

ECONOMIC INCENTIVE AGREEMENT

This Economic Incentive Agreement (“Agreement”) is entered into as of this ____ day of _____, 2022, by and between the City of Placerville, a municipal corporation (“City”) and Apple Hill Hospitality LLC, or its assigns, a California Limited Liability Company (“Developer”), and all of whom are collectively referred to as the “Parties”, with reference to the following facts:

RECITALS

A. WHEREAS, City entered into an Economic Incentive Agreement with a previous developer on September 28, 2015 for the property located at 3001 Jacquier Road in Placerville to develop a 112 room hotel. However previous developer was unable to commence with construction of the hotel and therefore that agreement became null and void; and

B. WHEREAS, Developer acquired the former Holiday Inn hotel located at 3001 Jacquier Road, in Placerville, and which Developer intends to develop and operate an approximately 106 room hotel (the “Project”). Developer anticipates that the Project will generate transient occupancy taxes (TOT) in the approximate amount of Seventeen Million, Three Hundred Sixty-Five Thousand, Three Hundred Twenty-Seven Dollars (\$17,365,327.00) during the first twenty (20) years of the Project’s operation, in addition to increased sales taxes generated by the increased visitation to the City; and

C. WHEREAS, pursuant to Title 5, Chapter 16 of the City's Municipal Code (the “Ordinance”), the City will impose a transient occupancy tax on all Hotel guests at a rate of ten percent (10%) of the rent charged by the Developer, whether or not the amount is actually collected (the "TOT"). The Hotel will be required to collect the TOT and remit said tax to the City. All TOT revenue is to be placed in the City's general fund; and

D. WHEREAS, under the Program, an eligible Hotel could receive up to Three Million Five Hundred Thousand Dollars (\$3,500,000); however, the Program allows for additional incentives for extenuating circumstances. To address certain challenges unique to the Project, this Project is eligible for additional incentives in the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000.00) for the unique challenges with regard to the foundation, street and offsite improvements and an additional One Million Dollars (\$1,000,000.00) for being the first new hotel to be constructed and operate under the Program; and,

E. WHEREAS, as additional evidence of extenuating circumstance, the Project site contains further challenges that negatively impact the economic feasibility of the Hotel that include but are not limited to: retro work for existing foundation and offsite improvements required for development of the Project; and,

F. WHEREAS, in further recognition that the development and operation of the Hotel will result in the redevelopment of a blighted site, infuse new investment into the City, establish new tax-generating uses for the City, provide new permanent jobs, and be the first new hotel constructed in the City in over twenty (20) years, the City has approved this Agreement with Developer on the terms and conditions set forth herein; and

G. WHEREAS, the City has established a Placerville Hotel Incentive Program (the “Program”) which was extended by the City Council on December 14, 2021 by Resolution No. _____. The Project qualifies for incentives pursuant to said Program, but also because of the challenges set forth herein above, qualifies for additional incentives as provided for in the Program; and

H. WHEREAS, the City desires to provide Developer with an incentive to operate the Project in order that increased visitation will generate additional TOT and sales tax to the City. The incentive will be in the form of a City reimbursement to Developer of TOT generated by the Project as provided for herein below and in the Program. Developer agrees that it is subject to complying with all of the terms and conditions set forth in the Ordinance and Program to obtain the benefits of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the following mutual covenants, agreements, conditions and representations, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incentive Payments.

In consideration for Developer operating a hotel and generating tax revenue for the City, lodging options, and for other conditions and covenants provided for herein, if and when the Project is built and operated on the Property by Developer, and subject to the limitations herein, the City agrees to provide economic incentive payments (“Incentive Amounts”) to Developer. Under no circumstance shall the City ever be required to expend General Fund or other revenues to pay Developer for incentives. The City shall only rely on its share of TOT taxes to support remittance payments to Developer.

The amount of Incentive Payments to Developer shall be for Six Million Dollars (\$6,000,000) and remitted to Developer as set forth in Section 2.

2. Remittance.

B. Developer shall collect and remit all Transient Occupancy Taxes to the City pursuant to the Ordinance. Upon receipt of the remittance, City shall have thirty (30) days to review and audit, at its own expense, all amounts so received, and remit the following amounts to Developer:

Years 1 – 3: During years one through three (1-3) of the Hotel's Operation, which shall be deemed to have commenced upon the issuance of the Certificate of Occupancy, the City will pay Developer an amount equal to ninety percent (90%) of the Hotel TOT actually received by the City.

Years 4 – 10: During years four through ten (4-10) of the Hotel's Operation, the City will pay Developer an amount equal to seventy-five percent (75%) of the Hotel TOT actually received by the City.

Years 11 – 15: During years eleven through fifteen (11-15) of the Hotel's Operation, the City will pay Developer an amount equal to seventy percent (70%) of the Hotel TOT actually received by the City, and only until Developer reaches Six Million Dollars (\$6,000,000)..

Years 16-20: During years sixteen through twenty (16-20) of the Hotel's Operation, the City will pay Developer an amount equal to five percent (5%) of the Hotel TOT actually received by the City, and only until Developer reaches Six Million Dollars (\$6,000,000). The City shall have no further obligations beyond year 20, even if Developer has not received the full Six Million Dollars (\$6,000,000) by then.

In the event that the City increases the TOT rate, the amount of TOT eligible for the Incentive Payments payable to Developer under this Agreement shall remain at ten percent (10%) of the Hotel TOT collected and remitted to the City by Developer.

If Developer uses a third-party company to collect room revenues on behalf of the Developer, such third-party company shall levy TOT and remit the required portion to the City according to the Ordinance and this Agreement. Developer shall require any third-party online booking services that collect room revenues on behalf of the Hotel to collect and remit Hotel TOT to the City in accordance with this Agreement.

In the event that the City decreases the TOT rate, the Incentive Amounts payable to Developer shall be reduced accordingly on a pro rata basis. However, the total amount of TOT to be remitted to the Developer pursuant to this Agreement shall remain at Six Million Dollars (\$6,000,000.00). The Parties expressly acknowledge that this Agreement does not create a debt of the City to Developer, but rather an obligation to pay Incentive Payments only upon City's receipt of Hotel TOT in accordance with the Ordinance and the terms of this Agreement.

C. Time Limits. If either Party fails to act pursuant to the timelines set forth in Section 2(b), or the other Party wishes to challenge the action, the challenging Party shall provide written notification to the other, within sixty (60) days. Notice shall be mailed with the United States Mail, postage prepaid, certified mail, return receipt requested, and shall be considered received three (3) days after mailing. Failure to notify the other Party of the breach shall constitute a waiver of the breach and an inability to seek such payments under this Agreement. Notice shall be provided to:

If to the City: _____

City of Placerville
Attn: City Manager
3101 Center Street
Placerville, CA 95667

If to the Developer: _____

Apple Hill Hospitality, L.L.C., by
By All Four One LLC, Manager,
By Michael R. Brown, President
23041 Mill Creek Drive
Laguna Hills, CA 92653

3. Annual Audit.

Developer agrees to provide a letter by February 1 of each year following execution of this Agreement, signed by a certified public accountant attesting that all TOT revenues have been collected and submitted to the City in accordance with the City's ordinance and this Agreement.

4. Record Retention.

The Developer agrees to retain all unaudited Hotel financial records regarding Hotel's revenues subject to TOT during the term of this Agreement plus five (5) years. The Developer agrees to make the Hotel's financial records regarding revenues subject to TOT available to the City within 30 days of a written request for auditing purposes.

5. Conditions of Reimbursement.

As a condition precedent to the remittances set forth in Section 2(B), Developer shall:

- A. Obtain a Building Permit prior to January 1, 2023
- B. Obtain a Certificate of Occupancy by January 1, 2025
- C. Commence Hotel Operations by January 1, 2026.
- D. Be at all times operated as a Select Service Hotel or equivalent as defined in the

Program.

If Developer fails to meet the deadlines set forth in this Section or cease to operate as a Select Service Hotel or equivalent, the City may, in its sole discretion, terminate this Agreement by providing written notice of this intent to Developer. Developer agrees that it has no recourse or right to appeal and should this Agreement terminate, Developer shall be subject to the City's Ordinance without the benefit of the incentives set forth in this Agreement.

6. Length of Term.

This Agreement shall apply to the first TOT payment by Developer to the City following the opening of the Hotel and shall remain in effect, unless otherwise terminated as provided for herein, until Developer has received the total amount of Six Million Dollars (\$6,000,000.00) in TOT reimbursement or twenty years, whichever occurs first.

7. No Obligation to Build or Operate.

Both parties acknowledge that the Project is currently in the proposal stages, and Developer shall have no liability to City for failure to build or operate a Hotel as intended by the parties herein. Similarly, the City shall have no right or obligation to provide any compensation or other incentives if Developer fails to build or operate a Hotel.

8. Disclosure.

Developer is informed and hereby acknowledges that the City is uncertain as to whether the benefits conferred by this Agreement create a public work for prevailing wage purposes, which, in turn, requires the payment of prevailing wages on the Hotel Project. Developer expressly and affirmatively acknowledges that the City's representation of uncertainty, as specifically set forth in this Agreement, is the sole and complete representation made by the City regarding the prevailing wage issue. Developer hereby acknowledges that Developer have been informed of the City's uncertainty in this regard. Developer may wish to treat this Agreement as an event triggering the consequences attendant with a prevailing wage project to remove any uncertainty; Developer are encouraged to seek the advice of its own attorney(s) as to this issue, prior to the execution of this Agreement. Developer' execution of this Agreement is an acknowledgment that such independent advice and counsel has been obtained.

9. Indemnity Obligation.

Developer agrees to protect, defend (with legal counsel acceptable to the City), indemnify and hold harmless the City, its council members, officers, agents, independent contractors and employees from any and all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys' fees and court costs), injuries and liabilities of every kind arising out of or caused by any of Developer' negligence, gross negligence or intentional wrong doing under this Agreement, whether such activities or performance thereof be by Developer or anyone directly or indirectly employed or contracted with by Developer and whether such damage

shall accrue or be discovered before or after commencement of operation of the Project, including but not limited to all claims that the benefits conferred by the City under this Agreement create a public work for prevailing wage purposes thereby requiring the payment of prevailing wages, and all claims challenging the legality, constitutionality, or enforceability of this Agreement, including but not limited to the City's authority to pay TOT Incentive Amounts.

The City's rights of indemnity, as expressly set forth in this Agreement, shall not depend upon the actual payment of any claim, damage, penalty, loss, cost, expense (including reasonable attorneys' fees and court costs), injury or liability sustained by the Developer and/or its contractors, subcontractors, agents and/or employees.

In the event that the City tenders the defense and indemnification of a claim contemplated by this Agreement to Developer and/or to his/her/its contractors, subcontractors, agents and/or employees, the City shall be entitled to actively supervise the claim and/or the defense of the same, shall be authorized to select and retain its own separate independent counsel, at Developer' and/or his/hers/its contractors, subcontractors, agents and/or employees' expense, as necessary, which decision shall be made solely and exclusively by the City, and the City must consent to the disposition of any such claim, including but not limited to, the settlement of any such claim.

10. Insurance Requirements

Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain the insurance listed below. Any requirement for insurance to be maintained after completion of the work shall survive this agreement.

A. Workers' Compensation & Employers Liability

- Workers' Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- Employers Liability with limits of 1,000,000 per Accident; 1,000,000 Disease per employee; 1,000,000 Disease per policy.
- The policy must include a written waiver of the insurer's right to subrogate against City of Placerville.
- Required Evidence of Coverage:
 1. Subrogation waiver endorsement; and
 2. Properly completed Certificate of Insurance.

B. General Liability

- Commercial General Liability Insurance no less broad than ISO form CG 00 01.
- Coverage must be on a standard Occurrence form. Claims-Made forms are not acceptable without prior written consent. Modified, limited or restricted Occurrence forms are not acceptable without prior written consent.

Minimum Limits: 1,000,000 per Occurrence; 2,000,000 General Aggregate; 2,000,000 Products/Completed Operations Aggregate. The General Aggregate must apply separately to each project.

- Prior written consent is required if the insurance has a deductible or self-insured retention.
- Coverage shall be continued for one (1) year after completion of the work.
- City of Placerville must be an additional insured for liability arising out of ongoing and completed operations by or on behalf of the contractor. City of Placerville shall continue to be an additional insured for completed operations for (1) year after completion of the work.
- The policy definition of "insured contract" must include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard ("f" definition of insured contract in ISO form CG 00 01, or equivalent).
- The insurance provided to City of Placerville as an additional insured must apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by City of Placerville.
- The policy must cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
- Required Evidence of Coverage:
 1. Copy of the additional insured endorsement or policy language granting additional insured status;
 2. Copy of the endorsement or policy language indicating that coverage applicable to City of Placerville is primary and non-contributory; and
 3. Properly completed Certificate of Insurance.
 4. Completed and signed Agent/Broker Questionnaire with supporting documentation as required.

C. Automobile Liability

- Minimum Limit: \$1,000,000 combined single limit per accident.
- Coverage must apply to all owned, hired and non-owned vehicles.
- City of Placerville must qualify as an insured.
- Required Evidence of Coverage:
 1. Copy of the endorsement or policy language indicating that City of Placerville is an insured; and
 2. Properly completed Certificate of Insurance.

10. Authority to Execute Agreement.

Each individual signing this Agreement represents and warrants that he or she has full authority to execute the same on behalf of the Party on whose behalf he or she so signs, and that he or she is acting within the scope of his authority. Each individual signing this Agreement agrees to indemnify and hold harmless the other Party for loss, damage, liability, cost or expense (including reasonable attorneys' fees) arising out of any claims made by anyone that such authority to sign this Agreement does not exist.

11. Default.

A. Defaults.

Any one or all of the following events shall constitute a default by Developer:

1. Any misleading statement, misrepresentation or warranty of Developer herein or in any other writing at any time furnished by Developer to City that materially harms the City or materially diminishes the Benefit of the Agreement to the City;
2. Nonperformance, when due, of any of the obligations described herein, or failure to perform any obligation or covenant contained herein if noncompliance is not cured by Developer within 90 days after written notice of noncompliance is provided to Developer by the City;
3. The filing by or against Developer of a petition for relief under the Bankruptcy Reform Act of 1978 or any bankruptcy or debtor relief law;
4. A general assignment by Developer for the benefit of creditors or the appointment of any receiver or trustee of all or any portion of the assets of Developer;
5. The transfer or assignment of this Agreement prior to opening the hotel and beginning operations except assignment to entity substantially controlled by same principals as Developer, and upon review and approval by the City, approval which shall not be unreasonably withheld.

B. Remedies.

Upon the occurrence of a default, the City, at its option, may declare this Agreement to be in default and, in such event, this Agreement shall be deemed termination and the City shall have all of the rights and remedies prescribed at law or in equity. Following an event of default, the City shall have no further obligation to disburse all or any portion of Reimbursement TOT.

C. No Liability of City Member.

No city council member, official or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City under this Agreement or for any amount which may become due to Developer or any successor or on any obligations under the terms of this Agreement.

12. Compliance with Governmental Regulations.

Developer shall, at its sole cost and expense, comply with all applicable municipal, county, state and federal laws, rules, regulations and ordinances now in force, or which may hereafter be in force, pertaining to its activities contemplated under this Agreement, issuance of

building and use permits and compliance with all federal and state labor laws (collectively, “Laws”). Supplementing the indemnity set forth in Section 9 above, Developer shall defend, indemnify and hold the City, its elected officials, officers, members, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of Developer to comply with such Laws relating to this Agreement.

Specifically, by its execution of this Agreement, Developer certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the project being performed is an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, Developer agrees to fully comply with such Prevailing Wage Laws. If required, Developer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the work on the project available to interested parties upon request and shall post copies at the Developers principal place of business and the project site.

13. Advice of Counsel.

Each of the Parties hereto has received the advice of independent legal counsel prior to signing this Agreement. Each of the Parties hereto acknowledges that no other party or agent or attorney of any other party has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce the other Party to execute this Agreement.

14. Entire Agreement.

It is expressly understood and agreed that this Agreement, inclusive of the Placerville Hotel Incentive Program and the Hotel Operations Covenant Agreement, contains the entire agreement and understanding concerning the subject matter thereof, and supersedes and replaces all prior negotiations and agreements between the Parties, whether written or oral. In the event there is a conflict between this document, the Placerville Hotel Incentive Program and the Hotel Operations Covenant Agreement, this document shall take precedent. It is expressly understood and agreed that there have been no promises, agreements, warranties or inducements, not herein expressed, and The Parties acknowledge that they have read this Agreement and have executed it without relying upon any statements, representations, or warranties, whether written or oral, not expressly set forth herein.

15. Governing Law.

All questions with respect to the construction of this Agreement and the rights and liabilities of the Parties hereto shall be governed by the laws of the State of California and venue in El Dorado County.

16. Further Assurances.

The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments, including, but not limited to, escrow instructions, and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

17. Captions.

Sections, titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference and shall in no way be construed to define, limit or extend the scope of this Agreement or the intent of any of its provisions.

18. Contingent on City Council's Approval.

Developer understands and acknowledges that this Agreement is subject to approval by the City Council of the City and that it cannot be fully performed by the City unless and until such approval has been duly and regularly made. The terms, conditions, and covenants set forth herein are all made expressly contingent upon approval by the City Council. In the event this Agreement is not approved, neither Party shall be obligated to perform and is released and discharged by the other from any and all obligations hereunder.

Notwithstanding the foregoing, this Agreement does not bind the City in any particular direction with respect to entitlements necessary for the construction and/or operation of the Developer; nor does this Agreement guarantee those approvals.

19. Amendment.

This Agreement shall not be amended except by a written instrument signed by the Parties or their respective successors and assigns.

20. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

21. Severability.

If any provision of this Agreement or the application thereof, to any person or entity is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

AGREED:

Apple Hill Hospitality, L.L.C., by
By All Four One LLC, Manager,
By Michael R. Brown, President

City of Placerville:

M. Cleve Morris, City Manager

Approved as to form and content:

ATTEST:

Mona G. Ebrahimi, City Attorney

Regina O'Connell, City Clerk