

## **GROUND LEASE**

This Ground Lease ("Lease") is dated for reference purposes only as of the \_ day of \_\_\_\_\_, 201\_ (the "Agreement Date") and is being made and entered into by and between the CITY OF PLACERVILLE, a California general law city ("Lessor"), and HALLMARK DEVELOPMENT AND REALTY CORPORATION, a development and real estate corporation, or its Assigns, a California corporation doing business as Hallmark Development and Realty Corporation, ("Lessee"). Lessor and Lessee are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

### **ARTICLE 1** **PURPOSE OF LEASE**

1.1 Purpose. The purpose of this Lease is to provide for the lease by Lessor to Lessee of the property located at 2990 Mosquito Road in the City of Placerville, County of El Dorado, State of California (as more specifically defined herein, the "Premises") and the construction and operation by Lessee on the Premises of a hotel (the "Hotel") with approximately sixty (60) guest rooms and related facilities including the necessary parking for hotel guests and employees, and additionally a minimum 70 space park and ride facility for which parking shall be free for commuters and trail users. The lease of the land and the development and operation of the Hotel thereon pursuant to this Lease, and the fulfillment generally of this Lease, are in the vital and best interests of the City of Placerville and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

### **ARTICLE 2** **TASKS TO BE PERFORMED PRIOR TO LEASE COMMENCEMENT DATE**

#### 2.1 Lessee Tasks.

2.1.1 Development Entitlements. Prior to commencement of lease, lessee shall complete applications and processes for all development entitlements including, (i) appropriate commercial or highway commercial zone designation; (ii) a Site Plan Review for grading and provision of necessary utility connections to serve the proposed Hotel, modification of existing street improvements within the abutting public rights-of-way, and site plan, floor plans, and elevations for the proposed Hotel submitted by Lessee; (iii) a project-level CEQA for the Hotel, including the associated Mitigation Monitoring and Reporting Program.

2.1.2 Final Building Plans and Satisfaction of All Prerequisites to Issuance of Building Permit(s). Prior to commencement of the lease, Lessee shall submit complete application(s), plans, and specifications to Lessor for issuance of all of the Final Building Plans and thereafter Lessee shall (i) exercise commercially reasonable diligence in an effort to obtain final Lessor approval of same, (ii) pay or deposit with Lessor all applicable fees and charges owing to Lessor prior to issuance of permits, (iii) deliver to Lessor any security instrument that is required by Lessor for construction of the Hotel pursuant to applicable Governmental Requirements, and (iv) satisfy any other applicable Governmental Requirements that may be a condition to Lessee's right to obtain required permits and commence construction of the Hotel.

2.1.3 Evidence of Financial Capability; Construction Loan Documents. Prior to the commencement of the lease, Lessee shall submit to the City Manager or his or her designee evidence that Lessee has the financial capability necessary to develop the Hotel (herein, "Evidence of Financial Capability"). Such Evidence of Financial Capability shall include without limitation each of the following: (i) a detailed budget showing Lessee's estimated Project Costs (the "Project Budget"); (ii) a financial statement and/or other documentation reasonably satisfactory to Lessor sufficient to demonstrate that Lessee has adequate funds committed to cover the costs set forth in the Project Budget and that such funds will be in Lessee's account as of the Commencement Date; (iii) draft construction loan documents; (v) a copy of the lump sum construction contract or contracts between Lessee and its general contractor(s) for the Hotel, certified by Lessee to be a true and correct copy thereof, covering all of the excavation, grading, demolition, and construction work comprising the Hotel, including without limitation all related utility and offsite work (the "Project Construction Contract"); and (vi) a corporate surety bond or bonds or other security instrument, approved as to form, content, and company by the City Engineer and City Attorney with Lessee's contractor or contractors as principal(s), in a penal sum not less than one hundred twenty five percent (125%) of the estimated cost of constructing improvements in the public rights-of-way in connection with the construction of the Hotel guaranteeing completion of construction and the payment of wages for services engaged and bills contracted for materials, supplies, and equipment used in the performance of the work, and protecting Lessee and Lessor from any liability, losses, or damages arising therefrom (the "Project Security Instruments"), provided, however, that the City Manager or his or her designee shall have the discretion on behalf of Lessor to accept alternate security in his or her sole and absolute discretion.

2.1.4 Hotel Management Company and Hotel Management Agreement. Prior to commencement of the lease, Lessee shall submit to the City Manager or his or her designee for his or her review and approval the identity of the entity Lessee desires to have manage the Hotel on the Premises ("Hotel Management Company") and the form of the hotel management agreement that Lessee proposes to enter into with the Hotel Management Company ("Hotel Management Agreement").

2.1.5 Hotel Franchisor and Hotel Franchise Agreement. Prior to commencement of the lease, Lessee shall submit to the City Manager or his or her designee for his or her review and approval the identity of the hotel chain Lessee desires to have franchise the Hotel on the Premises ("Hotel Franchisor") and the form of the franchise agreement that Lessee proposes to enter into with the Hotel Franchisor ("Hotel Franchise Agreement"), in accordance with the criteria and procedures set forth in Section 7.3 of this Lease.

2.1.6 Insurance. Prior to commencement of the lease, Lessee shall submit evidence reasonably satisfactory to the City Manager that Lessee has obtained all insurance required pursuant to this agreement.

## 2.2 Lessor Tasks.

2.2.1 Development Entitlements. Prior to commencement of the lease, Lessor shall review Lessee's application(s) for those Development Entitlements that are required to be submitted to Lessor, as set forth above in a timely fashion.

2.2.2 Review and Approval of Final Building Construction Plans. Prior to commencement of the lease, Lessor shall review Lessee's application(s) for approval of the Final Building Plans for the Hotel and parking facilities, including the park and ride facility, and all security instruments and other documents submitted by Lessee in conjunction therewith, including any proposed amendments or changes thereto. Lessor shall not unreasonably withhold, condition, or delay its approval of any of the same and Lessor shall not disapprove any such submittal on grounds that are inconsistent with (i) the approved Development Entitlements for the Hotel, (ii) applicable Governmental Requirements, or (ii) Lessor's standard policies and procedures.

2.2.3 Review and Approval of Lessee's Evidence of Financial Capability. Prior to commencement of the lease, the City Manager or his or her designee shall complete his or her review of and approve or disapprove Lessee's Evidence of Financial Capability. The City Manager or his or her designee shall not unreasonably withhold, condition, or delay its approval of Lessee's Evidence of Financial Capability. If the City Manager or his or her designee disapproves Lessee's Evidence of Financial Capability, he or she shall do so by written notice to Lessee stating the reasons for such disapproval.

2.2.4 Review and Approval of Construction Loan Documents. Prior to commencement of the lease, the City Manager or his or her designee shall complete his or her review of and approve or disapprove Lessee's Construction Loan Documents. The City Manager or his or her designee shall not unreasonably withhold, condition, or delay Lessor's approval of Lessee's Construction Loan Documents. If the City Manager or his or her designee disapproves Lessee's Construction Loan Documents, he or she shall do so by written notice to Lessee stating the reasons for such disapproval.

2.2.5 Review and Approval of Hotel Management Company and Hotel Management Agreement. Prior to commencement of the lease, the City Manager or his or her designee shall approve or disapprove the Hotel Management Company and the terms of the Hotel Management Agreement, in accordance with the criteria and procedures set forth in Section 7.2 of this Lease.

2.2.6 Review and Approval of Hotel Franchisor and Hotel Franchise Agreement. Prior to commencement of the lease, the City Manager or his or her designee shall approve or disapprove the Hotel Franchisor and the terms of the Hotel Franchise Agreement, in accordance with the criteria and procedures set forth herein.

### **ARTICLE 3** **TERM AND RENT**

#### 3.1 Term

3.1.1 Lease Term. Lessor leases to Lessee the above land for a term of Fifty (50) years, commencing on the date that Lessee receives final approval of complete building plans, and terminating fifty years from that date.

3.1.2 Option to Renew. Provided that Tenant is not in default in the performance of this Lease, Lessee shall have the opportunity to renew such lease for successive 20 year periods. Lessee shall notify Lessor in writing, of Lessee's intent to renew at least 180 days prior to the expiration of any term. However, the total lease term including any renewal periods shall not exceed 99 years. Rental rates shall be renegotiated for each renewal period as provided for in paragraph 3.2.2 herein below.

### 3.2 Rent

3.2.1 Rent Amount. Lessee shall pay to Lessee rent for the property in the following amounts for the following terms:

Years 1 – 20: \$1 per month

Years 21 – 30: 50% of the rental market value for the property

Years 31 – 50: 100% of the rental market value for the property.

3.2.2 Market Value: The Rent Market Value of the property at commencement of the lease shall be \$1500 per month. Prior to the commencement of the 21st year, Lessor and Lessee shall agree upon the fair market rent value of the property. However, the agreed upon amount shall not be less than \$1500 per month. In the event that lessor and lessee cannot agree upon the fair market rent value for the property, the matter shall be decided by arbitration. Lessor and lessee shall each appoint a real estate broker to act as arbitrators. If the two appointed arbitrators cannot agree on the fair market rental value, the two arbitrators shall select a third arbitrator and the decision of two of the three arbitrators shall be final. However, in no event shall the fair market rent value be less than \$1500 per month.

3.2.3 Rent Due Date: During years 1-20 of the term of the lease, rent shall be paid on an annual basis due on the first day of the month of each anniversary of the commencement of the lease. Thereafter rent shall be paid on a monthly basis due on the first day of each month during the term of the lease.

## **Article 4**

### **SBA/BANK AND PROVISIONS**

4.1 SBA/Bank Conditions. If this Lease is executed by a Lessor and/or Tenant, who are participating in the U.S. Small Business Administration 504 Loan Program, then the parties hereto agree and acknowledge that this Lease shall be construed to comply with the requirements of such program including, but not limited to, those found in Title 13 of the Code of Federal Regulations, the SBA Standard Operating Procedures 50-10 and all other relevant statutes laws,

codes, regulations and procedures. Without limiting the applicability of all relevant law, the following conditions shall apply:

4.1.1 The Tenant shall lease from Lessor all of the land;

4.1.2 This Lease shall be junior and subordinate to any and all deeds of trust in favor of the SBA /Bank which relate to the Real Property;

4.1.3 This Lease shall be assigned, for collateral purposes, to the SBA/Bank.

4.1.4 The term of this Lease shall not expire prior to the maturity date of the subject SBA 504 Loan. Provided, the Lease term may include options to renew the Lease, so long as the options are exercisable solely by the Tenant.

4.1.5 Any leases of the land other than to the Tenant shall be between the Tenant and the third party subtenant.

**ARTICLE 5**  
**CONDITION OF LEASEHOLD TITLE; RESERVED RIGHTS OF LESSOR**

5.1 Condition of Property: Lessor shall convey leasehold title to Lessee subject to following limitations, exceptions, and reservations:

5.1.1 Lessee shall accept leasehold title subject to the limitations and exceptions that are consistent with the Approved Title Condition.

5.1.2 Lessor reserves and shall have the right to enter the Premises during periods of construction.

5.1.3 Lessor reserves and shall have the right at all reasonable times during the entire Lease Term to enter the Premises for the purpose of viewing and ascertaining the condition of the same, to protect its interests in the Premises, and to inspect the operations conducted thereon. Except in the case of emergency, any such entry into areas not generally open to the public shall be made only after reasonable notice to Lessee. Nothing in this Lease is intended or shall be interpreted to limit any right that Lessor, as a municipal corporation, has to enter onto private property when acting in its governmental capacity in lieu of its proprietary capacity of the owner and landlord of real property.

5.1.4 Lessor further reserves and shall have the right to enter the Premises in order to cure or correct a Default by Lessee.

5.1.5 Nothing in this Lease is intended or shall be interpreted as a waiver by Lessor of its power of eminent domain.

**ARTICLE 6**  
**DEVELOPMENT OF THE HOTEL AND RELATED IMPROVEMENTS**  
**ON AND ABOUT THE PREMISES**

6.1 Commencement and Completion of Hotel. Time is of the essence due to federal grant funding associated with the development of the Park and Ride Facility. Therefore, Lessee agrees to proceed in an expeditious manner to process all entitlements. Prior to commencement of this lease, Lessee shall submit to Lessor a timeline for development of the project. Lessee shall comply with said timeline unless circumstances beyond lessee's control cause delays. The timeline shall include target dates for the following Zoning change, CEQA, Site Plan Review, Building Plan Submittal, Start of Construction and Opening of Hotel.

6.2 No Construction Before Notice; Notice(s) of Non-Responsibility. At no time during the Lease Term shall Lessee commence or allow to be commenced any excavation, grading, Premises preparation, utility relocation/installation, street or other public improvement work in the right(s)-of-way adjacent to the Premises, or any construction work of any kind on the Premises, nor shall Lessee deliver or allow to be delivered any equipment or materials to the Premises for any of such purposes, until Lessee has first provided at least twenty (20) days prior written notice to Lessor of the intended commencement of such work or the delivery of such equipment or materials. At any and all times during the Lease Term Lessor shall have the right to post and maintain on the Premises and to record as required by law any notice or notices of non-responsibility provided for by the mechanics' lien laws of the State of California.

6.3 Mechanic's, Materialmen's, Contractor's and Subcontractor's Liens. Subject to Lessee's right to contest as hereinafter provided, at all times during the Lease Term, Lessee shall keep the Premises, including all buildings and improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. Lessee shall notify Lessor in writing of any and all liens and claims of lien made or filed against the Premises within thirty (30) calendar days after Lessee becomes aware of the filing thereof. Thereafter, Lessee shall promptly (i) pay and discharge, or cause the Premises to be released from, any such lien or claim of lien, or (ii) contest such lien and furnish Lessor such bond as may be required by law to free the Premises from the effect of such lien and to secure Lessor against payment of such lien and against any and all loss or damage whatsoever in any way arising from Lessee's failure to pay or discharge such lien. In the event Lessee provides a bond in lieu of paying or discharging a lien as set forth herein, and Lessor is unable despite reasonably diligent effort to obtain an endorsement to any existing title policy in favor of Lessor insuring Lessor's interest in the Premises free and clear of any such liens that have not been paid or discharged, Lessee shall, at Lessee's sole cost and expense, within thirty (30) days of Lessor's written request therefor, provide the Lessor with such endorsement.

6.4 Lessor's Rights of Access. Representatives of Lessor shall have the reasonable right of access to the Premises without charges or fees, at normal construction hours during all periods of construction for the purposes of this Lease, including, but not limited to, the inspection of the work being performed in constructing, reconstructing, repairing, and replacing all or any portion of the Hotel and related Improvements. Such representatives of Lessor shall be those who are so identified in writing by the City Manager or Director of Development Services of Lessor or their

authorized designee(s). Lessor shall provide reasonable prior notice to Lessee of any such entry, and shall use its best efforts to minimize interference with Lessee's use of the Premises, Hotel, and Improvements as much as is reasonably feasible. Such entry shall be in compliance with all applicable safety rules and regulations provided by Lessee (or its general contractor) to Lessor's representative(s) at the time of entry. Lessor shall indemnify, defend, and hold harmless Lessee from and against any claim, liability, losses, and damages caused by Lessor during any such inspections, excluding any such claims, liabilities, losses, and damages arising out of Lessor's discovery of unsafe or substandard conditions not caused by the acts of Lessor and any such claims, liabilities, losses, and damages for which Lessor would not otherwise be liable in the absence of this Lease, and Lessor shall be responsible for the prompt repair and/or restoration of any such damage caused by Lessor or its representative(s) during any such inspection.

6.5 Local State and Federal Laws. Lessee shall carry out the construction and installation of the Improvements on and about the Premises in conformity with all applicable Governmental Requirements. In this regard, the Parties agree that Lessor is a general law city subject to the obligation to comply with California's prevailing wage laws, that the Hotel will be a privately owned facility, that the rent to be paid by Lessee to Lessor pursuant to this Lease is not less than the fair market rent for the Premises, that the Hotel is not being "paid for in whole or in part out of public funds" within the meaning of California Labor Code Section 1720(a)(1) and (b), and that any Lessor contribution to the Hotel project is "de minimis in the context of the project" within the meaning of Labor Code Section 1720(c)(3), such that Lessee's construction and installation of the Improvements and its performance of other related development/construction activities pursuant to this Lease does not constitute construction or installation of a "public work" for which prevailing wages must be paid or for which Lessee is required to comply with any other Governmental Requirements applicable to "public works." Notwithstanding such agreement, however, Lessor makes no covenant, representation, or warranty to Lessee in that regard, Lessee bears the full risk with respect thereto, and nothing in this Lease, including this Section 6.5, shall release Lessee from the obligation to comply with all applicable Governmental Requirements, including, if later found to be applicable, Governmental Requirements applicable to "public works."

6.6 As-Built Drawings. Upon completion of any construction work on the Premises, Lessee shall as soon as practicable furnish Lessor with a set of drawings and specifications for all completed construction which accurately reflects the nature and extent of all work done on or to the Premises and marked to show such construction "as built."

6.7 Costs of Construction. Lessee shall bear all costs and expenses associated with the planning, design, construction, maintenance, furnishing, equipping, and supplying of the Hotel and the Improvements, which costs and expenses include without limitation: (i) utility hook-up and connection fees and all distribution facilities, conduits, pipelines, and cables required in connection with construction of the Hotel; (ii) all design, engineering, financing, and construction costs; and (iii) all necessary permit fees, charges, assessments, taxes, and exactions.

**ARTICLE 7**  
**USE AND OPERATION OF HOTEL; CHANGES IN HOTEL MANAGEMENT**  
**COMPANY/HOTEL MANAGEMENT AGREEMENT AND/OR HOTEL**  
**FRANCHISOR/HOTEL FRANCHISE AGREEMENT**

7.1 General: Use and Operation of the Premises, Hotel, and Improvements. Lessee covenants and agrees that during construction and thereafter through the remainder of the Lease Term, Lessee shall comply with all of the following use and operational requirements, restrictions, and prohibitions:

7.1.1 Lessee shall operate and maintain the Hotel in full compliance with the Required Hotel Standard as agreed to in the Hotel Economic Incentive Agreement, all applicable Governmental Requirements, and the express provisions set forth in this Lease, as the same may be amended from time to time. Uses normally incidental to a hotel use, including without limitation a restaurant, cocktail lounge, cleaning and laundry service, banquet and catering facilities, meeting rooms, gift shop, spa, resort retail, magazine stand, barber or beauty shop, travel agency, airline ticket office, automobile rental operation, and recreational facilities, shall also be permitted, subject to whatever special permits for such uses may be required therefor from time to time in accordance with Governmental Requirements. The business conducted by each sub lessee, licensee, and concessionaire on the Premises similarly shall be consistent with the Required Hotel Standard and the high quality required for the Hotel generally.

Lessee shall maintain and operate the park and ride facility in accordance with the City's grant requirements for that facility.

7.1.2 Lessee shall not allow the Premises to be used for any of the following purposes, which are expressly prohibited: (i) Timeshare use; (ii) long-term residential use, which for purposes of this Lease shall mean continuous occupancy of any guest rooms in the Hotel at any one time by the same occupants for periods in excess of twenty-eight (28) consecutive days and with the understanding that for purposes of this clause (ii) a hotel guest shall be deemed to be continuously occupying a guest room for a period in excess of twenty-eight (28) consecutive days if he or she continuously occupies any room in the Hotel for a period in excess of twenty-eight (28) consecutive days, even if he or she moves from one guest room to another guest room one or more times during or after the twenty- eight (28) day period.

Lessee may request exception to this provision by providing information to the City Manager.

7.1.3 Lessee shall cause the Hotel to be open for business to the general public every day of the year and Lessee shall operate the Hotel in substantially complete fashion in accordance with the standards set forth in this Lease. Lessee shall stock and maintain adequate working capital and adequate inventories of food, beverages, operating equipment, and supplies consistent with the business(es) conducted on the Premises.

7.1.4 Lessee shall not place or permit to be placed on any portion of the Premises, in locations that are visible from any location off of the Premises, any art, displays, monuments, signs, logos, or advertising unless such art, displays, monuments, signs, logos, or advertising, including without limitation the size, design, subject, wording, composition, color, and lighting

thereof, are consistent with the City's Municipal Code and any other applicable Governmental Requirements.

7.1.5 To the maximum extent permitted consistent with applicable Governmental Requirements, without the prior written approval of the Community Development Department, which approval may be withheld in his/her sole and absolute discretion, Lessee shall not erect or maintain or allow to be erected or maintained any antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation outdoors above ground on any portion of the Premises, whether attached to an Improvement or otherwise.

7.2 Management by Approved Hotel Management Company; Changes in Hotel Management Company and New or Amended Hotel Management Agreement; Removal/Replacement of Hotel Management. At all times from the date the Hotel opens for business to the general public through the remainder of the Lease Term Lessee shall cause the day-to-day operation of the Hotel to be managed by a Hotel Management Company approved by Lessor and, in this regard, Lessee shall cause the Hotel Management Company to continuously (24 hours per day during all days that the Hotel is open for business) maintain competent and professional staff on the Premises.

7.3 Hotel Franchisor and Hotel Franchise Agreement. Lessee shall have the right but not the obligation from time to time to operate the Hotel as a franchise of a hotel company.

Lessee shall submit to the City Manager or his or her designee for his or her review and approval the identity of the Hotel Franchisor with which Lessee desires to affiliate. The City Manager or his or her designee shall not unreasonably withhold, condition, or delay approval of the Hotel Franchisor provided the Franchisor is a nationally recognized hotel chain.

## **ARTICLE 8** **MAINTENANCE AND REPAIRS**

8.1 Maintenance and Repairs; General. At Lessee's sole cost and expense, at all times during the Lease Term Lessee shall be responsible for maintaining, repairing, and operating the Premises, all Improvements constructed or to be constructed thereon (including landscaping, lighting, and signage), and all equipment and personal property placed from time to time on the Premises in a quality and condition consistent with the Required Hotel Standard and similar quality hotel properties in the Northern California marketplace, in compliance with the terms of the City of Placerville Municipal Code, other applicable Governmental Requirements, and the following:

8.1.1 All Improvements on the Premises shall be maintained in appropriate condition in accordance with the practices prevailing in the operations of similar developments, and in conformance and substantial compliance with all plans, drawings, and related documents approved by Lessor pursuant to this Lease and all conditions of approval of land use entitlements adopted by Lessor in its governmental or regulatory capacity, including without limitation the interiors and exteriors of all buildings and structures and all grounds to the curb line, the entrances, windows, partitions, doors, lighting and plumbing fixtures, heating, ventilation and air conditioning systems, benches, shelters, planters, kiosks, trash containers, signs, sculptures,

fountains, play areas, swimming pools, jacuzzis, spas, exercise rooms, platforms, stages, lateral water and sanitary sewer lines, drainage facilities, sidewalks, driveways, parking areas and facilities (subject to paragraph 8.4 herein below), landscaping and irrigation facilities, exterior lighting systems, and pedestrian walkways.

8.1.2 All furnishings and fixtures on the Premises shall be kept at all times in a neat, clean, and appropriate condition in accordance with the practices prevailing in the operations of similar developments and shall be periodically repaired and replaced in accordance with the practices prevailing in the operations of similar developments.

8.1.3 All exterior and interior painted surfaces shall be kept clean, shall be periodically repainted, and shall not be allowed to show unreasonable peeling or worn surfaces.

8.1.4 All wallpapered or other treated surfaces shall be kept clean and shall be periodically repaired or replaced in accordance with the practices prevailing in the operations of similar developments.

8.1.5 Landscape maintenance shall include, without limitation, periodic watering/irrigation, fertilization, mowing, edging, trimming of grass, tree and shrub pruning, trimming, and shaping of trees and shrubs to maintain a natural and healthy appearance, road visibility, and irrigation coverage, and replacement, as needed, of all dead or diseased plant materials, control of weeds in all planters, shrubs, lawns, ground covers, and other planted areas; and staking for support of trees.

8.1.6 Clean-up maintenance shall include, without limitation, maintenance of all sidewalks, paths, and other paved areas to keep the same in a clean and weed-free condition, maintenance of all such areas to keep the same clear of dirt, mud, trash, debris, and other matter which is unsafe or unsightly, removal of all trash, litter, and other debris from improvements and landscaping, and clearance and cleaning of all areas maintained prior to the end of each day on which maintenance operations are performed to ensure that all cuttings, weeds, leaves, and other debris are properly disposed of by maintenance workers.

8.1.7 Maintenance of appropriate entrance, exit, and directional signage, markers, and lights shall be provided as reasonably required and in accordance with the practices prevailing in the operation of similar developments.

8.1.8 Lighting fixtures shall be cleaned and lamps/bulbs shall be promptly replaced if not operating.

8.1.9 Pavement striping, markers, directional signs, and similar improvements shall be periodically repainted or replaced as necessary to maintain the same in appropriate condition in accordance with the practices prevailing in the operations of similar developments.

8.1.10 Adequate security personnel and security measures shall be instituted and maintained in a commercially reasonable manner to provide a safe and secure environment in all interior and exterior areas of the Premises and for all activities and events occurring on the Premises.

8.2 Waste. Lessee shall not commit or suffer to be committed any waste or impairment of the Premises or the Improvements, or any part thereof.

8.3 Hazardous Substances. Lessee covenants each and all of the following:

8.3.1 Following the Commencement Date and within commercially reasonable time periods, Lessee shall remove all existing Hazardous Substances from the Premises in the manner prescribed by law.

8.3.2 Upon completion of construction of the Hotel and prior to opening the Hotel for business to the general public the Premises shall be free and clear of any Hazardous Substances to the extent required by applicable law.

8.3.3 The development, construction, and uses of the Premises required and permitted under this Lease do not require the presence of any Hazardous Substance on, in, or under the Premises, except for those customarily used in the ordinary course of business for such development, construction, and use consistent with applicable law.

8.3.4 If at any time during the Lease Term any Hazardous Substance is present on, in, or under the Premises (including, without limitation, the soil and groundwater) in violation of applicable law, Lessee, at no expense to Lessor, and at the earliest practicable date, shall remove such Hazardous Substances from the Premises.

8.4 Lessor Not Responsible for Maintenance or Repairs. Lessor shall have no responsibility for and shall not be required to perform any maintenance, repairs, or services or to assume any expense in connection with the Premises, the Improvements, or any furnishings, fixtures, and equipment except that Lessor and Lessee shall agree on a shared cost for maintenance of the parking facilities based on the number of spaces provided for hotel purposes and those provided for the park and ride. This agreement shall not take effect until such time as the agreement for operations and maintenance of the garage has been executed.

8.5 Capital Replacement Reserve Fund. Commencing no later than the Operating Commencement Date and continuing thereafter through the balance of the Lease Term Lessee shall establish and maintain a capital replacement reserve fund. Lessee shall demonstrate and deposit amounts sufficient to meet the renovation and upgrading needs of the facility. Within thirty (30) days after the close of each Operating Year during the Initial Term, Lessee shall submit to Lessor (i) evidence that Lessee has deposited the required minimum amount in the Capital Replacement Reserve Fund for the previous Operating Year. Funds in this account shall only be used for replacement and upgrade of facility and not for on-going maintenance.

8.6 Lessor's Rights/Remedies for Deficient Maintenance and Repairs. If Lessor delivers written notice to Lessee that the maintenance or condition of the Premises or any portion thereof or any Improvements thereon does not comply with this Lease or that Lessee has committed waste and such notice describes the deficiencies/conditions that need to be corrected, remedied, or cured, Lessee shall correct, remedy, or cure the deficiencies within a reasonable amount of time as determined by Lessor. If said deficiencies are not cured in a timely manner, Lessor shall have the right to enter onto the Premises or to contract with a third party or parties for the

correction, remedy, and cure of any such deficiencies, and Lessee shall be responsible for payment of all such costs actually and reasonably incurred by Lessor.

**ARTICLE 9**  
**TAXES, ASSESSMENTS, UTILITIES, AND OTHER CHARGES**

9.1 Lessee's Obligation to Pay Impositions. In accordance with California Revenue and Taxation Code Section 107.6(a), the Parties acknowledge that from and after the Commencement Date and for the balance of the Lease Term Lessee will have a possessory interest in the Premises that will be subject to the obligation to pay possessory interest taxes.

Lessee agrees to pay or cause to be paid, as and when they become due and payable, and before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all taxes, assessments, franchises, excises, license and permit fees, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time during the Lease Term may be assessed.

Lessee shall furnish to Lessor, within thirty (30) days after the date when any real property taxes, assessments, or any other Imposition which could have any effect on Lessor's title to the Premises would become delinquent, official receipts of the appropriate taxing authority or other evidence, satisfactory to Lessor, evidencing payment thereof.

9.2 Utilities. Lessee agrees to pay or cause to be paid, as and when they become due, all hook-up and connection fees and all charges for water, sewer, electricity, gas, light, heat, air conditioning, telephone, internet, cable television, solid waste/trash/refuse collection disposal, recycling, and other utility and communication services furnished to or rendered or used on or about the Premises and Improvements at all times during the Lease Term. Upon Lessee's written request, Lessor agrees to join in the grant of such easements and licenses upon the Premises to any supplier of utilities to the Premises as necessary to construct, install, operate, and maintain any facilities, conduits, transmission lines, and pipelines for the provision of utility services to the Premises; provided, however, that the locations of all such facilities, conduits, transmission lines, and pipelines associated with utility services located upon the Premises shall be consistent with the Development Entitlements and Final Building Plans and shall be located below grade in subterranean easements.

9.3 Lessor's Right to Cure. If Lessee, in violation of the provisions of this Lease, shall fail to pay and to discharge any Impositions or any utilities furnished to or rendered or used on or about the Premises, Lessor shall have the right, but not the obligation, to pay or discharge such obligation(s), and in such event the amount paid by Lessor plus all of related Lessor's costs and expenses, including attorney fees, together with interest at the maximum legal rate or the rate of three percent (3%) over the prime rate of the largest bank operating in the State of California on the date payment is made by Lessor, whichever is lower shall be deemed to be and shall be payable by Lessee as additional Rent and shall be reimbursed by Lessee to Lessor immediately upon demand.

**ARTICLE 10**  
**OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS**

10.1 Ownership of Improvements During Lease Term. All Improvements on the Premises constructed or installed by Lessee as permitted or required by this Lease, shall, during the Lease Term, be and remains the property of Lessee. All Improvements located on the Premises, whether existing thereon at the Commencement Date or constructed or installed thereon by Lessee as permitted or required by this Lease, shall, at the expiration or sooner termination of the Lease Term, be and remain the property of Lessor. Subject to Lessee's rights and obligations set forth in this Lease relating to alterations and additions, Lessee shall have no right at any time to waste, destroy, demolish, or remove any of the Improvements. Lessee's rights and powers with respect to the Improvements are subject to the terms and limitations of this Lease. Lessor and Lessee covenant for themselves and all persons claiming under or through them that the improvements are real property.

10.2 Reversion of Improvements; Duty to Remove Personal Property. Upon the expiration or earlier termination of the Lease Term, whether by cancellation, forfeiture, or otherwise, all Improvements located on, in, or under the Premises (including all fixtures and equipment affixed thereto) shall remain upon and be surrendered with the Premises as part thereof, and title to such Improvements shall vest in Lessor without any compensation to Lessee.

10.3 Damage to or Destruction of Hotel and Improvements.

10.3.1 Lessee to Give Notice. In case of any damage to or destruction of the Hotel or the Improvements, or any part thereof, in excess of an amount equal to Two Hundred and Fifty Thousand Dollars (\$250,000.00) escalated from the Commencement Date of this Lease in accordance with increases in the Consumer Price Index, Lessee shall within ten (10) days after Lessee becomes aware of such damage or destruction give written notice thereof to Lessor generally describing the nature and extent of such damage or destruction.

10.3.2 Restoration. Lessee shall be responsible for the restoration of the Hotel or other Improvements in accordance with the damage and destruction clauses of this Lease.

In case of any damage to or destruction of the Hotel or other Improvements, or any part thereof, Lessee shall commence the restoration, replacement, or rebuilding of the Improvements with such alterations and additions as may be approved by Lessor (such restoration, replacement, rebuilding, alterations, and additions, together with any temporary repairs and property protection pending completion of the work being herein called "Restoration") within thirty (30) days of such damage or destruction, plus any additional period reasonably required to obtain any Net Insurance Proceeds to be used to pay all or a portion of the cost of such Restoration, and Lessee shall complete such Restoration within a reasonable period of time thereafter.

10.4 Faithful Performance and Labor and Material (Payment) Bonds; Indemnification; Non-responsibility Notices.

10.4.1 Lessee agrees to indemnify, defend, and hold harmless Lessor from and against all claims, liabilities, costs, and expenses for labor and materials in connection with all

construction, repairs, or alterations on the Premises and Improvements and the Improvements, including reasonable attorney's fees.

10.4.2 Lessee agrees to procure, or cause the procurement of, contractor's bonds covering labor, materials, and faithful performance for all construction work on the public right of ways in accordance with the following requirements: (i) As to the initial construction work on any public right of ways required by this Lease, such bonds shall be in an amount equal to one hundred percent (100%) of the cost of the Improvements on such public right of ways, as the same may be amended from time to time. (ii) As to subsequent work involving repair, alteration, or replacement of the work on any public right of way in an aggregate amount exceeding \$250,000 plus escalations to such amount after the Lease Effective Date in accordance with the Consumer Price Index, such bonds shall be in the amount equal to one hundred percent (100%) of the construction price in the contract entered into by Lessee and its general contractor. Subsequent work in an aggregate amount of \$250,000 (plus escalations to such amount after the Lease Effective Date in accordance with the Consumer Price Index) or less shall not be subject to bonding requirements.

10.4.3 Said bonds and the construction contract must first be approved in writing as to content and form by Lessor. Lessee shall, prior to commencement of construction, deliver to Lessor a certificate or certificates from the bonding company or companies issuing the aforesaid bonds, naming Lessor as additional insureds under said bonds.

10.4.4 Lessor shall have the right to post and maintain on the Premises and the Improvements any notices of non-responsibility provided for under applicable law.

## **ARTICLE 11**

### **ASSIGNMENT, SUBLETTING, TRANSFER**

#### **11.1 Restrictions on Lessee's Right to Transfer.**

11.1.1 Lessee represents and warrants that this Lease, the construction of the Improvements, and Lessee's other undertakings pursuant hereto are and will be used for the purpose of development of a hotel on the property. Lessee further recognizes that (i) the qualifications and identity of Lessee and its principals are of particular concern to the community and Lessor; (ii) it is because of such qualifications and identity that Lessor is entering into this Lease with Lessee; (iii) the timely development of the property is important to the general welfare of the community; (iv) the anticipated tax and rent income to be generated by this Lease and the development of the hotel and park and ride facility are important financial/economic reasons for Lessor wishing to ensure the timely development of the property. Accordingly, from the Agreement Date through the entire Lease Term, Lessee shall be subject to the restrictions on its Transfer rights set forth herein.

11.1.2 Except as expressly permitted herein, Lessee shall not make, allow, or authorize any Transfer or assignment to any person or entity, without the prior written consent of Lessor. Any proposed reasonable Transfer that does not affect the viability of the project shall not be unreasonably rejected.

11.1.3 Lessee expressly agrees that no transfer will be proposed or allowed within the first year of operation of the hotel.

## **ARTICLE 12**

### **INDEMNIFICATION AND INSURANCE**

12.1 Indemnification. To the maximum extent permitted by law and except as hereinafter expressly limited, from and after the Agreement Date Lessee agrees to and shall defend, indemnify, and hold harmless Lessor and Lessor's officials, officers, employees, agents, contractors, and consultants from and against all claims, liability, loss, damage, costs, and expenses (including investigation costs, reasonable attorneys' fees, and court costs) arising from or as a result of the death or injury of any person, property damage, economic loss, penalties, fines, and other damages of any kind whatever which is directly or indirectly caused by or based on (or alleged to be caused by or based on) Lessor's ownership of or interest in the Premises or any portion thereof or any improvements thereon, the condition of the Premises or any portion thereof or any Improvements thereon, Lessee's entry onto or occupancy of the Premises, Lessee's acts or omissions with respect to the development, construction, use, maintenance, operation, and repair of the Premises or any portion thereof or any Improvements thereon, and any of Lessee's activities under this Lease, whether such actions or inactions be prior to or after the Commencement Date, whether such actions or inactions be by Lessee or anyone directly or indirectly employed or contracted with by Lessee, and whether such damage or injury shall accrue or be discovered before or after the termination of this Lease. Notwithstanding the foregoing, Lessee shall not be responsible for (and such indemnity shall not apply to) property damage or bodily injury caused by Lessor's entry onto the Premises and Improvements pursuant to various provisions of this Lease, and/or to the extent such damage or injury is caused by the willful misconduct or active negligence of Lessor or its designated employees or agents. Each Party shall promptly provide notice to the other Party of any actual or threatened claim that gives rise or may give rise to the indemnity obligations set forth herein and thereafter the Parties agree to cooperate in the defense of any such claim.

12.2 Indemnification From Third Party Challenges to Lease and/or Development Entitlements. In addition to the provisions set forth in Section 13.1 and except as stated in the next paragraph herein below, in the event of any legal action instituted by a third party (not a Party to this Lease) challenging the validity or enforceability of (i) this Lease or any provision of this Lease, (ii) any action by either Lessor or Lessee pursuant to this Lease, including without limitation any consent or approval issued by Lessor pursuant hereto, or (iii) any Development Entitlement or other permit or approval approved or issued by Lessor (in its regulatory capacity) or any other governmental agency with jurisdiction over the Premises and the Hotel, the Parties hereby agree to cooperate in defending said action; provided, however, Lessee shall indemnify, defend (by counsel reasonably acceptable to Lessor), and hold harmless Lessor and Lessor's officials, officers, employees, agents, contractors, and consultants from and against all claims, liabilities, and losses, including without limitation all litigation expenses (including investigation costs, reasonable attorneys' fees, and court costs), arising therefrom. In the event that such action involves mediation, arbitration, or any other means of alternative dispute resolution, the provisions of this Section 12.2 shall apply equally thereto. Lessor shall have the right to appoint and designate independent counsel to represent Lessor and/or any of Lessor's officials, officers, employees, agents, contractors, and consultants named as parties in any such third party action,

as reasonably determined to be necessary and appropriate by Lessor, at Lessee's expense; provided, that in such event Lessor shall instruct its independent counsel to cooperate with counsel retained by Lessee to defend the same persons and entities in order to avoid unnecessary duplication of expense. Upon being served with process in any such legal action, the Party so served shall promptly notify the other Party to this Lease. Lessee shall have the right to settle or compromise any such action; provided, however, that no such settlement or compromise shall terminate, modify, alter, or amend any of Lessor's rights or obligations set forth in this Lease or with respect to any of the Development Entitlements or permits or approvals issued or approved by any governmental agency with respect to the Premises without compliance with any applicable legal procedures and requirements and without Lessor's prior written consent, which consent Lessor may withhold in its sole and absolute discretion.

12.3 Required Insurance. During the entire Lease Term, Lessee, at its sole cost and expense, shall maintain or cause to be maintained insurance policies protecting against all of the following types of risk and loss:

12.3.1 Insurance against loss or damage to the Improvements on the Premises, resulting from fire, earthquake (to the extent commercially available at commercially reasonable rates), windstorm, hail, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage fire insurance policies. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Improvements, all furnishings, fixtures, and equipment on the Premises from time to time, and the estimated cost of any architectural and engineering fees, inspection and supervision costs, and other costs that would be incurred to replace the Improvements on the Premises to their pre-existing condition. As used herein, the term "full insurable value" shall mean the actual replacement cost (excluding the cost of excavation, foundations, and footings below the ground level and without deduction for depreciation) of the Improvements, including without limitation the cost of construction of the Improvements, architectural and engineering fees, inspection and supervision, and applicable governmental permit fees. To ascertain the amount of coverage required, Lessee shall cause the full insurable value to be determined from time to time by the insurer or by a qualified expert mutually acceptable to Lessor and Lessee, not less often than once every three years. Lessor shall be included as a loss payee under the commercial property insurance.

12.3.2 Use and occupancy or business interruption or rental income insurance against the perils of fire, windstorm, hail, lightning, vandalism and malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage fire insurance policies, in an amount equal to not less than two times the sum of the highest Participation Rent paid to Lessor in any year under this Lease and twelve (12) months fixed operating expenses of Lessee, except to the extent such insurance is not commercially available at commercially reasonable rates due to reasons other than the wrongful acts or omissions or dangerous or hazardous activities of Lessee.

12.3.3 Commercial general liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of Lessee or under Lessee's control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person

caused directly or indirectly by or from the acts or activities in connection with the Premises and Improvements of Lessee or its invitees and sub lessees, or any person acting for Lessee, or under its control or direction. Any such property damage and personal injury insurance maintained by Lessee at any time during the term of this Lease shall name Lessor and its officials, officers, employees, agents, volunteers, and consultants as additional insureds and shall also provide for and protect Lessor against incurring any legal cost in defending claims for alleged loss. Coverage shall be at least as broad as that provided by Insurance Services Office form CO 00 01 and may be arranged through any combination of primary and excess insurance as required to achieve the limits specified, provided that any excess liability policy does not restrict coverage provided in the primary policy. Such personal injury and property damage insurance shall be maintained in full force and effect during the entire term of this Lease in an amount not less than Ten Million Dollars (\$10,000,000.00) combined single limit, Twenty Million Dollars (\$20,000,000) in the aggregate, as of the Effective Date of Lease, which minimum amount of coverage shall escalate on the January 1st next following the fifth anniversary of the Commencement Date and once every five years thereafter in proportion to the escalation, if any, during such period in the Consumer Price Index. Lessee agrees that the provisions of this Section 12.3.3 as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, the activities of its invitees and sub lessees, or the activities of any other person or persons for which Lessee is otherwise responsible.

12.3.4 Business automobile coverage for bodily injury and property damage liability for all activities of Lessee arising out of or in connection with the activities and services to be performed and provided pursuant to this Lease, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than Five Million Dollars (\$5,000,000.00) combined single limit for each occurrence, which minimum amount of coverage shall escalate on the January 1st next following the fifth anniversary of the Commencement Date and once every five years thereafter in proportion to the escalation, if any, during such period in the Consumer Price Index.

12.3.5 Builder's risk insurance during all periods of construction, reconstruction, or alteration of any Improvements on the Premises against "all risk" of physical loss, including without limitation the perils of flood, collapse, and transit, with deductibles acceptable to Lessor, covering the total cost of work performed, equipment, supplies, and material furnished on a replacement cost basis with no co-insurance penalty.

12.3.6 Contractor's pollution liability insurance for contractors or subcontractors performing construction work written on a form acceptable to Lessor providing coverage for liability arising out of sudden, accidental, and gradual pollution. The policy limit shall be not less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate. The policy shall provide coverage for the hauling of waste from the Premises to the final disposal location, including non-owned disposal sites. Products/completed operations coverage must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work.

12.3.7 Liquor liability coverage in the amount of not less than Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate.

12.3.8 Workers compensation insurance, statutory limits, and employer's liability insurance with limits in accordance with the laws of the State of California, Section 3700 of the Labor Code. Such workers compensation insurance shall cover all persons employed by Lessee in connection with the Premises and Improvements, and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of, any person incurring or suffering injury or death in connection with the Premises and Improvements, or the operation thereof by Lessee. In addition, Lessee shall require each subtenant and subcontractor to similarly maintain workers compensation insurance and employer's liability insurance meeting the requirements of this Section for all of said subtenant's and subcontractor's employees.

12.3.9 Lessee hereby agrees to waive rights of subrogation which any insurer of Lessee may acquire from Lessee by virtue of payment of any loss. Lessee agrees to obtain any endorsements that may be necessary to effectuate this waiver of subrogation. The workers compensation policy shall be endorsed with a waiver of subrogation in favor of Lessor for all work performed by Lessee, its employees, agents, and contractors and subcontractors.

12.4 General Insurance Provisions and Requirements. Lessee shall provide copies of all insurance policies or certificates of insurance, with original endorsements, to Lessor as evidence of the insurance coverage required herein. Insurance certificates must be approved by Lessor prior to the Commencement Date and prior to commencement of performance by Lessee or issuance of any permit. Current certification of insurance shall be kept on file with Lessor at all times during the Lease Term. Lessee shall also deliver to Lessor appropriate evidence of payment of the premiums for all required insurance prior to the Commencement Date and thereafter, during the entire Lease Term, at least thirty (30) days prior to expiration of coverage.

All insurance provided under Section 13.3 of this Lease shall be primary insurance for the benefit of Lessee and Lessor and not contributory with any other insurance that may be maintained from time to time by Lessor in its sole and absolute discretion. Each insurer shall waive all rights of subrogation against Lessor, its elected and appointed officers, officials, employees, agents, and volunteers. Lessor and its elected and appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds under all general, liquor, and pollution liability policies with respect to liability arising out of Lessee's activities related to this Lease and with respect to Lessee's use and occupancy of the Premises.

Lessor shall be listed as payee on property and builder's risk policies.

Lessee covenants not to keep on the Premises or permit to be kept, used, or sold thereon anything prohibited by any fire or other insurance policy covering the Premises.

All insurance shall be written on an occurrence-made form except pollution liability insurance.

Lessee shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein and Lessee shall ensure that Lessor is an additional insured on the insurance required from contractors and subcontractors. For CGL coverage, contractors and subcontractors shall provide coverage with a form at least as broad as CG20380413.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Lessor, its elected and appointed officers, officials, employees, agents, and volunteers.

The insurance required by this Lease shall not be suspended, voided, canceled, or reduced in coverage or limits except after thirty (30) calendar days (ten (10) calendar days written notice of non-payment of premium) written notice has been received by Lessor. It shall be Lessee's obligation to ensure that provisions for such notice have been established.

All insurance provided under Section 12.3 shall be periodically reviewed by the Parties for the purpose of adjusting the minimum limits of such insurance to amounts which may be reasonable and customary for similar facilities of like size and operation; provided, however, that in no event shall Lessor be required to consent to or approve a reduction in the amount of insurance to be provided pursuant to Section 12.3.3.

The insurance to be provided by Lessee may provide for a deductible or self-insured retention of not more than Ten Thousand Dollars (\$10,000.00), with such amount to increase at such times as Lessor may require increases in the policy limits as set forth above; provided that the percentage increase in the deductible or self-insured retention shall not exceed the percentage increase in the Consumer Price Index since the last requested adjustment; and further provided that Lessee may maintain such higher deductibles or self-insured retention as may be approved in writing by the City Manager or his or her designee. In the event such insurance does provide for deductibles or a self-insured retention, Lessee agrees that it will fully protect Lessor, its boards, officials, officers, employees, and consultants in the same manner as these interests would have been protected had the policy or policies not contained the deductible or retention provisions.

All insurance herein provided for under Section 12.3 shall be effected under policies issued by insurers of recognized responsibility licensed or permitted to do business in the State of California with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City Manager of Lessor or his or her designee.

Any insurance required to be maintained by Lessee pursuant to Section 12.3 may be taken out under a blanket insurance policy or policies covering other premises or properties, and other insureds in addition to the Parties hereto; provided, however, that any such policy or policies of blanket insurance shall specify therein, or supplemental written certification from the insurers under such policies shall specify, the amount of insurance irrevocably allocated to the coverage to be provided under Section 12.3 and provided further, that in all other respects, any such blanket policy shall comply with the other provisions of Section 12.3.

Lessee hereby waives any claim against Lessor for any loss that is required to be covered by insurance of the type specified in Section 12.3.

By requiring insurance herein, Lessor does not represent that coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed as a limitation on Lessee's liability under the covenants set forth in this Lease, including without limitation the indemnity provisions herein.

Lessee shall give Lessor prompt and timely notice of any claim made or suit instituted arising out of or resulting from Lessee's performance under this Lease and confirmation, if such be the fact, that the claim or suit has been tendered to Lessee's insurer and the insurer has accepted said tender.

12.5 Failure to Maintain Insurance. If Lessee fails or refuses to procure or maintain insurance as required by this Lease, Lessor shall have the right, but not the obligation, at Lessor's election, and without notice to Lessee or any Mortgagee, to procure and maintain such insurance. The premiums paid by Lessor shall be treated as additional rent due from Lessee, to be paid on the first day of the month following the date on which the premiums are paid. Lessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

12.6 Disposition of Insurance Proceeds Resulting from Loss or Damage to Improvements.

12.6.1 Subject to the provisions of Section 12.6.2 below, proceeds of insurance with respect to loss or damage to the Improvements to be maintained and repaired by Lessee during the Lease Term shall be payable, under the provisions of the policy of insurance, to Lessee or, if such loss or damage involves the need for Lessee to obtain any governmental approvals or permits, jointly to Lessee and Lessor, and said proceeds shall constitute a trust fund to be used for the repair, restoration, or reconstruction of the Improvements in accordance with plans and specifications approved in writing by Lessor.

12.6.2 In the event this Lease is terminated by mutual agreement of Lessor and Lessee and the Improvements are not repaired, restored, or reconstructed, the insurance proceeds shall be applied first to any payments due under this Lease from Lessee to Lessor, second to restore the Premises to a neat and clean condition, and finally any excess shall be paid to Lessee; provided, however, that during any period when there is an outstanding Mortgage upon the Improvements, such proceeds shall be applied first to discharge the debt secured by the Mortgage and then for the purposes and in the order set forth above in this paragraph.

**ARTICLE 13**  
**DEFAULTS, REMEDIES, AND TERMINATION**

13.1 Defaults - General. Subject to the extensions of time for Events of Force Majeure, the failure or delay by either Party to timely perform any term or provision of this Lease constitutes a default under this Lease (herein, a "Default"). The Party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction, or remedy within such time as may be expressly stated in any other provision of this Lease (including without limitation Section 8.6) and, if the time for completion of such cure, correction, or remedy is not expressly stated in any other provision of this Lease, within thirty (30) days of such failure or delay for monetary Defaults and, for nonmonetary Defaults, within the minimum reasonable period of time within which such Default can be cured if the Defaulting Party acts with commercially reasonable diligence to cure, correct, or remedy the same (the "Cure Period").

The injured Party shall give written notice of default to the Party in Default, specifying the Default complained of by the injured Party. Except as required to protect against further damages, and except as may be otherwise expressly provided elsewhere in this Lease, the injured Party may not institute proceedings against the Party in Default until the expiration of the applicable Cure Period. In addition, Lessor's exercise of its remedies under this Article 15 shall be subject to the provisions of Article 12 of this Lease.

13.2 Legal Actions. In addition to any other rights or remedies it may have hereunder or under applicable law, either Party may institute legal action to cure, correct, or remedy any Default by the other Party, to recover damages for any Default by the other Party, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted and maintained in the Superior Court of the County of El Dorado, State of California, in any other appropriate court in that county, or in the United States District Court in the Northern District of California. To the fullest extent permitted by law, each Party consents to the jurisdiction of such court(s) and waives any right it might have in the absence of this Lease to object to such jurisdiction or transfer venue to another court.

13.3 Attorneys' Fees and Court Costs. Subject to the express provisions of this Lease relating to indemnity, in the event of any legal action for enforcement of this Lease or arising out of this Lease, the prevailing Party, in addition to whatever relief to which it may be entitled, shall be entitled to recover all of its litigation expenses, including, to the maximum extent permitted by law, its attorney's fees, expert witness fees, and costs, and including such litigation expenses arising in preparation for litigation and prior to the commencement or filing of the initial pleading, litigation expenses incurred with respect to any appeal, and litigation expenses as may be incurred to enforce any judgment or settlement agreement that is entered or agreed to. The foregoing provisions shall apply equally to any arbitration, mediation, or other alternative dispute resolution proceeding.

## **ARTICLE 14**

### **RIGHT OF FIRST REFUSAL**

14.1 Lessor shall not sell the property subject to this Lease except in accordance with the provisions of this Lease. Any such sale shall be pursuant to a written offer (Offer) from a Qualified Purchaser setting forth the terms and conditions for such proposed purchase. A Qualified purchaser shall be an independent third party that is not directly or indirectly owned or controlled by Lessor and that intends to purchase the property for its own account.

14.2 If Lessor receives an offer that it is willing to accept, Lessor shall give Lessee a copy of the offer and certify that the proposed purchaser is a Qualified Purchaser.

14.3 Lessee shall have 30 days from the delivery of the offer within which to notify Lessor of its election to purchase the property under the terms and conditions specified in the offer by giving written notice to Lessor (Acceptance Notice) of such election.

14.4 On delivery of the Acceptance Notice, Lessor and Lessee shall forthwith proceed to consummate the sale and purchase of the property on the terms and conditions set forth in the offer.

14.5 If the Acceptance Notice is not given in a timely manner, then Lessor may proceed to sell the property on the terms and conditions set forth in the offer free and clear of any rights of Lessee under this Right of First Refusal.

14.6 This right of first refusal shall not be applicable to sales or transfers of the property to governmental agencies.

14.7 This right of first refusal may not be assigned or transferred by Lessor except as part of an assignment of this Lease.

**ARTICLE 15**  
**GENERAL PROVISIONS**

15.1 Notices, Demands, and Communications between the Parties. Formal notices, demands, and communications between Lessor and Lessee shall be sufficiently given if personally delivered, delivered by reputable overnight delivery service providing a receipt confirming delivery, or delivered by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to City:  
City of Placerville  
3101 Center Street  
Placerville, CA 95667  
Attention: City Manager

With copies to:  
City of Placerville  
3101 Center Street  
Placerville, CA 95667  
Attention: City Attorney

If to Lessee:  
\*  
\*  
\*  
\*

With a copy to:  
\*  
\*  
\*  
\*

15.2 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Lease.

15.3 Conflicts of Interest. No official, officer, or employee of Lessor who participates in the making of this Lease or in the implementation or enforcement of this Lease by or on behalf of Lessor shall have any personal financial interest, direct or indirect, in this Lease.

15.4 Inspection of Books and Records. Lessor has the right at all reasonable times to inspect the books and records of Lessee pertaining to the Premises and Improvements as pertinent to the purposes of this Lease. Lessee shall maintain such books and records in El Dorado County, California, or shall make such books and records available for inspection in El Dorado County, California, during normal business hours on not less than two (2) business days' notice from Lessor. Lessee also has the right at all reasonable times to inspect the books and records of Lessor pertaining to the Premises and Improvements as pertinent to the purposes of this Lease.

15.5 Entire Agreement, Waivers, and Amendments. This Lease constitutes the entire agreement between Lessor and Lessee with respect to the subject matter addressed herein and supersedes all prior discussions, negotiations, and agreements between the Parties with respect thereto.

AGREED:

\_\_\_\_\_  
Hallmark Development and Realty Corporation, by

City of Placerville:

\_\_\_\_\_  
M. Cleve Morris, City Manager

Approved as to form and content:

ATTEST:

\_\_\_\_\_  
John Driscoll, City Attorney

\_\_\_\_\_  
Regina O'Connell, Interim City Clerk