”), and (ii) advising and coordinating in conjunction with Owner presentations before the Agencies and citizen groups or other similar organizations having an interest in the Project to the extent deemed necessary by Owner and Developer to obtain the Project Permits. All applications for Project Permits shall be consistent with the Plans and Specifications. When appropriate, Developer shall file applications for Project Permits jointly with applications for permits and approvals for the Hotel.

2.5.5 Plans and Specifications. Developer shall supervise the development of the Sketch Plans, Schematic Plans, Design Development Plans and Final Plans and Specifications and all required modifications thereto, all of which shall be subject to the Approval of Owner, as more fully described below, and shall coordinate the development of the Sketch Plans, Schematic Plans, Design Development Plans and Final Plans and Specifications consistent with the Joint Development Agreement, the Hotel Development Agreement, the Hotel License Agreement and the Hotel Management Agreement. Developer shall solicit and process all required approvals of Hotel Owner under the Joint Development Agreement. Developer shall submit to Owner for Owner's Approval, the Plans and Specifications in the following four (4) phases as and when the same have been completed: (i) Sketch Plans within six (6) months after the date of this Agreement; (ii) subsequently, Schematic Plans; (iii) subsequently, Design Development Plans; and (iv) subsequently, Final Plans and Specifications. Owner shall communicate its Approval or disapproval to Developer in writing (the “Plans and Specifications Response Letter”) of (i) the Sketch Plans within twenty (20) days after submission, (ii) the Schematic Plans within twenty (20) days after submission, (iii) the Design Development Plans within twenty (20) days after submission, and (iv) the Final Plans and Specifications within thirty (30) days after submission. If Owner fails to submit the Plans and Specifications Response Letter within such twenty (20) day period or thirty (30) day period, as the case may be, the items submitted shall not be deemed Approved. In the event that Owner disapproves of the proposed Sketch Plans, Schematic Plans, Design Development Plans or Final Plans and Specifications, in whole or in part, such reasons for disapproval shall be set forth in the Plans and Specifications Response Letter, or if Owner failed to deliver the Plans and Specifications Response Letter, then Owner shall immediately thereafter notify Developer in writing of the reasons for disapproval. Developer shall, thereafter, cause the Architect and other required Design Team members and consultants to modify the proposed Plans and Specifications to be consistent with the comments of Owner as set forth in the Plans and Specifications Response Letter. The proposed modified Plans and Specifications shall be resubmitted to Owner and Owner and Developer shall have ten (10) days from the date of such resubmission to reach agreement. If Owner and Developer fail to reach agreement within such ten (10) day period, then such dispute shall be submitted to binding arbitration in accordance with Section 7.1 hereof. The Project Schedule shall automatically be extended by one day for each day beyond the twenty (20) day period or thirty (30) day period, as the case may be, in which Owner fails to submit the Plans and Specifications Response Letter and for each day any disputes under this Section 2.4.5 are being arbitrated. Notwithstanding anything contained herein, the parties acknowledge that the Sketch Plans, the Schematic Plans, and the Design Development Plans are completed and approved

2.5.6 Construction Process. Developer shall communicate and interface with the Design Team members and Contractors on a regular and continuing basis with respect to construction management services provided by the Design Team members and Contractors under the Contracts and Construction Contracts. Developer shall interface with the Design Team members and Contractors with respect to the Design Team members' and Contractors' services in drafting bid documents, specifications and procedures, the selection of qualified bidders for the construction of the Project and the bidding process, including preparation of forms of requests for proposals and bidding procedures, collection and organization of bid information, contractor interviews, and value engineering proposals. Developer shall report to Owner's Authorized Representative regarding the provision of construction management services by the Design Team members and Contractors pursuant to the Contracts and Construction Contracts.

2.5.7 Contracts. Developer shall act as a consultant to Owner in connection with the award of any Contracts (including, without limitation, agreements with the Design Team) covering the services, materials and construction upon, to or concerning the Project. Following execution of such Contracts, Developer shall monitor performance of such Contracts for and on behalf of Owner.

2.5.8 Change Orders. Change Orders in individual amounts of less than One Hundred Thousand Dollars (\$100,000) and in the aggregate less than Five Hundred Thousand Dollars (\$500,000), shall be made upon the Approval of Developer and shall not require, but Developer may request at its election, the Approval of Owner. Except for those Change Orders to be made solely upon Developer's Approval, as hereinbefore provided in this Section, and Owner initiated Change Orders, Developer shall submit to Owner for Approval all Change Orders and make recommendations to Owner regarding Approval of such Change Orders. Developer shall process and coordinate with the Architect and Contractors regarding implementation of all Change Orders.

2.5.9 Coordination. Developer shall coordinate, in conjunction with the Architect and the appropriate Contractors, the coordination of all aspects of the development and construction of the Project with the development and construction of the Hotel, including without limitation all appropriate design and construction meetings, design clarifications and Change Orders, obtaining of Project Permits and permits and approvals for the construction of the Hotel, the Project Budget and development budget for the Hotel, and the Project Schedule and the development schedule for the Hotel.

2.5.10 Records. Developer shall keep and maintain copies of all Project-related records, including Project Permits, Contract documents, Change Orders, meeting minutes for Design Team and construction meetings, vouchers, statements, receipted bills and invoices and records covering all collections, disbursements and other data in connection with the activities and services of Developer under this Agreement. Developer shall permit Owner, or any person designated by Owner, at any reasonable time, to audit and make copies of or extracts from the books, records and accounts of Developer relating to the Project. Developer shall retain such books, records and accounts for a period of three (3) years after this Agreement terminates, at which point Developer, at Owner's sole cost and expense, shall either deliver all such books,

records and accounts to Owner or otherwise dispose of such materials at the written direction of Owner.

#### 2.5.11 Insurance.

2.5.11.1 Developer shall require that the Contractors and any other contractor performing Work on the Premises or the Project, at all times during performance of their portion of the Work, maintains insurance reasonably satisfactory to Owner, including but not limited to, builder's risk insurance in an amount not less than the insurable value of the Project, worker's compensation insurance, employer's liability insurance and insurance against liability for injury to persons and property arising out of all of the Prime Contractors', or such other contractors', operations and the use of owned, non-owned or hired automotive equipment in the pursuit of all such operations.

2.5.11.2 Owner and Developer shall place and maintain in force insurance of the type, class and amount set forth below, but in no event shall the coverage, limits and amounts of said insurance be less than that which will provide protection to Owner and Developer as follows:

(i) Worker's compensation insurance (including employer's liability insurance) covering all employees of Owner and Developer, respectively, in an amount sufficient to provide statutory benefits as required by the laws of the Commonwealth of Pennsylvania.

(ii) Comprehensive general liability insurance (including protective liability coverage on operations of independent contractors engaged in construction and also blanket contractual liability insurance) on an "occurrence" basis for the benefit of Owner and Developer, each as named insureds, against claims for "personal injury," including without limitation, bodily injury, death and property damage, in such amount or amounts as Owner and Developer may from time to time reasonably require but in no event less than \$2,000,000 per occurrence with umbrella coverage of not less than \$20,000,000; such insurance shall also include coverage against liability for bodily injury and property damage arising out of the use by or on behalf of Owner or Developer, of any owned, non-owned or hired automotive equipment.

All policies of insurance shall: (i) name and designate Owner and Developer as named insureds and (ii) be issued by insurers and be in forms and for amounts Approved by Owner and Developer. Without limiting the foregoing, all insurance shall be effected under valid and enforceable policies issued by insurers of recognized responsibility, and shall, to the extent obtainable, provide (a) that such policies shall not be canceled without at least thirty (30) day's prior written notice to each insured named therein and to the holder of any mortgage to whom loss thereunder may be payable, and (b) that any loss shall be payable to Owner and Developer as their interests may appear.

2.5.12 Employees. Developer shall allocate to the Project such personnel as may be required to properly perform Developer's obligations hereunder. Staffing shall include Thomas D. Smithgall, Senior Vice President of Development, or such other person of comparable experience and authority as may be designated by Developer and Approved by Owner. The compensation, retention and performance of Developer's employees shall be the sole responsibility of Developer. Developer shall be responsible for complying with all laws and regulations affecting such employment, including the provision of any benefits or compensation required by statute or contract.

2.5.13 Information. Developer shall furnish to Owner or parties designated by Owner: (i) copies of all Project Permits or, as to Project Permits previously furnished, any revisions thereto; (ii) copies of all insurance certificates relating to the construction of the Project; (iii) copies of any Contracts; (iv) copies of all labor, lien, payment or performance bonds posted by Contractor(s); (v) copies of Contractor(s)' schedules and subsequent revisions thereto, (vi) copies of all testing and inspection reports describing construction outside acceptable tolerance ranges; and, (vii) upon request, copies of all other development and construction documentation related solely to the Project.

2.5.14 Communication. Developer shall communicate and interface with Owner's Authorized Representative on a reasonable, regular and continuing basis and cause to be performed the necessary distribution of information as required to keep the Owner's Authorized Representative apprised of the status of the Project design, Project Budget, Project Schedule and Plans and Specifications. Developer shall coordinate Project meetings on a regular and continuing basis (and in no event less frequently than once per month) to review the status of the development of Plans and Specifications, Project Schedule and Project Budget, the processing of Project Permits and the process of development and construction of the Project. Developer shall provide Owner's Authorized Representative with reasonable advance notice of all Project meetings. Any decisions made at Project meetings in which an Owner's Authorized Representative participates and reflected in the meeting minutes distributed to Owner's Authorized Representative will be deemed approved unless written objection is received by Developer on or before six (6) days following distribution of the minutes.

2.5.15 Project Monitoring. Developer shall make visits to the Project site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work under the Construction Contracts and the Contracts, and to determine in general if such Work is proceeding in accordance with the relevant documents. During such visits to the site and on the basis of its on-site observations, Developer shall keep Owner informed, by means of written reports to Owner's Authorized Representative, of the progress of the Work. Developer shall monitor the services of the Contractors and shall make recommendations to Owner as to disapproval or rejection of Work failing to conform to the Contracts or Construction Contracts. Upon notification that an area of the Project is complete, and prior to the opening of said area, Developer, in conjunction with the Architect and Contractors, shall inspect the area and create or cause to be created a punch list of items requiring additional or corrective Work, and make recommendations to the Owner as to the exercise of Owner's rights to seek compliance by the Contractors under the Construction Contracts, and by other parties rendering services or furnishing materials in connection with the construction and fit-up of the Project, with their

obligations to perform all Work necessary to cure all defects or deficiencies resulting in non-conforming Work.

2.5.16 Project Close-Out Services; Final Completion Report. Developer, in conjunction with the Architect and Contractors, shall coordinate all appropriate Project close-out services, including completion of all construction punch list items, approval of the certificate of substantial completion, approval of the final application for payment and final release of lien waiver form. Developer shall furnish to Owner a completed Project report within sixty (60) days after Final Completion describing all aspects of the completed Project, delineating the specific areas of the Project disapproved or rejected by Developer and setting forth grounds for such disapproval or rejection. In conjunction with such report the Developer shall direct the Architect and applicable Contractors to furnish copies of the following: (i) certificate of substantial completion from the Architect, certificate of occupancy, and any attachments or stipulations thereto; (ii) all final testing and balancing reports; (iii) all final as-built drawings, specifications, equipment manuals and maintenance-related documents, warranties and guaranties; and (iv) all flame-proofing and other fire-life safety-related certificates and all other permits, licenses and approvals relating to the Project. Should any such attachments be unavailable at the time Developer's report is submitted to Owner, such attachments shall be furnished as soon thereafter as practicable.

2.6 Funding and Payment. It is understood and agreed that all Developer's Expenses and Reimbursable Costs provided in the Project Budget and other reasonable and necessary expenses incurred or payable by Developer in connection with the development of the Project pursuant to the terms of this Agreement, to the extent the same are provided in the Project Budget or as otherwise Approved by Owner in writing, shall be funded by Owner in accordance with the Project Budget, or otherwise in accordance with the provisions of this Agreement. Owner shall advance the sums required for the development and construction of the Project in accordance with the Project Budget and the procedures set forth herein. The Developer shall coordinate with the Architect the processing of all Project payment requisitions (hereinafter referred to as "Draws") for payment monthly in accordance with the Contracts and Construction Contracts. All Draws required to be advanced by Owner in connection with the development of the Project shall be drawn in accordance with the Project Budget, the Contracts and the Construction Contracts and shall be made monthly. The obligations of the Developer under this Agreement, at all times, shall be conditioned upon the full and timely funding of the Development Fee and the Developer's Expenses and Reimbursable Costs by Owner, as more fully set forth in the Project Budget.

2.7 Authorized Representatives. Owner and Owner's Authorized Representative shall process all communication and correspondence with Developer and Approvals required or contemplated by this Agreement only through Developer's Authorized Representative. The foregoing shall not limit the right of Owner's Authorized Representative to participate in Project meetings and to monitor the development of the Project as otherwise provided in this Agreement. In no event shall Owner's Authorized Representative interfere with Developer's performance of its duties under this Agreement.



## ARTICLE 3.

### DEVELOPMENT FEE AND EXPENSES

3.1 Development Fee. In consideration for the professional services to be provided, as described in this Agreement, by Developer for Owner, Owner agrees to pay Developer a fee in a dollar amount equal to four and one-half percent (4.5%) of the Final Project Budget (including, without limitation, allocated shared cost, exclusive of the costs set forth therein in the categories for land acquisition, including, without limitation, the Watt & Shand Building, financing costs, legal fees, pre-opening expenses, working capital, and other expenses of OWNER (the "Development Fee"). The Development Fee shall be adjusted upward only for increases in the Final Project Budget due to Change Orders (i) required to comply with any laws, orders, rules or regulations of any Agencies issued after the date of the Final Project Budget, (ii) required because of errors and omissions in the Final Plans and Specifications, (iii) which are initiated by Owner, or (iv) resulting from an event of Force Majeure which requires re-performance or reconstruction of the Work.

3.2 Reimbursement of Developer's Expenses and Reimbursable Costs. In addition to the Development Fee, Developer shall be reimbursed for all of Developer's Expenses and Reimbursable Costs.

3.3 Payment. Owner shall pay the Development Fee and shall reimburse Developer for Developer's Expenses and Reimbursable Costs in accordance with the following:

3.3.1 Installments. The Development Fee shall be paid in installments in the following amounts and at the following times:

3.3.1.1 ninety percent (90%) of the Development Fee less all fees paid pursuant to the Existing Professional Services Development Agreement (acknowledged by the parties to be in the amount of \$ \_\_\_\_\_ as of the date of execution of this Agreement) spread over equal monthly installments over the projected period of development and construction of the Project from the date hereof until substantial completion of the Project; and

3.3.1.2 the ten percent (10%) balance of the Development Fee (including any upward adjustments for Change Orders as set forth in Section 3.1 hereof) when Completion of the Project has occurred.

3.4 Calculation. The amount of each installment of the Development Fee shall be based on the then current Project Budget. Prior to the establishment of a Project Budget, the amount of each installment of the Development Fee shall be based on the preliminary cost estimate set forth on the Project Program or as otherwise agreed in writing by Owner and Developer.

3.5 Procedures. Prior to commencement of construction of the Project, the current installment of the Development Fee shall be paid on or before the tenth (10<sup>th</sup>) day of each month

and Developer shall be reimbursed for Developer's Expenses and Reimbursable Costs within thirty (30) days after submission to Owner of a statement therefor, together with such supporting material and detail as may be reasonably required by Owner. After commencement of construction of the Project, the current installment of the Development Fee and reimbursement for Developer's Expenses and Reimbursable Costs for the prior month shall be paid on or before the tenth (10<sup>th</sup>) day of each month, provided that with respect to Developer's Expenses and Reimbursable Costs, Developer has submitted to Owner of a statement therefor, together with such supporting material and detail as may be reasonably required by Owner.

3.6 Early Termination. In the event this Agreement is rightfully terminated in accordance with Article 5 hereof, Developer shall be entitled to and Owner shall pay to Developer that portion of the Development Fee due through the date of termination and Owner shall reimburse Developer for Developer's Expenses and Reimbursable Costs through the date of termination.

3.7 Full Payment. Developer acknowledges and agrees that Owner's payment of the Development Fee and reimbursement of Developer's Expenses and Reimbursable Costs shall constitute the full and complete compensation to Developer for the professional services rendered hereunder and Owner shall have no other payment obligation to Developer for such services.

## **ARTICLE 4.**

### **DEFAULT AND REMEDIES**

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

4.1.1 Any party fails to (i) pay any sum of money within ten (10) days after receipt of written notice that the same is due, provided however that such written notice shall not be required more than twice in any twelve (12) month period after which the failure to pay any sum of money within ten (10) days after the same is due shall be an automatic Event of Default, or (ii) comply with any material provision or requirement contained or referenced in this Agreement which has or may have a material adverse effect upon the development, construction, renovation, conversion, expansion, fit-up, opening or operation of the Project; provided, no default shall occur under this clause (ii) unless written notice shall have been given and thirty (30) days shall have elapsed after receipt of such notice without the cure thereof, provided, however, that if such non-monetary default is not reasonably capable of being cured within such thirty (30) 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 ninety (90) days; or

4.1.2 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.

4.2 Remedies of Owner and Developer. Upon the occurrence and continuation of an Event of Default by either Developer or Owner, each shall have the right as its sole and exclusive remedy to terminate this Agreement. In the event of a termination of this Agreement pursuant to the terms of this Section 4.2: (i) neither party shall have any further liability under this Agreement (except for payment obligations provided in (ii) below) and any and all of its obligations hereunder shall immediately cease; and (ii) other than with respect to payments which have become due and remain unpaid at the time of termination, Owner shall have no further payment obligations to Developer. Owner and Developer shall execute mutual releases fully releasing one another except for the payment of fees owed to the Developer, if any.

4.3 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 5.

### TERMINATION

5.1 Termination Event. A “Termination Event” shall occur hereunder if:

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

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

5.1.3 Any Project Budget projects a total cost over the total cost set forth in the preliminary cost estimate in the Project Program, unless resulting from (i) the direction, request or Approval of Owner, (ii) an event of Force Majeure, or (iii) the requirement of any law, order, rule or regulation of any Agency, and Owner has not Approved such total cost.

5.1.4 Owner provides written notice to Developer on or before commencement of construction of Owner’s intention to abandon the Project.

5.1.5 The Joint Development Agreement is terminated by any party thereto in accordance with its terms.

5.2 Right to Terminate. Upon the occurrence of a Termination Event, either Owner or Developer, upon written notice to the other given within ten (10) days after the Termination Event, shall have the right to terminate this Agreement whereupon all rights, benefits, duties and obligations of Owner and Developer hereunder shall be null and void and neither party shall have

any further duties and obligations hereunder, except that Owner shall pay Developer the portion of the Development Fee payable through and including the date of termination of this Agreement and shall reimburse Developer for all Developer's Expenses and Reimbursable Costs incurred by Developer through and including the date of termination of this Agreement. The parties shall execute mutual releases fully releasing one another except for the payment of fees owed to the Developer, if any.

5.3 Disposition of Work Product Upon Termination. Upon termination of this Agreement by either party, Developer shall promptly deliver to Owner all work product prepared in connection with this Agreement, and shall return all materials delivered to Developer by Owner in connection with Developer's services and obligations under this Agreement.

5.4 Termination Fee. If Owner terminates this Agreement by written notice to Developer upon the Termination Event specified in 5.1.4, Owner shall pay Developer, simultaneously with notice of termination, a termination fee in the amount of One Hundred Fifty Thousand Dollars (\$150,000). The payment of such termination fee in such event shall be in addition to and not in lieu of payment of the portion of the Development Fee payable through and including the date of termination and reimbursement of Developer for all Developer's Expenses and Reimbursable Costs incurred by Developer through and including the date of termination.

## ARTICLE 6.

### REPRESENTATIONS AND WARRANTIES

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

6.1.1 Developer is authorized, and has the power, to enter into this Agreement and to consummate the transactions contemplated hereby.

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

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

6.2 Representations and Warranties of Owner. In order to induce Developer to enter into this Agreement, Owner hereby makes the following representations and warranties:

6.2.1 Owner is authorized, and has the power, to enter into this Agreement and to consummate the transactions contemplated hereby.

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

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

## ARTICLE 7.

### MISCELLANEOUS

7.1 Alternative Dispute Resolution. Any dispute with respect to this Agreement shall be immediately (and in no event later than five (5) days after the dispute has occurred) submitted 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. CSA 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 and the third (3<sup>rd</sup>) to be appointed by the American Arbitration Association. If the parties have not jointly initiated arbitration within such five (5) days, the arbitration may be initiated by either party by giving notice to the other of the date, which shall be not less than (5) days after delivery of notice, in which event the American Arbitration Association shall select two (2) of the three (3) arbitrators. 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 Project. 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.

7.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Owner and Developer and their respective heirs, legal representatives, successors and permitted assigns. Neither Owner nor Developer shall assign or transfer any rights hereunder or interest herein (including, without limitation, monies due or that may become due hereunder) without the Approval of the other party. 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. Nothing contained in this Section 7.2 shall prevent Developer, at Developer's sole cost and expense, from (i) employing such independent consultants and associates as Developer may deem appropriate to assist it in the performance of services hereunder, and (ii) subcontracting services (including to affiliates of Developer), provided Developer shall remain responsible for the performance of services hereunder.

7.3 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.

7.4 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.

7.5 No Liability. No inspection made, approval given or recommendation made by Developer, its agents, employees or representatives shall be deemed to impose any liability upon Developer and no warranties shall be construed to arise by reason of any such inspection, approval or recommendation by Developer, its agents, employees or representatives. Developer shall not be responsible for malfeasance, neglect or failure of any members of the Design Team, the Contractors, vendors or consultants to meet schedules for completion or to perform their duties and responsibilities under their respective agreements or with respect to the Project.

7.6 Payment Defaults. In the event Owner fails to timely pay any sum due for a period of thirty (30) days after the date due hereunder, whether in respect to the Construction Contract or Contracts to be entered into pursuant to this Agreement, or for reimbursement to Developer or in respect of the Development Fee, Developer, in addition to all other rights and remedies available at law or in equity, may terminate or suspend its performance hereunder and may direct that all Work be suspended or canceled, without being liable in any way to Owner or forfeiting Developer's rights to full payment in accordance with the terms hereof. All such sums not paid when due shall bear interest on the unpaid portion from the date that is thirty (30) days after such sums are due at three percent (3%) over the Prime Rate. Should any such sums be collected by or through an, attorney at law, Owner shall in addition be liable for reasonable attorney's fees.

7.7 Force Majeure. A delay in or failure of performance by either party hereto, other than the payment of money, shall not constitute a default, nor shall Owner or Developer 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.

7.8 Access. Owner shall provide access to Developer, the Design Team, the Contractors and their employees and consultants to the Project and endeavor to make all reasonable provisions for Developer to enter upon public and private property for the purpose of carrying out its obligations under this Agreement.

7.9 Permits. Owner and Developer shall cooperate with each other regarding all filings and applications necessary to permit Developer, the Design Team, and the Contractors to obtain the Project Permits from the Agencies for the prosecution and Completion of construction of the Project.

7.10 Publicity. Except as otherwise required by law, Owner and Developer covenant and agree to furnish to the other for its prior Approval all announcements to news media regarding the Project and the Hotel and to permit and assist the other to obtain such publicity in connection with the Project and the Hotel as Owner or Developer, as the case may be, reasonably desires.

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

7.12 Relationship. In the performance of this Agreement, Developer shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making Developer or Hotel Owner, in that capacity, an agent, a partner or joint venturer with Owner or as creating any similar relationship or entity, and Owner agrees that it will not make any contrary assertion, contention, claim or counterclaim in any action, suit or other legal proceedings involving Developer or Hotel Owner, in that capacity, and/or Owner. To the fullest extent permitted by law, Owner hereby acknowledges that Developer shall not have any obligation to Owner other than those expressly set forth in this Agreement. It is also expressly understood and agreed by Developer and Owner that either party may engage in any other business or investment, including the ownership of or investment in real estate and development, operation and management of hotels and that the other party shall not have rights in and to any such business or investment or the income or profit derived therefrom.

7.13 Notices. Any notice, consent, approval, statement, demand or other communication which is provided for or required by this Agreement must be in writing 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:

(i) If to Owner:

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

with a copy to:

Stevens & Lee  
P.O. Box 11670  
Harrisburg, PA 17108-1670  
Attention: Christopher M. Cicconi, Esquire

(ii) If to Developer:

High Associates, Ltd.  
1853 William Penn Way  
Lancaster, PA 17605-0008  
Attention: Mark C. Fitzgerald, President

with a copy to:

Ballard Spahr Andrews & Ingersoll, LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103-7599  
Attention: Richard R. Goldberg, Esquire

Owner and Developer each agree that upon giving of any notice, it shall use its reasonable efforts to advise the other 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.

7.14 Costs and Attorneys' Fees. In any proceeding arising under this Agreement, including any arbitration pursuant to Section 7.1 hereof, the prevailing party 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.

7.15 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.

7.16 Cooperation. Owner and Owner's Authorized Representative shall cooperate with Developer so as to enable Developer to perform its services within the time periods and as otherwise contemplated in this Agreement.

7.17 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.



IN WITNESS WHEREOF, Owner and Developer have executed this Agreement under seal as of the date first above written.

**OWNER:**

THE LANCASTER COUNTY CONVENTION  
CENTER AUTHORITY

By: C. Ted Darcus  
Name: C. Ted Darcus  
Title: Chairman

**DEVELOPER:**

HIGH ASSOCIATES, LTD., a Pennsylvania limited  
liability company

By: High Family Partnership I, LP, a  
Pennsylvania limited partnership,  
its sole member

By: High Family General Corporation,  
a Pennsylvania corporation,  
its general partner

By: Mark C. Fitzgerald  
Mark C. Fitzgerald  
President

**EXHIBIT "A"**

Project Program

Initial Convention Center Spatial Program

- Gross Square Footage: 205,000-210,000 square feet
- Exhibit Space: 45,000-50,000 square feet
- Ballroom Space: 17,000-19,000 square feet
- Meeting Room Space: 10,000-12,000 square feet
- Lobby/Pre-function Space: 38,000-43,000 square feet
- Support Space: 75,000-85,000 square feet
- Food Service: 10,000-11,000 square feet

Preliminary Cost Estimate

The hard costs of construction of the Convention Center shall not exceed \$35,000,000 (increased by CPI beginning in year 2001) unless the aggregate area of the Convention Center is expanded beyond 181,000 square feet.