

When Recorded, Return To:

City Clerk
City of Prescott
201 South Cortez Street
Prescott, Arizona 86303



**FIRST AMENDED DEVELOPMENT AND
DISPOSITION AGREEMENT**
Agreement No. _____

**CITY OF PRESCOTT,
an Arizona municipal corporation
("City")**

**WSH HOSPITALITY, LLC,
an Arizona limited liability company
("Developer")**

FIRST AMENDED DEVELOPMENT AND DISPOSITION AGREEMENT

THIS FIRST AMENDED DEVELOPMENT AND DISPOSITION AGREEMENT ("Agreement"), dated as of _____, 2019~~8~~ (the "Effective Date"), is made by and between **CITY OF PRESCOTT**, an Arizona municipal corporation ("City"), and **WSH HOSPITALITY, LLC**, an Arizona limited liability company ("Developer") and amends and replaces the Development and Disposition Agreement (City agreement number 2019-088). Developer and the City may sometimes be referred to herein as the "Parties."

RECITALS

A. The City owns fee simple title to the parcel of real property generally located at 254 and 300 North Montezuma Street, west of the intersection of Sheldon and Montezuma Streets (~~2.164~~ 1.911 acres +/-) more particularly described on Exhibit A attached hereto and made a part of by this reference (the "Property"). The Property is shown on the Exhibit B preliminary site plan attached hereto and incorporated herein. The City also owns fee simple title to the parcel of real property located north of the Property more particularly described on Exhibit H (the "Park Area").

B. The City desires to lease the Property to Developer and the Developer desires to lease the Property from the City, on the terms and conditions set forth herein. The City is empowered to undertake such lease of real property with an option to purchase pursuant to Prescott City Charter Article VIII, Section 11.

C. Developer proposes to construct an approximately seventy thousand square foot business-class hotel consisting of approximately 10095 hotel rooms with a height of not more than ~~seventy-five-five (5570)~~ feet measured from the finished floor at the front door of the building to the highest architectural element of the building and meeting room and conference space included as part of the hotel. Developer's lease and option to purchase of the Property, construction of the hotel and conference space, rehabilitation of historic landmarks and structures, park improvements/landscaping and revitalization of the Park Area, and subsequent business operations on the Property are hereinafter referred to as the "Project". The Project consists of those details and drawings to be submitted by Developer or the City as provided in this Agreement for review by City staff concerning the Property and the Park Area.

D. The parties acknowledge that this Agreement constitutes a "Development Agreement" within the meaning of A.R.S. § 9-500.05, and that, in accordance therewith, it shall be recorded against the interest of Developer in the Property, in the Office of the Yavapai County Recorder to give notice to all persons of its existence and of the parties' intent that the burdens and benefits contained herein be binding on and inure to the benefit of the parties and all their successors in interest and assigns.

E. Developer has submitted a proposal to the City that requires participation by the City in order to accomplish the Project. The City is concerned that its failure to offer to Developer the terms and incentives set forth in this Agreement will likely result in Developer not undertaking the Project.

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F. The parties expressly acknowledge and agree that the development of the Property as contemplated in this Agreement is consistent with the portions of the Prescott General Plan applicable to the Property on the date hereof and that there are no features of the Development Plan (as provided in Exhibit C hereto), including, without limitation, the intensity of development and range of land uses proposed in the Development Plan , that cannot be accommodated within the scope of the General Plan.

G. The City desires to obtain those public benefits that will accrue from Developer's development of the Property in a manner consistent with the downtown business district and redevelopment components of the Land Development Code and the Entertainment District component of the City Code. Furthermore, the parties acknowledge that the Project qualifies as a business expansion economic development Project; that the Project will assist in the creation and retention of jobs and will otherwise improve and enhance the economic welfare of the residents of Prescott by expanding commercial, hotel and conference center uses in Prescott, increasing access to goods and services, increasing the City's assessed property valuation, stimulating further economic development in the City, constructing public infrastructure improvements in a difficult to develop area, preserving and revitalizing historical landmarks and structures, enhancing and revitalizing public parks and trailways, and generating additional sales tax revenues; that the terms and incentives agreed to by the City in this Agreement will in fact serve legitimate economic development purposes as authorized by A.R.S. § 9-500.11; and that the incentives authorized by this Agreement are reasonably proportionate to the benefits the City and the public will derive from Developer's Project to Prescott.

H. The Property is currently zoned Downtown Business District and Business Regional under the City's Land Development Code (the "Zoning"), which Zoning allows the uses contemplated by this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

PART I – AGREEMENT

1. Recitals. The recitals set forth above are acknowledged by the parties to be true and correct and are incorporated herein by this reference.

2. City Council Action Requirement. The City and Developer acknowledge that, notwithstanding any language of this Agreement or any subsequent additional document, no act, requirement, payment or other agreed upon action to be done or performed by the City which would, under any federal, state or city constitution, statute, charter provision, ordinance or regulation, require formal action, approval or concurrence by the City Council, will be required to be done or performed by the City unless and until said formal City Council action has been taken and completed. "Completed" under this provision means that such City Council action is no longer subject to referendum action. Notwithstanding the foregoing to the contrary, at such time as formal City Council action to approve this Agreement has been taken and completed, this Agreement shall be binding on the City.

3. Compliance with Law. The City represents and warrants that prior to entering this Agreement it will comply with any applicable legal requirements including any requirements necessary to lease property with an option to purchase found in the Prescott City Charter or other applicable law. The City further represents and warrants that it has valid title to the Property and that, other than any permitted encumbrances, there are no adverse claims to the Property known to the City. As used in this provision, the term “permitted encumbrance” means any encumbrance which is permitted as provided in Exhibit F to this Agreement.

4. General Cooperation. The City agrees to use its reasonable best efforts to assist Developer or its affiliates in the development of the Project, including any assistance with other governmental agencies as appropriate.

PART II – DISPOSITION OF THE PROPERTY

Disposition of the Property is hereby conveyed by way of a ground lease with option to purchase between the City and the Developer (the “Ground Lease”). This Ground Lease, dated as of the Effective Date, is entered into by and between the City as “Lessor” and Developer as “Lessee”. In consideration of the payment of rent and the performance by the parties of each of the provisions set forth herein, and intending to be legally bound, the parties agree as follows:

GROUND LEASE ARTICLE 1 **PROPERTY**

1.1 Agreement. Lessor hereby leases to Lessee for the term, at the rent, and in accordance with the provisions set forth herein, the Property described in Exhibit A for the uses and purposes specified in this Agreement.

1.2 Use. The Property shall be used solely and exclusively for the construction and operation of the Project.

1.3 Property leased "as is". Lessee makes use of the Property "as is" and, except as expressly provided in this Agreement, Lessor makes no further express or implied warranties as to the physical condition of the Property but subject to the City's obligations to construct or cause to be constructed the Public Improvements as defined in Part III of this Agreement (Development of the Property).

GROUND LEASE ARTICLE 2 **TERM**

2.1 Commercial Expiration. The term of this Ground Lease commences on the Effective Date, and ends on December 31, 2068, with one (1) thirty-year renewal option at the direction of the Lessee as provided in this Ground Lease unless terminated earlier as provided in this Ground Lease. Unless Lessee provides written notice of its election to not exercise this option to renew at least 365 days before expiration of the current term, Lessee is deemed to have automatically exercised this option.

GROUND LEASE ARTICLE 3
RENT

3.1 **Annual Rent.** Annual rent in the amount of Fifteen Thousand Dollars (\$15,000), (“Rent”) shall be payable by Lessee to Lessor for the use and occupancy of the Property during the term of this Ground Lease, without offset or deduction except as provided hereafter.

3.2 **Abatement of Rent.** Lessor agrees to forego Rent, and no Rent shall be payable until the rent commencement date, which shall be the first day of the month following the date of issuance of an unconditional certificate of occupancy for the hotel by the City (the “Rent Commencement Date”). Beginning on the Rent Commencement Date and continuing on the first day of each calendar month thereafter, Lessee shall pay, without notice and free from all claims, deductions and setoffs against the City the Rent in equal monthly installments.

3.3 **Adjustments.** On each Adjustment Date, Base Rent (defined as the annual rent being paid during the last five year term) shall be increased by multiplying the Base Rent by the Adjustment Ratio. The “Adjustment Dates” are the 5th, 10th, 15th, 20th, 25th, 30th, 35th, 40th, 45th, 50th and if applicable the 55th, 60th, 65th, 70th, 75th, and 80th anniversaries of the Rent Commencement Date. The “Adjustment Ratio” is seven and one-half percent (7.5%).

3.4 **Late Fees.** In the event that any payment required to be made by Lessee to City under the terms of this Lease is not received within five (5) days after the due date thereof, a late charge shall become immediately due and payable as an Additional Payment in an amount equal to two and one-half percent (2.5%) of the late payment; provided, however, that no late charge shall be assessed with respect to the first such late payment in any twelve consecutive month period.

3.5 **Default Interest Rate.** If Lessee fails to pay any rent in full on or before the due date, Lessee shall be responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment in full is made.

3.6 **City Interest Superior.** City’s interest in this Lease, as the same may be modified, amended or renewed, shall not be subordinate to:

3.6.1 Any mortgage now or hereafter placed upon Lessee’s interest in this Lease, or

3.6.2 Any other liens or encumbrances hereafter affecting Lessee’s interest in this Lease.

To the extent the terms of this article 3.6 conflict with the terms of article 20 of this part, article 20 shall apply.

3.7 **Lessee Obligations.** At any time prior to the Rent Commencement Date, Lessee may cancel this Agreement without penalty as a result of force majeure or unanticipated site conditions. Other than unanticipated site conditions or force majeure, Lessee may cancel this agreement on or before the Rent Commencement Date for any reason by paying a \$5,000.00 lease termination fee to Lessor and restoring the Property to be in substantial form to its state on the Effective Date. As used in this paragraph, “unanticipated site conditions” means conditions existing on the Property which, in Developer’s sole discretion, make it unreasonably difficult to develop the Project. As used in this paragraph, “force majeure” means an event such as a fire, explosion or other casualty; earthquake, lightning, and other severe or unusual weather conditions for Prescott, Arizona or other acts of God; acts of public enemies, terrorism, riot, insurrection; governmental regulations of the sale of materials and supplies or the transportation thereof; unusual delays in transportation; strikes, lock outs or boycotts directly affecting the work of

construction; embargoes and shortages of material, energy, fuel or labor resulting directly from lack of market availability; governmental control or diversion, delays in approvals required for the Project; an inability or refusal of Lender (as defined in Part IV paragraph 1) and City to agree on their respective interests pursuant to a mortgage or deed of trust in the Ground Lease or the Improvements; concealed conditions in the soil; action or inaction of governmental or quasi-governmental authorities (including utility companies), including delays in performing any work on or about the Property that is a necessary precedent to construction of the Project, and other similar causes beyond Developer's reasonable control.

GROUND LEASE ARTICLE 4
USE OF PREMISES

4.1 Use. Unless Developer has exercised its option to purchase the Property, the Property shall be used solely and exclusively for the Project in accordance with the Development Plan.

4.2 Other Terms of Use

(a) Lessee may erect within the Property monument signage with respect to Lessee's operation of the hotel on the Property consistent with the City Land Development Code.

(b) Lessee may place signage on the Property in size and square footage as other similar size hotels operating in the City consistent with the City Land Development Code.

(c) Alternatively, Lessee may provide a Comprehensive Sign Package. Unless otherwise agreed by the parties, the Comprehensive Sign Package, may include at least (1) a freestanding monument sign of up to 50 square feet of sign area, (2) a building wall sign of at least 1.5 square feet of sign for each 1 linear foot of wall frontage along Montezuma, (3) a blade sign on the northeast corner of the building along Montezuma of at least 40 square feet, and (4) a sign on the porte-cochere or entrance of the hotel of at least 20 square feet.

4.3 Waste. Lessee shall not conduct or permit to be conducted any public or private nuisance on the Property or commit or permit to be committed any waste thereon. Lessee shall report to Lessor and appropriate law enforcement authorities any known or suspected trespass or waste committed on the Property.

4.4 Conformity to Law. Lessee shall not use or permit the Property to be used in any manner that is not in conformity with all applicable Federal, State, County and municipal laws, rules and regulations, unless Lessor determines and advises Lessee in writing otherwise.

4.5 Quiet Enjoyment. Lessee shall peaceably and quietly enjoy the Property during the term of this Ground Lease so long as Lessee is in compliance with all the provisions of this Ground Lease.

4.6 Inspection. Lessor, its duly authorized agents, employees and representatives shall have the right to enter upon and inspect the Property and all Improvements thereon at reasonable time, and in a reasonable manner.

4.7 Surrender. In the event this Ground Lease is not renewed or the Lessee has not exercised its option to purchase the Property as described in this Ground Lease, Lessee shall surrender peaceably the possession of the Property upon expiration of the term of this Ground Lease.

4.7.1 Temporary Use by Lessor for Purposes of Constructing Public Improvements. The Lessor is responsible to construct or cause to be constructed certain Public Improvements (as provided in this Agreement and more specifically set forth in Exhibit E attached hereto). In order to permit such construction, the Lessee hereby grants temporary use to Lessor of such portion of the Property as is necessary for the Public Improvements to be constructed, such temporary use to end upon completion of the Public Improvements. Any other temporary use of any portion of the Property shall be governed by other provisions of this Ground Lease.

4.7.2 Access. The Lessor shall not take any action which materially affects access to the Property.

GROUND LEASE ARTICLE 5 **RECORDS**

5.1 Record Keeping; Inspection. Lessee shall make and keep (i) for a term of five (5) years after creation of a record; or (ii) until the conclusion of any dispute concerning this Ground Lease, whichever is later, appropriate books and records concerning the operation of this Ground Lease, including but not limited to Federal and State tax statements, receipts and other records. Such records are confidential to Lessee unless required to be disclosed to any party pursuant to law.

GROUND LEASE ARTICLE 6 **CONSTRUCTION AND IMPROVEMENTS**

6.1 Definitions. "Improvements" means anything permanent in character which is the result of labor or capital expended by Lessee or his predecessors in interest in its reclamation or development, and which has enhanced the value of the Property and remains the property of Lessee. "Removable Improvements" means anything not permanent in character which is the result of labor or capital expended by Lessee or his predecessors in interest.

6.2 Prior Approval Required. Unless Lessee exercises its option to purchase, Lessee shall not place or construct or permit to be placed or constructed any Improvement or Removable Improvement on or to the Property, other than as approved for the Project.

6.3 Utilities; New Construction. Gas, electric, power, telephone, water, sewer, cable television and other utility or service lines of every nature shall be placed and kept underground unless Lessor grants prior written approval otherwise. Except the historic railroad bridge, all buildings and structures shall be of new construction and no buildings or structures shall be moved from any other location onto the Parcel without Lessor's prior written approval.

6.4 Encroachment Permits and Easements. Lessor agrees to issue to Lessee encroachment permits and easements over any portions of contiguous parcels to the Property owned by Lessor and which are beneficial for the Project and its use including for vehicular access, pedestrian access, architectural elements, overhead awnings/shading, valet parking stations, porte cocheres, subterranean foundations, lateral support systems, and outdoor dining. Any permits and easements granted pursuant to this section will run with the title to the Property.

GROUND LEASE ARTICLE 7 **REPAIRS AND MAINTENANCE**

7.1 Lessee's Obligations. Lessor shall be under no obligation to maintain, repair, rebuild or replace any Improvement on the Property. Lessee shall, subject to the provisions of Article 12 (Damage) and Article 15 (Eminent Domain) and at its own expense, keep and maintain the

Property in good order, condition and repair in conformity with all governmental requirements and if applicable, those of the insurance underwriting board or insurance inspection bureau having jurisdiction over the Property, unless Lessor determines and advises Lessee in writing that such conformity is not in the best interest of the Lessor.

GROUND LEASE ARTICLE 8
MECHANICS' LIENS

8.1 **Payment; Indemnity.** Unless Lessee exercises its option to purchase the Property, the Property is public property which is not subject to lien. Nevertheless, to the extent permitted by law, the following provisions apply. Lessee shall be responsible for payment of all costs and charges for any work done by or for it on the Property or in connection with Lessee's occupancy thereof, and Lessee shall keep the Property free and clear of all mechanics' liens and other liens and encumbrances resulting from work done for Lessee or persons claiming under it; provided, however, that Lessee may in good faith, and with reasonable diligence, contest or dispute any such lien claims in any appropriate forum so long as this Ground Lease or the Property are not actually in danger of levy or sale. Lessee expressly agrees to and shall indemnify and save Lessor harmless against liability, loss, damages, costs, attorney's fees and all other expenses on account of claims of lien or other encumbrances of laborers or material men or others for work performed or materials or supplies furnished to Lessee or persons claiming under it. Further, any contracts between Lessee or sublessees and any contractors and subcontractors shall expressly hold Lessor harmless against any liability arising from such contracts, as described above.

8.2 **Notice.** Should any such claims of lien or other encumbrances be filed against the Property or any action affecting the title to the Property be commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

GROUND LEASE ARTICLE 9
UTILITIES

9.1 **Lessee's Obligations.** Lessee shall be responsible for and shall hold Lessor harmless from any liability for all charges for water, gas, sewage, electricity, telephone and any other utility service for the Property.

9.2 **Maintenance of Utilities.** Lessee shall maintain on the Property and make available to the Parcel at all times after the issuance of the certificate of occupancy all the recited utilities in Section 9.1 above, other than telephone service.

GROUND LEASE ARTICLE 10
TAXES AND ASSESSMENTS

10.1 **Lessee's Obligations.** Once an unconditional certificate of occupancy has been issued, in addition to the rent set herein, Lessee shall timely pay and discharge, without deduction or abatement for any cause, all duties, taxes, charges, assessments, impositions and payments, extraordinary as well as ordinary, unforeseen as well as foreseen, of every kind and nature (under or by virtue of any current or subsequently enacted law, ordinance, regulation or order of any public or governmental authority) (collectively "taxes"), which during the term are due, imposed upon, charged against, measured by or become a lien on the Improvements. Lessee is not responsible for any taxes on the Improvements prior to issuance of an unconditional certificate of occupancy and is solely responsible for taxes on the Improvements, and not the Property, after an unconditional certificate of occupancy has been issued.

10.2 Development Impact Fees. Lessor shall not impose any new or increased development impact fees against this Project that were not otherwise in effect as of the Effective Date.

GROUND LEASE ARTICLE 11
INSURANCE AND INDEMNITY

11.1 Indemnity. Irrespective of any insurance carried by Lessor for the benefit of Lessor, Lessee, to the fullest extent allowed by law, hereby expressly agrees to indemnify, defend and hold Lessor harmless, or cause Lessor to be indemnified and held harmless, from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses, including attorney's fees and costs, which may be imposed upon or incurred by or asserted against Lessor by reason of the following: (i) any accident, injury or damage to any person or property occurring on the Property or any portion thereof; (ii) any use, nonuse or condition of the Property or any portion thereof; or (iii) any failure on the part of Lessee to perform or comply with any of the provisions of this Ground Lease; except that none of the foregoing shall apply to Lessor's intentional conduct or active negligence, whether by its employees or agents. In case any action or proceeding is brought against Lessor by reason of any such occurrence, Lessee, upon Lessor's request and at Lessee's expense, will resist and defend such action or proceeding, or cause the same to be resisted and defended either by counsel designated by Lessee or, where such occurrence is covered by liability insurance, by counsel designated by the insurer. Notwithstanding the above, Lessor does not waive any applicable statutory notice requirements and any applicable statute of limitations.

11.2 Policies. Lessee at its expense, shall after issuance of a construction permit for the hotel and at all times during the term, and any extension thereof, maintain in full force a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in the State of Arizona, and each policy shall be written on an occurrence basis, which insure Lessee and Lessor against liability for injury to persons and property and death of any person or persons occurring in, on or about the Property, or arising out of Lessee's maintenance, use and occupancy thereof. Further, the policies shall provide that their coverage is primary over any other insurance coverage available to Lessor, its servants, agents and employees. All policies of insurance delivered to Lessor must contain a provision that the company writing the policy shall give to Lessor thirty (30) days notice in writing in advance of any cancellation or lapse, or the effective date of any reduction in the amounts of insurance.

11.3 Coverage. The insurance as described in Paragraph 11.2 (Policies) herein shall afford protection not less than \$1,000,000 per person, \$2,000,000 per event in combined single limits for bodily injury and property damage and each liability policy shall be written on an occurrence basis; provided, however, that the minimum amount of coverage for the above shall be adjusted upward on Lessor's reasonable request so that such respective minimum amounts of coverage shall not be less than the amounts then required by statute or generally carried on similarly improved real estate in the County herein described, whichever is greater. If at any time Lessee fails, neglects or refuses to cause such insurance to be provided and maintained, then Lessor may, at its election, procure or renew such insurance and any amounts paid therefor by Lessor shall be an additional amount due at the next rent day.

11.4 Blanket Policy. Notwithstanding anything to the contrary in this Article, Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance maintained by Lessee, provided, however, that the

coverage afforded Lessor will not be reduced by reason of the use of such blanket policy of insurance.

11.5 Copies. Evidence of policies required by this Article shall be delivered to Lessor after issuance of a construction permit and prior to commencement of construction of the hotel as contemplated in Exhibit D. At Lessor's request, Lessee will provide copies of such policies. Lessee shall provide Lessor with a current certificate of insurance and appropriate endorsements and at Lessor's request provide proof of payment.

GROUND LEASE ARTICLE 12
DAMAGE

12.1 Lessee's Obligations. If the Property or any building or other Improvement located thereon are damaged or destroyed after the issuance of a certificate of occupancy, Lessee shall arrange at its expense for the repair, restoration and reconstruction of the Property substantially to its former condition existing prior to commencing construction of the Project or may repair, restore, or reconstruct the Property to its condition existing prior to the damage or destruction, but such damage or destruction shall not terminate this Ground Lease or relieve Lessee from its duties and liabilities hereunder except as provided in paragraph 3.8; provided that in the last year of the initial term or any renewal term, Lessee shall not be required to undertake any repairs, restoration or reconstruction. The parties expressly acknowledge that this provision does not apply in the event Lessee exercises its option to purchase the Property.

12.2 Insurance Proceeds. Insurance proceeds received by the Lessee shall first be used by the Lessee for the purpose of repair and rebuilding as provided in Section 12.1. Once the Property has been repaired, restored, or reconstructed in accordance with this Section 12.1, any further insurance proceeds are for the benefit of Lessee or Lessee's Lender.

GROUND LEASE ARTICLE 13
TRADE FIXTURES AND PERSONAL PROPERTY

13.1 Lessee's Property. Any trade fixtures, signs, store equipment, and other personal property installed in or on the Property or in or on the Project (whether or not physically attached to any structure) by Lessee or any sublessee shall remain its property subject to the provisions of this Ground Lease. Lessee shall have the right, provided it is not then in breach hereunder, at any time to remove any and all of the same, subject to the restrictions Section 22. 6 (Lessor's Lien).

GROUND LEASE ARTICLE 14
ASSIGNMENT, SUBLETTING AND ENCUMBRANCE

14.1 Prior Approval Required. Except any assignment to a lender which occurs pursuant to Article 20 of this Agreement, Lessee shall not assign this Ground Lease or any interest therein, nor shall Lessee sublease any portion or all of the Premises without obtaining Lessor's prior written approval as provided in Part III, Section 3 of this Agreement below. Except as provided in Article 20, in no event may this Ground Lease or any interest therein be assigned or sublet unless Lessee is in full compliance with this Ground Lease and the Agreement. Lessor may require additional rent in consideration for approval of any sublease only if the reasonably anticipated excise tax revenues generated at the Property and the tax revenues generated from the assignee's or sublessee's business are expected to be lower. Lessee shall not enter into a contract of sale, mortgage, lien or other encumbrance affecting this Ground Lease unless a copy is filed with Lessor.

14.2 Purpose. There shall be no assignment or sublease made except to an assignee or sublessee that will use the Property for the purpose(s) described herein.

14.3 Lessee Primarily Responsible. Notwithstanding any sublease, Lessee shall remain responsible to Lessor for the performance of the provisions of this Ground Lease. In the event of a full assignment, approved by Lessor which approval shall not be unreasonably withheld, Lessee shall no longer be responsible for the performance of any provisions of this Ground Lease.

14.4 Percentage Rent Due. Assignment shall not be approved unless all accrued Annual Rent has been paid as of the date of the application for assignment.

14.5 Entire Interest. The assignment of Lessee's entire interest in a portion of the Property shall not relieve Lessee of its responsibility to Lessor for the performance of the provisions of this Ground Lease as it relates to that portion of the Property not transferred by the assignment.

14.6 Certain Permitted Assignments. The Lessor grants permission to the Lessee to assign its interest in portions of the Property or to the Project to subsidiaries or affiliates of the Lessee who engage in activities ancillary to those undertaken at the Property, such as restaurants, bars, valet parking, etc. or if not subsidiaries or affiliates of the Lessee, with the written consent of the Lessor.

GROUND LEASE ARTICLE 15
EMINENT DOMAIN

15.1 Complete Taking. If at any time during the duration of this Ground Lease the whole of the Property is taken by acquisition in any manner through condemnation proceedings or otherwise, for any quasi-public or public purpose by any person, private or public corporation, or any governmental agency having authority to exercise the power of eminent domain or condemnation pursuant to any law, general, special or otherwise, this Ground Lease shall expire on the date when the Parcel is taken or acquired except as otherwise provided.

15.2 Partial Taking; Damages; Rent. In the event of a partial taking and if Lessee determines that it is in the best interest of the Lessee, the Ground Lease may continue in full force and effect for that portion of the Property not taken. If Lessee chooses to continue the lease, rent shall be abated as of the day of such taking in a percentage amount equal to the percent of the Property taken. Unless the Lessor is the entity taking a part of the Property, as against Lessor, Lessee and any sublessee shall not have a compensable right or interest in the real property being taken and shall have no compensable right or interest in severance damages against Lessor which may accrue to the remainder of the Property not taken. Nor shall Lessee or any sublessee have any compensable right or interest in the remaining term of this Leasehold or any renewal as against Lessor unless Lessor is the entity taking the part of the Property. Lessor shall be entitled to and shall receive any awards, including severance damage to remaining lands not part of the Property that may be made for any taking concerning the Property.

15.3 Lessee's Rights to Award. In the event of any taking, Lessee shall have the right to receive any and all awards or payments made for Lessee's interest in the Property created by this Agreement, any building, or any other improvements placed on the Property.

GROUND LEASE ARTICLE 16
BANKRUPTCY AND INSOLVENCY

16.1 Lessor's Rights. If (i) all or substantially all of Lessee's assets are placed in the hands of a receiver, and such receivership continues for a period of thirty (30) days; or (ii) should Lessee

make an assignment for the benefit of creditors; or (iii) should Lessee institute any proceedings under any present or future provisions of the Bankruptcy Code or under a similar law wherein Lessee seeks to be adjudicated as bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization; or (iv) should any involuntary proceedings be filed against Lessee under such bankruptcy laws and not be dismissed or otherwise removed within ninety (90) days after its filing, then this Ground Lease shall not become an asset in any of such proceedings or assignment. In addition to all other rights and remedies of Lessor provided hereunder or by law, Lessor shall have the right to declare the term of this Ground Lease at an end and to re-enter the Property, take possession and remove all persons, and Lessee shall have no further claim on the Property under this Ground Lease.

GROUND LEASE ARTICLE 17
LESSEE DEFAULTS AND LESSOR'S REMEDIES

17.1.1 **Conditions.** All of the provisions of this Ground Lease are conditions. Breach of any one of these conditions by Lessee or any sublessee shall be sufficient grounds for cancellation of this Ground Lease by Lessor, subject to the other provisions of this Article.

17.2 **Cancellation.** If Lessee fails to keep any provision of this Ground Lease after notice and expiration of the cure period set forth in Section 17.3, Lessor may cancel this Ground Lease and declare Lessee's interest forfeited, Lessor shall be forever wholly absolved from liability for damages which might result to Lessee or any sublessee on account of this Ground Lease having been canceled or forfeited prior to the expiration of the full term, subject to the other provisions of this Article.

17.3 **Breach.** In the event of a breach of this Ground Lease by Lessee which remains uncured after thirty (30) days written notice by Lessor of failure to pay rent, taxes or other assessments, and forty-five (45) days from the receipt of the notice to cure any other default, to Lessee of the breach, (but provided however if the breach can be corrected, but cannot be corrected within the applicable period, it will not constitute a breach if corrective action is instituted by the Lessee within the applicable period and diligently pursued until corrected) Lessor may (i) enter and repossess the Property or any part thereof, expelling and removing therefrom all persons and property (either holding such property pursuant to Lessor's landlord's lien, or storing it at Lessee's risk and expense, or otherwise disposing thereof), as to which Lessor shall not be liable to Lessee or any sublessee for any claim for damage or loss which may thereby occur, and (ii) either (a) terminate this Ground Lease, holding Lessee liable for compensatory, but not consequential or punitive damages for Its breach or (b) treat the Ground Lease as having been breached anticipatorily and the Property abandoned by Lessee. To the extent this paragraph is inconsistent with any provisions (including any separate agreement(s) between City, Lender, and/or Lessor (the "Lender Provisions") regarding Lender's right in the Property or the Improvements including Lender's right (but not the obligation) to assume the Ground Lease then the Lender Provisions apply.

17.4 **Expense.** Lessee shall pay to Lessor upon demand all costs, expenses and fees, including attorneys' fees which Lessor may incur in connection with the exercise of any remedies on account of or in connection with any breach by Lessee, plus interest on all amounts due from Lessee to Lessor at the rate set by the Arizona State Treasurer, according to law.

17.5 **Remedies not Exclusive.** The remedies herein granted to Lessor shall not be exclusive or mutually exclusive and Lessor shall have such other additional remedies against Lessee as may be permitted in law or in equity at any time; provided, however, Lessor shall not be relieved of any obligation imposed by law for mitigation of damages, nor shall Lessor recover any duplicative

damages, and Lessee shall be reimbursed by any subsequent Lessee or purchaser of the Property for any amount by which the value of Lessee's Improvements exceed Lessor's damages, notwithstanding any other provision in this Ground Lease to the contrary. Lessor expressly acknowledges that in the event of completion of the Project by Developer, and any subsequent breach by Developer of this Ground Lease which results in an abandonment of the Property, that Lessor is not entitled to any further damages of any kind against Developer.

17.6 No Waiver. No waiver of breach of any provision of this Ground Lease shall be construed as a waiver of succeeding breach of the same or other provisions.

17.7 Form of Notice. Any notice to Lessee and Lender pursuant to this provision must be sent both by email and by traceable carrier service (with next day delivery) such as FedEx, UPS, or USPS to each address provided in Part IV of this Agreement.

GROUND LEASE ARTICLE 18 **LESSOR DEFAULTS AND LESSEE'S REMEDIES**

18.1 Conditions. All of the provisions of this Ground Lease are conditions. Breach of any one of these conditions by Lessor shall be sufficient grounds for Lessee to seek to exercise remedies hereunder.

18.2 Breach. In the event of a breach of this Ground Lease by Lessor which is not curable or remains uncured after forty-five (45) days from the receipt of the notice to cure any curable default, to Lessor of the breach, (but provided however if the breach can be corrected, but cannot be corrected within the applicable period, it will not constitute a breach if corrective action is instituted by the Lessor within the applicable period and diligently pursued with the breach until corrected) Lessee may, (i) seek compensatory, but not consequential or punitive, damages arising out of such breach by Lessee or (ii) seek an award and/or order seeking specific performance by the Lessor of the Lessor's obligations under the Ground Lease.

18.3 Expense. Lessor shall pay to Lessee upon demand all costs, expenses and fees, including attorneys' fees which Lessee may incur in connection with the exercise of any remedies on account of or in connection with any breach by Lessor, plus interest on all amounts due from Lessor to Lessee at the rate set by the Arizona State Treasurer, according to law.

18.4 Remedies not Exclusive. The remedies herein granted to Lessee shall not be exclusive or mutually exclusive and Lessee shall have such other additional remedies against Lessor as may be permitted in law or in equity at any time; provided, however, Lessee shall not be relieved of any obligation imposed by law for mitigation of damages, nor shall Lessee recover any duplicative damages.

18.5 No Waiver. No waiver of breach of any provision of this Ground Lease shall be construed as a waiver of succeeding breach of the same or other provisions.

GROUND LEASE ARTICLE 19 **HOLDING OVER**

19.1 Prohibition. There shall not be any holding over by Lessee or any assignee or sublessee, upon the expiration or cancellation of this Ground Lease without Lessor's prior written consent. If there be any holding over by Lessee or any assignee or sublessee, the holding over shall give rise to a tenancy at the sufferance of Lessor upon the same terms and conditions as are provided for

herein with a rent for the holdover period commensurate with, but in no event less than, the previous year's rent.

19.2 Renewal Application. A notice to renew this Ground Lease, properly and timely filed, may give rise to a period of interim occupancy if the term of this Ground Lease expires prior to execution of a new lease or the denial of the application to renew. This provision does not apply to Lessee's first option to renew as provided in article 2.1.

GROUND LEASE ARTICLE 20 **ENCUMBRANCES**

20.1 Rights. Lessee, and its successors and assigns, shall have the unrestricted right to mortgage and pledge this Ground Lease in accordance with this Section. Nothing in this Ground Lease shall be construed to impose upon Lessor any obligation or liability with respect to the payment of any indebtedness to any holder of a mortgage/deed of trust or pledge of this Ground Lease. After entering into this Agreement, the Lender and the City may execute any agreements necessary to effectuate the terms provided herein. Lessee shall also have the unrestricted right to mortgage and pledge the Improvements.

20.2 Term. The term of any leasehold mortgage or deed of trust shall not be longer than the remaining lease term.

20.3 Registration. No holder of a mortgage/deed of trust on this Ground Lease shall have the rights or benefits provided by this Article nor shall the provisions of this Article be binding upon Lessor, unless and until the name and address of the holder of the mortgage/deed of trust is registered with Lessor.

20.4 Of Record. If Lessee, or Lessee's successors or assigns, shall mortgage this Ground Lease in compliance with provisions of this Article, then so long as any such mortgage/deed of trust of record remains unsatisfied, the following provisions shall apply:

20.4.1 Lessor, upon giving Lessee any notice of default, or any other notice under the provisions of or with respect to this Ground Lease, shall also give a copy of such notice to the registered holder of a mortgage/deed of trust on this Ground Lease. Lender may require a longer time than what is granted to Lessee to cure any default under this Ground Lease. If requested by Lender, the City shall provide for an extended time via separate agreement as long as such extended time is reasonable.

20.4.2 The Lender holding a mortgage or deed of trust on this Ground Lease, the Improvements or any other part of the Project or Property which may be subject to mortgage or a deed of trust by Lessee shall have the right, but not the obligation, to assume the rights and duties of Lessee under this Agreement in the event of a failure to cure a default by Lessee in accordance with the terms of this Agreement. The Lender may exercise this right by curing Lessee's default in accordance with any notice and option to cure periods as agreed by the Lender and the City. Lessor shall accept such performance by or at the instance of such holder as if the same had been made by Lessee. In the event that Lender assumes the rights and duties of Lessee under this Agreement, such assumption shall include, without limitation, Lessee's option to renew the ground lease and any option to purchase the Property as provided in this Agreement.

20.4.3 The Lender may require a Lessor Estoppel, Subordination, and Consent Agreement in substantial form to the document attached hereto as Exhibit G and as may be modified by

the parties after the Effective Date. If requested by Lender, the City, Lender and Lessee shall enter into such agreement.

20.4.4 In the event of a foreclosure by Lender pursuant to any deed of trust or mortgage interest and an assumption of this Agreement by Lender, any obligations accruing to Lender as a result of such foreclosure and assumption will terminate as soon as Lender's interest in the Property ends as a result of sale or assignment of the Lender's interest to a third-party.

20.4.5 Nothing herein contained shall preclude Lessor, subject to the provisions of this Article, from exercising any rights or remedies under this Ground Lease with respect to any other default by Lessee during the pendency of any foreclosure or trustee's sale proceedings.

20.4.6 No failure on the part of Lessor to give the required notice of default to the holder of a mortgage/deed of trust shall be deemed a waiver of Lessor's continuing right to give notice of the default.

20.4.8 Upon foreclosure of the mortgage or deed of trust, Lessor shall assign this Ground Lease to the holder of the mortgage or deed of trust if all taxes rent and assessment payments are current.

20.4.9 No agreement between Lessor and Lessee modifying, canceling or surrendering this Ground Lease shall be effective without the prior written consent of the registered mortgagees and lien holders.

20.4.10 No union of the interest of Lessor and Lessee shall result in a merger of this Ground Lease in the fee interest.

20.5 Applicability of Lender Provisions. To the extent any provisions of this article or any other provisions of this Agreement are inconsistent with any provisions (including any separate agreement(s) between City, Lender, and/or Lessor (the "Lender Provisions") regarding Lender's right in the Property or the Improvements including Lender's right (but not the obligation) to assume the Ground Lease then the Lender Provisions apply.

20.6 If a default is not cured within the applicable time period, Lessor may issue an order canceling the Ground Lease. If a cancellation order is issued, the order shall not become final until any foreclosure action by a mortgagee or other lien holder, registered with Lessor pursuant to this Article, is finally resolved, if the mortgagee or lien holder does both of the following:

20.6.1 Within thirty (30) days of the date of issuance of a cancellation order, files written notice with Lessor of its intent to proceed with a foreclosure action, and;

20.6.2 Within one hundred twenty (120) days of the date of issuance of a cancellation order, has commenced either a foreclosure action in court or a nonjudicial foreclosure of a deed of trust, and has provided Lessor with a certified copy of the complaint or other document that officially commences the foreclosure process, and thereafter prosecutes the foreclosure with reasonable diligence.

20.7 Casualty. A standard Mortgage Clause naming each leasehold mortgagee may be added to any and all insurance policies required to be carried by Lessee hereunder on condition that the insurance proceeds are to be applied in the manner that is not in derogation of Lessor's rights; except that the leasehold mortgage may provide a manner for the disposition of such proceeds, if

any, otherwise payable directly to Lessee (but not such proceeds, if any, payable jointly to Lessor and Lessee) pursuant to the provisions of this Ground Lease.

GROUND LEASE ARTICLE 21
ENVIRONMENTAL MATTERS

21.1 Definition of Regulated Substances and Environmental Laws. For purposes of this Ground Lease, the term "Environmental Laws" shall include but not be limited to any relevant federal, state or local environmental laws, and the regulations, rules and ordinances, relating to environmental matters, and publications promulgated pursuant to the local, state, and federal laws and any rules or regulations relating to environmental matters. For the purpose of this Ground Lease, the term "Regulated Substances" shall include but not be limited to substances defined as "regulated substance," "solid waste," "hazardous waste," "hazardous materials," "hazardous substances," "toxic materials," "toxic substances," "inert materials," "pollutants," "toxic pollutants," "herbicides," "fungicides," "rodenticides," "insecticides," "contaminants," "pesticides," "asbestos," "environmental nuisance," "criminal littering," or "petroleum products" as defined in Environmental Laws.

21.2 Compliance with Environmental Laws. Lessee shall strictly comply with all Environmental Laws, including, without limitation, water quality, air quality; and handling, transportation, storage, treatment, or disposal of any Regulated Substance on, under, or from the Property. Without limiting the foregoing, compliance includes that Lessee shall: (1) comply with all reporting obligations imposed under Environmental Laws; (2) obtain and maintain all permits required by Environmental Laws, and provide a copy to Lessor within ten (10) business days of receipt of the same; (3) provide copies of all documentation required by Environmental Laws to Lessor within ten (10) business days of Lessee's submittal and/or receipt of the documentation; (4) during the term of the Ground Lease, provide copies of all information it receives or obtains regarding any and all environmental matters relating to the Property, including but not limited to environmental audits relating to the Property regardless of the reason for which the information was obtained or whether or not the information was required by Environmental Laws; (5) prevent treatment, storage, disposal, handling or use of any Regulated Substances within the Property without prior written authorization from Lessor.

21.3 Audit. At any time, Lessor may request Lessee to provide an environmental audit of the Property performed by an Arizona registered professional engineer or an Arizona registered geologist. Lessor shall pay the entire cost of the audit.

21.4 Environmental Assessment. If the Lessor has a reasonable basis to believe there may be an event which could cause claims for damages (as described in Section 21.6), then at any such time, during the term of the Ground Lease, Lessor, at Lessor's sole cost and expense, may obtain one Phase I environmental assessment of the Property performed by an Arizona registered professional engineer or an Arizona registered geologist. If based upon the Phase I environmental assessment or its own independent investigation, Lessor identifies any possible violation of Environmental Laws or the terms of this Ground Lease, Lessor may conduct additional environmental assessments as Lessor deems appropriate for the purpose of ensuring that the Property is in compliance with Environmental Laws. The Phase I assessment, or any other assessment required by Lessor, shall be obtained for the benefit of both Lessee and Lessor. A copy of the Phase I report shall be provided both to Lessee and Lessor. The Lessor may also request a Phase I environmental assessment at any time the Lessee requests permission to assign its interests in the Ground Lease.

21.5 Indemnity for Environmental Damage Occurring After Lessee's Occupancy. To the fullest extent allowed by law, Lessee shall defend, indemnify and hold Lessor harmless from and against any and all liability, obligations, losses, damages, penalties, claims, environmental response and cleanup costs and fines, and actions, suits, costs, taxes, charges, expenses and disbursements, including legal fees and expenses of whatever kind or nature (collectively, "claims" or "damages") imposed on, incurred by, or reserved against Lessor in any way relating to or arising out of any non-compliance with any Environmental Laws by Lessee, the existence or presence of any Regulated Substance, on, under, or from the Property occurring after Lessee occupies the Property, and any claims for damages in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance on, under, or from the Property by Lessee, its agents, contractors, or subcontractors, provided that Lessee shall have caused such claims for damages.

21.6 Indemnity for Environmental Damage Occurring Prior to Lessee's Occupancy. To the fullest extent allowed by law, Lessor shall defend, indemnify and hold Lessee harmless from and against any and all liability, obligations, losses, damages, penalties, claims, environmental response and cleanup costs and fines, and actions, suits, costs, taxes, charges, expenses and disbursements, including legal fees and expenses of whatever kind or nature (collectively, "claims" or "damages") imposed on, incurred by, or reserved against Lessee in any way relating to or arising out of any non-compliance with any Environmental Laws, the existence or presence of any Regulated Substance, on, under, or from the Property occurring before Lessee occupies the Property, and any claims for damages in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance on, under, or from the Property by Lessor, its agents, contractors, or subcontractors, provided that Lessor shall have caused such claims for damages.

21.7 Scope of Indemnity. This indemnity shall include, without limitation, claims for damages arising out of any and all violations of Environmental Laws regardless of any real or alleged fault, negligence, willful misconduct, gross negligence, breach of warranty, or strict liability on the part of any of the indemnities. This indemnity shall survive the expiration or termination of this Ground Lease and/or transfer of all or any portion of the Property and shall be governed by the laws of the State of Arizona.

21.8 Participation in the Defense. In the event any action or claim is brought or asserted against the indemnified party which is or may be covered by this indemnity, the non-indemnified party shall fully participate, at that non-indemnified party's expense, in the defense of the action or claim including but not limited to the following: (1) the conduct of any required cleanup, removal or remedial actions and/or negotiations, (2) the conduct of any proceedings, hearings, and/or litigation, and (3) the negotiation and finalization of any agreement or settlement. The indemnified party shall retain the right to make all final decisions concerning the defense. The non-indemnified party's obligations to participate in the defense under this Section shall survive the expiration or termination of the Ground Lease.

21.9 Restoration. Prior to the termination of the Ground Lease, Lessee shall restore the Property by removing any and all Regulated Substances caused by Lessee. In addition, the restoration shall include, but not be limited to, removal of all waste and debris deposited by Lessee. If the Property or any portions thereof are damaged or destroyed from the existence or presence of any Regulated Substance caused by Lessee or if the Property or any portions thereof are damaged or destroyed in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance caused by Lessee, Lessee shall arrange, at its expense, for the repair, removal, remediation, restoration, and reconstruction to the Property to the original condition existing on the date that Lessee first

occupied the Property, to the satisfaction of Lessor. In any event, any damage, destruction, or restoration by Lessee shall not relieve Lessee from its obligations and liabilities under this Ground Lease. Lessee's restoration obligations under this Section shall survive the expiration or the termination of the Ground Lease.

GROUND LEASE ARTICLE 22
MISCELLANEOUS

22.1 **Reservation.** This Ground Lease grants Lessee only those rights expressly granted herein and Lessor retains and reserves all other rights in the Premises.

22.2 **Binding Effect.** Each provision of this Ground Lease shall extend to, be binding on and inure to the benefit of not only Lessee but each of its respective heirs, administrators, executors, successors and assigns. When reference is made in this Ground Lease to either "Lessor" or "Lessee", the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of the parties. This Ground Lease shall be binding upon all subsequent owners of the Property, and of any interest or estate therein or lien or encumbrance thereon.

22.3 **No Partnership.** The relationship of the parties is that of Lessor and Lessee, and it is expressly understood and agreed that Lessor does not in any way or for any purpose become a partner of Lessee or a joint venturer with Lessee in the conduct of Lessee's business or otherwise, and that the provisions of any agreement between Lessor and Lessee relating to rent are made solely for the purpose of providing a method by which rental payments are to be measured and ascertained.

22.4 **Quitclaim Upon Termination.** After the expiration or termination of this Ground Lease, Lessee shall execute, acknowledge and deliver to Lessor within thirty (30) days after written demand from Lessor to Lessee, any document requested by Lessor quitclaiming any right, title or interest in the Leasehold to Lessor or other document required by any reputable title company to remove the cloud of this Ground Lease from the Property.

22.5 **Titles.** The titles to the Articles of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of the Ground Lease.

22.6 **Lessor's Lien.** Except as is necessary to secure a mortgage or deed of trust and to provide a right, but not an obligation to cure any default by Lessee by Lessee's lender(s), Lessee grants to Lessor a lien superior to all others in Lessee's interest in Improvements and valuable materials located on the Property. Lessor has the right to recover any rent arrearage and outstanding liabilities of Lessee from Lessee's interest in the Improvements or valuable materials.

22.7 **Applicable Law.** This Ground Lease is subject to all current and subsequently enacted rules, regulations and laws applicable to the State and to the rights and obligations of Lessor and Lessees. No provision of this Ground Lease shall create any vested right in Lessee except as otherwise specifically provided in this Ground Lease.

PART III – DEVELOPMENT OF THE PROPERTY

1. **Scope of Project.** The Project shall consist of the construction and operation of an approximately seventy thousand square foot business-class hotel consisting of approximately ~~10095~~ hotel rooms with a height of not more than ~~seventy-five (5570)~~ feet measured from

the finished floor at the front door of the building to the highest architectural element of the building and meeting room and conference space included as part of the hotel, rehabilitation of historic landmarks and structures, park improvements/landscaping and revitalization of the Park Area, all as shown on the "Development Plan and Project Narrative" attached hereto as Exhibit C ("Development Plan"), in accordance with the development schedule attached hereto as Exhibit D ("Development Schedule") and the Public Improvements list attached hereto as Exhibit E. Except as provided in this Agreement, all costs and expenses, direct and indirect, associated with the construction and operation of the Project shall be the sole responsibility of Developer.

2. Development Rights. The City agrees that, for the term of this Agreement, Developer and successor owners of the Property shall have a right to undertake and complete the development and use of the Property in accordance with this Agreement, without being subject to subsequent amendment to the Zoning Ordinance of the City of Prescott (the "Zoning"). For purposes of this Agreement, the Development Plan and Zoning for the Property are deemed vested for the term of this Agreement. Nothing herein affects the vesting of the Development Plan and Zoning for the Property as a matter of common law following termination of this Agreement. During the term of this Agreement, unless mutually agreed by the City and Developer or its designated assignee, development of the Property shall be governed by the Land Development Code, Development Plan and the Zoning in effect at the time of approval of this Agreement.

3. Rezoning and Development Agreement Amendments. The City shall not initiate any changes or modifications to the Zoning for the Property, except at the request of Developer. The City shall not initiate any changes or modifications to the design review approval, once such approval is final, except at the request of Developer. Any such request by Developer for a change will be processed in the manner then set forth in the City's Land Development Code. The City agrees that the design review process pursuant to Section 9.8 of the City Land Development Code is administrative and will not require public hearings by the Planning & Zoning Commission or City Council.

4. Approval of Development Plan. The City acknowledges and agrees that the Development Plan is in substantial conformance with the Zoning and that the Property may be developed in substantial conformance with the Development Plan without amending the Zoning.

5. Project Development Timeline and Termination of Agreement. The parties agree that Developer's substantial conformance and compliance with the Development Schedule is a material consideration for the City to enter into the transaction contemplated by this Agreement. Therefore, should Developer substantially fail to comply with the deadlines as set forth on Exhibit D (Development Schedule), except as may be extended pursuant to paragraph 6 below regarding force majeure, the City may terminate this Agreement by following the procedures set forth in Part II, Article 17 above and Part IV, Section 2 below).

6. Force Majeure and Notice of Force Majeure Extension. The Development Schedule will be automatically extended in the event of a force majeure event by Developer providing written notice of a force majeure event to the City. Such notice shall include the date of commencement of the force majeure extension and the date of ending of the force majeure extension along with a total number of days to extend the Development Schedule. Such notice shall be provided within fifteen (15) days of the end of the force majeure event. As used in this paragraph, "force majeure" means an event such as a fire, explosion or other casualty; earthquake, lightening, and other severe or unusual weather conditions for Prescott, Arizona or other acts of God; acts of public enemies, terrorism, riot, insurrection; governmental regulations of the sale of materials and supplies or the transportation thereof; unusual delays in transportation; strikes, lock outs or boycotts directly affecting the work of construction; embargoes and shortages of material, energy,

fuel or labor resulting directly from lack of market availability; governmental control or diversion, delays in approvals required for the Project; an inability or refusal of Lender and City to agree on their respective interests pursuant to a mortgage or deed of trust in the Ground Lease or the Improvements; concealed conditions in the soil; action or inaction of governmental or quasi-governmental authorities (including utility companies), including delays in performing any work on or about the Property that is a necessary precedent to construction of any portion of the Project, unanticipated site conditions making it unreasonably difficult to commence any portion of the Project, and other similar causes beyond Developer's reasonable control.

7. City Obligations. The City shall use reasonable efforts to expedite all city review times for building plan review.

8. Design Considerations. Developer will use its best efforts to implement local design concepts into the project by incorporating historic elements from the Sam Hill Warehouse, the historic railroad bridge, and Whiskey Row into the exterior and interior design of the hotel. Such elements may include sliding barn doors, brick detailing, and steel detailing consistent with the railroad bridge. Developer will use its best efforts to incorporate local elements into the Project signage including any naming of hotel amenities such as conference and dining space.

9. Construction of Public Improvements. The Project consists of certain public landscape hardscape, utilities, drainage, historical landmark refurbishments, park revitalization, and infrastructure improvements (each a "Public Improvement" or collectively the "Public Improvements") as provided in Exhibit E which improvements are located on or in the Property or on or in the Park Area. Exhibit E provides for a description of the Public Improvements, the party responsible for construction of each Public Improvement, notice and time requirements for starting construction of each Public Improvement, and, if Developer is responsible for construction, then the percentage of the cost the City is responsible for with respect to that Public Improvement and the method of payment from the City for the Public Improvement. The Public Improvements must be completed pursuant to plans and specifications approved by the City and all applicable provisions of the Prescott City Charter, Prescott City Code and applicable regulations. The Responsible Party, as provided in Exhibit E, shall secure any necessary construction easements, licenses or permits required in connection with the construction of any Public Improvement. After their installation, the Developer will maintain all such Public Improvements on the Property except any improvements related to utilities. The City shall maintain the Park Area consistent with the design intent of plans approved by City staff and a Class "A" development. Prior to exercising any option to purchase, Developer may reduce rental payments each month by the amount Developer expends in maintaining the Park Area consistent with the design intent of the approved Park Area plans and a Class "A" development to the extent such maintenance is not provided by the City.

10. Payment for Public Improvements; Indemnification. Unless otherwise provided in Exhibit E, the City agrees to pay within fourteen (14) days of receipt of invoice from Developer the actual costs of Public Improvements or any portion thereof constructed, or caused to be constructed, by Developer as provided in Exhibit E. After the Effective Date, Developer may request a payment bond be issued by the City to secure payment by the City for the Public Improvements or any portion thereof and that such payment bond be consistent with A.R.S. § 34-222 and 34-223. If requested by Developer, the City shall provide such payment bond and notice thereof to Developer within fifteen (15) days of Developer's request. The City expressly agrees to and shall indemnify and save Developer harmless against liability, loss, damages, costs, attorney's fees and all other expenses on account of claims of lien or other encumbrances or claims of failure to pay made by laborers or material men or others for work performed or materials or supplies

furnished for the Public Improvements to the City. Further, any contracts regarding Public Improvements between the City and any contractors and subcontractors shall expressly hold Developer harmless against any liability arising from such contracts.

11. Option to Purchase. In consideration of the covenants herein contained, the City grants to Developer the exclusive option to purchase the Property not earlier than five (5) years after the Rent Commencement Date and no later than the end of the first lease term (December 31, 2068), as set forth in the Ground Lease, by giving the City written notice of its exercise of the option to purchase (the "Option"). If Developer exercises the Option, the City and Developer (or an entity affiliated with Developer) promptly shall enter into an agreement consistent with the following terms.

(a) The City will agree to sell, and Developer will agree to purchase, the Property for a total purchase price of Three Hundred Thousand Dollars (\$300,000) (the "Purchase Price"). The Purchase Price shall be payable as follows:

(i) Concurrent to execution of a purchase and sale agreement, Developer will pay to the City an earnest money deposit of Fifty Thousand Dollars (\$50,000) by Developer's check made payable to the City (the "Earnest Money Deposit"). The City shall acknowledge that it has received the Earnest Money Deposit. The Earnest Money Deposit shall be applied against the Purchase Price at the Close of Escrow. The Earnest Money Deposit will be nonrefundable to Developer, except in the event of the City's default or as otherwise provided in the purchase and sale agreement.

(ii) The balance of the Purchase Price shall be deposited in immediately available funds by Developer with an agreed upon escrow agent, on or before the close of escrow.

(iii) Upon the Close of Escrow, the escrow agent shall pay the Purchase Price to the City, less any funds required to take into account the prorations and other adjustments required by the purchase and sale agreement.

(iv) Upon the Close of Escrow, the City shall execute and/or deliver to Developer (a) a special warranty deed conveying all of the City's right, title and interest in and to the Property to Developer, free and clear of all encumbrances except any encumbrances permitted by Developer, and (b) any other documents as may be reasonably required by the title company in order to record the special warranty deed and issue a title insurance policy approved by Developer.

12. End of Ground Lease. Upon exercising the Option in accordance with paragraph 11 -and completion of the transaction contemplated herein, any and all provisions of this Agreement under Part II (Ground Lease) shall end and no longer have any force or effect with respect to either party. Developer may request and the City may cause to be executed any documents necessary to provide notice to any third parties that the Ground Lease has ended and is no longer in effect.

13. Compliance with Law. City represents that ~~this the~~ Option fully complies with law, no further council approval is required after entering into this Agreement or to execute any documents needed to complete the transaction contemplated by ~~this the~~ Option, and is not subject to referendum once the referendum period, if any, has ended.

14. Easement for Conference Space. In the event Developer incorporates any other building near the Property for conference or meeting space which would be accessed by pedestrian or vehicular access across City property from the Property, the City will provide an easement to Developer for such pedestrian or vehicular access which may be recorded against the City property. However, such easement shall be limited to parcels 800-11-031A, 113-14-063B, and the portion of parcel 113-13-037H to the west of Granite Street. The signing and recording of such easement may be undertaken by staff with no further action needed by City council. The Developer may landscape and provide other improvements on these parcels consistent with pedestrian use.

15. Parking. Prior to commencing construction Developer will acquire private property adjacent to the Property to facilitate the site plan. Upon such acquisition, the Developer agrees to use its reasonable efforts to enter into shared parking agreements with the City for public parking on the adjacent property in order to maximize public parking opportunities for the Park Area and other uses.

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PART IV – GENERAL TERMS AND CONDITIONS

1. **Notices.** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery or upon confirmed facsimile transmission, as of the second business day after mailing by United States mail, postage prepaid, return receipt requested, or upon the next business day if delivered by Federal Express or similar overnight delivery system, addressed as follows:

IF TO THE CITY: City Manager
City of Prescott
201 South Cortez Street
Prescott, Arizona 86303
michael.lamar@prescott-az.gov

WITH A COPY TO: City Attorney
City of Prescott
221 South Cortez Street
Prescott, Arizona 86303
jon.paladini@prescott-az.gov

IF TO DEVELOPER:

WSH Hospitality, LLC
Attn: Steven Shumway
1501 E. Woolford Rd.
Show Low, Arizona 85901
steveshumway@wbicompany.com

WITH A COPY TO: WSH Hospitality, LLC
Attn: Shane Shumway
1501 E. Woolford Rd.
Show Low, Arizona 85901

shaneshumway@wbicompany.com

IF TO LENDER (“Lender”): (to be added once Lender is finalized after Effective Date)

The address to which any notice, demand or other writing may be given, made or sent to any party may be changed by written notice as above provided.

2. Defaults and Remedies. In the event a default should occur under any of the obligations of the City or Developer as provided in this Agreement, each party shall be entitled to exercise such rights or remedies as may be available pursuant to the terms of such document, at law or in equity, including without limitation specific performance, except as such document may specifically limit such remedies. Notwithstanding the foregoing, each party waives any claim such party may have for incidental or consequential damages arising out of a failure of performance of the other party under this Agreement.

3. Waiver of Right to Trial By Jury. The Parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, whether the Ground Lease or Development Agreement, each of the Parties hereto waives any right to a trial by jury. In the event of litigation, the Parties hereby agree to submit any such litigation to the Court (bench trial) and that the parties agree that this Agreement shall be deemed to have been created in Yavapai County, Arizona, and to be subject to the jurisdiction of the Yavapai County Superior Court, and that any claims to alternative jurisdiction based on diversity of citizenship, corporate location, etc. are waived by the Parties pursuant to this Agreement.

4. Assignment or Changes in Ownership, Management and Control of Developer. Developer represents and agrees that its undertakings pursuant to this Agreement are, and will be, for the purpose of development of the Project on the Property and not for speculation in landholding. Developer further recognizes that the qualifications of its principals are of particular concern to the City and that it is because of such qualifications and identity that the City is entering into this Agreement. In recognition of Developer’s expertise and experience in hotel development, Developer may not assign its rights under this Agreement to develop the Property without the prior consent of the City, which consent may be withheld in the City’s sole and absolute discretion. Notwithstanding City consent or assignment requiring no consent, any such assignment shall not relieve Developer of any obligations.

5. Assignment by the City. The City may not assign its rights and obligations under this Agreement without the prior written consent of the Developer, which consent may be withheld in the Developer’s sole and absolute discretion.

6. Institution of Legal Actions; Governing Law. Any legal actions instituted pursuant to this Agreement must be filed in the county of Yavapai, State of Arizona. The laws of the State of Arizona will govern the interpretation and enforcement of this Agreement.

7. Acceptance of Legal Process. If any legal action is commenced by Developer against the City, service of process on the City will be made by personal service upon the City Clerk of the City of Prescott, or in such other manner as may be provided by law. If any legal action is commenced by the City against Developer, service of process will be made by personal service or in such other manner as may be provided by law, whether made within or without the State of Arizona.

8. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by such defaulting party.

9. Conflict of Interests. No member, official or employee of the City may have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

10. Cancellation. Pursuant to A.R.S. § 38-511 this Agreement may be canceled within three years after its execution, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

11. Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys and any licensed real estate broker retained by Developer.

12. Nonliability of Officials, Partners and Employees. No member, official or employee of the City will be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or successor, or on any obligation under the terms of this Agreement. No agent, employee, officer, member, or shareholder of Developer will be personally liable to the City, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City or successor, or on any obligation under the terms of this agreement.

13. No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. Nothing herein shall constitute a waiver of the City's police powers or amount to an unlawful delegation of governmental authority by the City.

14. Severability. If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term. If application of this severability provision should materially and adversely affect the economic substance of the transactions contemplated hereby, the Party adversely impacted shall be entitled to compensation for such adverse impact.

15. Captions. The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.

16. Entire Agreement Waivers and Amendments. This Agreement may be executed in up to three (3) duplicate originals, each of which is deemed to be an original. This Agreement, including twenty-seven (27) pages of text and the below-listed exhibits that are incorporated herein by this reference, constitutes the entire understanding and agreement of the parties.

- Exhibit A - Legal Description of Property
- Exhibit B - Preliminary Site Plan of Property
- Exhibit C - Development Plan and Project Narrative
- Exhibit D - Development Schedule
- Exhibit E - Public Improvements
- Exhibit F - Permitted Encumbrances
- Exhibit G - Example Lessor Estoppel, Subordination, and Consent Agreement
- Exhibit H - Description and Aerial Map of Park Area

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. This Agreement may be amended solely in writing signed by the parties. Developer and the City may amend this Agreement with City staff approval if such approval is based on City staff authority under any applicable law, the City Charter, or other City governing document. City staff is authorized to undertake any action which action is necessary to give effect to the terms of this Agreement.

17. No Agency Created. Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between the City and Developer. No term or provision of this Agreement is intended to be for the benefit of any person, firm, organization or corporation not a party hereto, and no other person, firm, organization or corporation may have any right or cause of action hereunder.

18. Governing Statutes. References are made in this Agreement to specific sections of the Arizona Revised Statutes. Any such references mean the statute in effect on the date of the execution of this Agreement and any subsequent renumbering or reordering of those provisions.

19. Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

20. Developer's Authority. Developer warrants and represents that it is a duly organized and validly existing limited liability company formed under the laws of the State of Arizona and authorized to transact business in the State of Arizona. The entry by Developer into the transaction contemplated by this Agreement and the performance by Developer of all of its obligations in connection herewith have been duly and validly authorized by all necessary action(s), are in accordance with applicable law and are not in violation of Developer's Operating Agreement, Articles of Incorporation, Articles of Organization, or Bylaws, as the case may be. This Agreement and all additional documents delivered in connection with this Agreement have been duly and validly executed and delivered by Developer and constitute the legal, valid and binding obligations of Developer.

21. Indemnity. Each of the parties shall indemnify, protect, defend and hold harmless the other from and against any and all claims, costs, damages and liabilities (including attorneys' fees and costs) arising from any breach by such party of any of the representations and warranties contained herein.

22. Waiver of Attorneys' Fees. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, whether the Ground Lease or the Development Agreement, neither party shall be entitled to an award of attorneys' fees, either pursuant to the Contract, pursuant to A.R.S. §12-341.01(A) and (B), or pursuant to any other state or federal statute, court rule, or common law.

23. Lender Information. The Lender or contact information for Lender may be added or substituted after the Effective Date by Developer providing written notice to City of the addition or substitution.

24. Binding Agreement. Subject to any limitation on assignment elsewhere set forth herein, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective legal representatives, successors and assigns.

25. Covenants Running With the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the Parties. The Owner and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a Party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of the Owner contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it.

IN WITNESS WHEREOF, the parties have executed this Agreement through their representatives duly authorized to execute this document and bind their respective entities to the terms and obligations herein contained on the day and year first written above.

ATTEST:

GREG R. MENGARELLI, Mayor
APPROVED AS TO FORM:

MAUREEN SCOTT, City Clerk

JON M. PALADINI, City Attorney

WSH HOSPITALITY, LLC,
an Arizona limited liability company,

By: _____
Steven D. Shumway

Its: _____

STATE OF ARIZONA)
) ss.
County of Yavapai)

This instrument was acknowledged before me this _____ day of _____, 2018 by Greg R. Mengarelli, Mayor of the CITY OF Prescott, an Arizona municipal corporation, on behalf of the municipal corporation.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of _____)

This instrument was acknowledged before me this _____ day of _____, 2018 by Steven D. Shumway of WSH HOSPITALITY, LLC, an Arizona limited liability company, on behalf of the limited liability company.

Notary Public

My Commission Expires:

LIST OF EXHIBITS

- Exhibit A - Legal Description of Property
- Exhibit B - Preliminary Site Plan of Property
- Exhibit C - Development Plan and Project Narrative
- Exhibit D - Development Schedule
- Exhibit E - Public Improvements
- Exhibit F - Permitted Encumbrances
- Exhibit G - Example Lessor Estoppel, Subordination, and Consent Agreement
- Exhibit H - Description and Aerial Map of Park Area

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B
PRELIMINARY SITE PLAN OF THE PROPERTY

The site plan included herein is consistent with the design intent of the project including any requirements necessary for parking, ingress and egress, and traffic considerations.

EXHIBIT C
DEVELOPMENT PLAN AND PROJECT NARRATIVE

The development shall consist of construction of an approximately 70,000 square foot business-class hotel consisting of approximately ~~10095~~ hotel rooms with a height of not more than ~~seventy-five (5570)~~ feet measured from the finished floor at the front door of the building to the highest architectural element of the building and meeting room and conference space included as part of the hotel. The hotel may connect and integrate the historic railroad bridge as part of the Project and the Developer and City will coordinate efforts to make improvements to the Park Area and other Public Improvements as provided in Exhibit E. Development of plans and construction shall proceed in substantial compliance with the development schedule as provided in Exhibit D and as may be extended in accordance with the Agreement. It is anticipated that the hotel will have similar architectural features as depicted on the preliminary elevation provided with this Exhibit C.

EXHIBIT D
DEVELOPMENT SCHEDULE

<u>Item</u>	<u>Schedule</u>
FEMA Conditional Letter of Map Revision (CLOMR)	Submission of CLOMR application to FEMA by Developer within 30 days of the Effective Date. Developer expects to receive comments from FEMA within 120 days of the Effective Date and receive the CLOMR within 240 days of the Effective Date.
Architectural, Engineering, and Landscaping Plan Development	Expected plan development time of approximately 180 days from the date of receipt of the CLOMR Effective Date.
Permit Review and Approval of Architectural, Engineering, and Landscaping Plans by the City	City approval of plans within thirty <u>(30)</u> days from the date of receipt of the plans.
Commencement of Construction	Within <u>approximately sixty-ninety (90)</u> days of plan approval by the City.
Issuance of Certificate of Occupancy	Approximately fifteen months after commencement of construction but certificate of occupancy to be issued sooner if Developer is ready for such certificate of occupancy at a sooner date.
Public Improvements	Public Improvements expected to be completed in accordance with <u>Exhibit E</u> of this Agreement.

EXHIBIT E
PUBLIC IMPROVEMENTS

The responsible party (“Responsible Party” or “Responsible Party for Construction”) shall constructor cause to be constructed the following Public Improvement(s) for the Project. If Developer is the Responsible Party, the City will pay Developer (or Developer’s designated contractor or agent) within fourteen days of receipt of invoice for any work related to construction by Developer of the Public Improvement up to the City’s percentage of responsibility for the cost of such Public Improvement. If City is the Responsible Party then any costs for such Public Improvements shall be at the sole cost and expense of City as provided in this Exhibit E. In the event the City is a Responsible Party and is either unable or unwilling to timely perform the required work then Developer may, at Developer’s sole discretion undertake such portion of the work and deduct such amounts from any amount due, or which may become due for Rent pursuant to this Agreement or be reimbursed by the City for any amounts expended by Developer.

<u>Description</u>	Modification to, or installation of traffic lights, traffic signals, and restriping of vehicular or pedestrian traffic lanes necessary for the Project.
<u>Responsible Party for Construction</u>	The City
<u>Payment between Parties</u>	None. Undertaken at sole cost and expense of City.
<u>Time of Construction</u>	Construction to commence within sixty (60) days of receipt of written notification from Developer and to be completed within thirty days of commencement of construction.
<u>Payment Method</u>	Not Applicable.
<u>Party providing plans for City staff design review.</u>	The City shall provide plans within thirty days of the staff-reviewed and approved hotel site plan.
<u>Other</u>	<u>The Parties agree that no traffic impact analysis is required.</u>

<u>Description</u>	Landscaping of the Park Area consistent with plans to be approved by the City and including, without limitation, all site grading, import and/or export of materials, water features (if any), screening berms or walls, softscapes, hardscapes, sidewalks, and retention ponds.
<u>Responsible Party for Construction.</u>	The Developer.
<u>Payment between Parties.</u>	This work is done at the sole cost and expense of City. The City shall pay within fourteen days of receipt of invoice from the Developer the costs associated with completing the Park Area <u>as such work progresses</u> consistent with approved plans. <u>In the event a splash pad is included as part of the approved landscaping plans, Developer agrees to cover fifty-percent of the cost of the splash-pad. The City is responsible to obtain any licenses needed for a splash pad and ongoing maintenance of the same.</u>
<u>Time of Construction</u>	The Developer shall undertake construction within a reasonable time and complete construction on or before issuance of a certificate of occupancy for the hotel <u>unless any delay in constructing the Park Area is due to force</u>

	<u>majeure (as defined in Article 3.7 herein) and then such certificate of occupancy may be issued prior to completion of the Park Area.</u>
<u>Payment Method</u>	Check issued to Developer or Developer's designated party as provided in the invoice to City.
<u>Party providing plans for City staff design review.</u>	Developer will pay for and submit a preliminary landscaping plan for review and approval by the City. Other than payment for these plans, all other costs associated with landscaping the Park Area are at the sole cost and expense of City. <u>Developer will submit plans and proposed costs to the City electronically to michael.lamar@prescott-az.gov and joe.baynes@prescott-az.gov for City review and approval within thirty days of receipt of the same. Upon commencing construction, the City will designate a party to review change orders and either approve or deny the change order in a cost-effective manner for the City.</u>
<u>Other</u>	The City is responsible for the costs of irrigating and maintaining the Park area consistent with the design intent of the approved plans and a Class "A" development. <u>No water demand analysis is required for the Project and the Project is not subject to further review and approval for a water management policy.</u>

Field Code Changed

<u>Description</u>	Screening berms, <u>fences</u> , or walls in the Property.
<u>Responsible Party for Construction</u>	The Developer.
<u>Payment between Parties</u>	None. Undertaken at the sole cost and expense of Developer.
<u>Time of Construction</u>	After commencement of construction of the Project.
<u>Reimbursement Method</u>	Not applicable.
<u>Party providing plans for City staff design review.</u>	The Developer.
<u>Other</u>	The Developer may construct screening berms, <u>fences</u> , or walls up to ten (10) feet above grade on the Property.

<u>Description</u>	Redesign and reconstruction of sewer utilities in the Property and the Park Area and stub out to the hotel building.
<u>Responsible Party for Construction</u>	The City.
<u>Payment between Parties.</u>	None. Undertaken at the sole cost and expense of the City.
<u>Time of Construction</u>	Upon the Effective Date of this Agreement the City will commence design and finish design within ninety days of the Effective Date. The City will complete the reconstruction of sewer utilities within thirty (30) days of the Developer providing written notice to City to commence construction.

Reimbursement Method	Not applicable.
Party providing plans for City staff design review.	The City will engage a design build contractor to provide plans consistent with the Project.
Other	

Description	Parking lot construction and paving in the Park Area consisting of approximately twenty parking spaces and adjacent to Montezuma including curb cut-outs, landscaping (if any), signage, striping, and curbs.
Responsible Party for Construction:	The Developer.
Payment between Parties:	The Developer is responsible for fifty percent (50%) of the cost. The City shall pay Developer within fourteen days of receipt of invoice from the Developer the remaining fifty percent (50%).
Time of Construction	After commencement of construction of the Project.
Payment Method	By check from the City to Developer within fourteen (14) days of receipt of invoice.
Party providing plans for City staff design review.	The Developer.
Other	Prior to commencing construction, the Developer will provide City with notice of the estimated cost. Upon completion of this parking lot the City will provide an easement to Developer for parking based on the as-built parking lot. The City surveyor will conduct a survey and prepare a legal description of the property for the parking lot and the parties will then execute and record the easement.

Description	Refurbishment of the historic railroad bridge connected to the Sam Hill Warehouse and to be connected to the hotel.
Responsible Party for Construction	The Developer.
Payment between Parties.	The Developer is responsible for sixty-seven percent (67%) of the cost. The City shall pay Developer within fourteen days of receipt of invoice from the Developer the remaining thirty-three percent (33%).
Time of Construction	After commencement of construction of the Project.
Reimbursement Method	By check from the City to Developer within fourteen (14) days of receipt of invoice.
Party providing plans for City staff design review.	Plans shall be obtained by Developer and approved by the City prior to commencing construction.
Other	Prior to commencing construction, the Developer will provide City with notice of the cost. The City will be entitled to six events per year on the railroad bridge with 60 days' notice at no cost to the City for use of the

	bridge. Costs for catering (food service, etc.) by hotel will be at City's expense. <u>At Developer's expense, Developer will use a reasonable design to connect the bridge to the hotel. In the event conferences or other events are not schedule or occurring at the hotel on the bridge, the historic railroad bridge will remain open to public access.</u>
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Description	Sidewalks in or adjacent to the Property if any.
Responsible Party for Construction	The Developer.
Payment between Parties	None. Undertaken at the sole cost and expense of Developer.
Time of Construction	After commencement of construction of the Project.
Reimbursement Method	Not applicable.
Party providing plans for City staff design review.	Plans shall be obtained by Developer and approved by the City prior to commencing construction.
Other	

Description	Storm water management including infrastructure to discharge water from the Property into the public storm system.
Responsible Party for Construction	The Developer.
Estimate	None. Undertaken at the sole cost and expense of Developer.
Time of Construction	After commencement of construction.
Reimbursement Method	Not applicable.
Party providing plans for City staff design review.	The Developer.
Other	The parties agree that there is no retention, <u>detention, stormwater quality BMP facilities, or first flush treatment</u> -requirements for storm water on the Property <u>due to the current substantially impervious nature of the Property.</u>

Description	Fire hydrants to service the Property
Responsible Party for Construction	The Developer.
Payment between Parties	None. Undertaken at the sole cost and expense of Developer.
Time of Construction	After commencement of construction of the Project.

Reimbursement Method	Not applicable.
Party providing plans for City staff design review.	The Developer.
Other	<u>The Parties agree to work together to ensure that the north side of the hotel is adjacent to landscaping and not improvements such as a drive aisle.</u>

<u>Description</u>	<u>Refurbishment and improvements to City property to the south of the Sam Hill Warehouse currently designated as parcels 113-14-063B and 800-11-031A.</u>
<u>Responsible Party for Construction</u>	<u>The Developer.</u>
<u>Estimate</u>	<u>Undertaken at the sole cost and expense of Developer.</u>
<u>Time of Construction</u>	<u>After commencement of construction.</u>
<u>Reimbursement Method</u>	<u>Not applicable.</u>
<u>Party providing plans for City staff design review.</u>	<u>The Developer.</u>
<u>Other</u>	<u>The Developer agrees to make improvements to the above mentioned parcels including landscaping and pavers in order to facilitate pedestrian access and improve public landscaping in the event adjacent conference space is incorporated into the project.</u>

EXHIBIT F

PERMITTED ENCUMBRANCES

An approximately eight (8) foot proposed planned utility easement as depicted on the third page of Exhibit A is the sole permitted encumbrance on the Property. Aside from this encumbrance, any other encumbrances are not permitted and the City agrees to remove any other encumbrances affecting the Property. If any encumbrance cannot be removed, the City agrees to and shall indemnify and save Developer harmless from or against any liability, loss, damages, costs, attorney's fees and all other expenses incurred by Developer on account of claims of any interest in the Property made by a third party. The Parties agree that Developer is permitted to landscape in the planned utility easement including, without limitation, placement of trees in such easement.

EXHIBIT G

EXAMPLE LESSOR ESTOPPEL, SUBORDINATION, AND CONSENT AGREEMENT

EXHIBIT H

DESCRIPTION AND AERIAL MAP OF PARK AREA

The Park Area includes the area depicted on the aerial map below and is limited to parcels 800-11-029K, 113-14-058D, 113-14-055, 113-14-059C, 113-14-056B, 800-11-030P, and 113-14-062F less any area of these parcels which is part of the Property as provided in the legal description of Exhibit A.

