

STAFF REPORT
City of Lancaster

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MVB

Date: May 8, 2018

To: Mayor Parris and City Council Members

From: Chenin Dow, Economic Development Manager

Subject: **Operating Covenant Agreement with BLVD Renual, LP**

Recommendation:

Adopt **Resolution No. 18-15**, approving an Operating Covenant Agreement with BLVD Renual, LP; and authorize the City Manager or his designee to execute all related documents.

Fiscal Impact:

The proposed hotel will generate an estimated \$5.4 million in total property taxes, of which the City’s share is 6%, and \$13.1 million in transient occupancy taxes (TOT) during its first 25 years of operation. In exchange for the Operating Covenant Agreement, 50% of the TOT generated during the hotel’s first 10 years of operation will be rebated to BLVD Renual, LP.

Background:

In 2010, the City of Lancaster completed construction on “The BLVD Transformation Project,” a comprehensive initiative to revitalize the City’s downtown core. Since then, more than 60 new businesses have chosen to call the downtown district home. The BLVD has drawn well over \$150 million in private investment, and more than 200,000 square feet of commercial space has been constructed or rehabilitated.

Today, the BLVD continues to evolve and adapt to residents’ wishes and needs. Recent additions include a Regency Theatres, which has purchased and renovated BLVD Cinemas; Don Sal, an upscale Mexican cantina; Buckle & Boots, a country western bar; and more.

Each of these uses is in keeping with the City’s target tenant mix, which envisions the downtown area as an increasingly vibrant, thriving urban core rich in entertainment and dining options. A key component of this long-term vision is the addition of an upscale hotel.

Now, the City has the opportunity to attract such a hotel. BLVD Renual, long-standing partners in the effort to revitalize and continuously refresh the BLVD, are working to bring a 105-room Marriott Residence Inn to the heart of the downtown area.

The Marriott will join the existing Homewood Suites and Springhill Suites as one of three hotels in Lancaster classified as “upscale” by Smith Travel Reports (STR), long recognized as a beacon in the industry. The proposed hotel will also provide the highest level of density of any hotel in the Antelope Valley. Recent analyses by independent fiscal resiliency firm Urban 3 have illustrated that high-density development, particularly in the urban core, yields significantly greater value to the community over the long term. In addition, travelers attracted by the hotel will further contribute to Lancaster’s economy via spending at restaurants and other local businesses.

Under the proposed agreement, BLVD Renewal will agree to construct the proposed hotel and operate it for a minimum of 10 years. The City will also receive up to 15 free room nights per month at the Marriott for official City business, including five nights that can be booked up to 30 days in advance on Friday through Sunday nights; five that can be booked up to 24 hours in advance any day of the week; and five that can be booked the same day, any day of the week. In exchange, BLVD Renewal will receive a rebate of 50% of the total TOT collected during the term of the operating covenant, and development impact fees will be waived.

This agreement will enable the construction of a high-quality, high-density hotel which will bring millions of dollars in property and transient occupancy tax revenue to the City of Lancaster during its operation, in addition to new jobs for local residents. As the rebate will come from new tax revenues that the City would not receive but for construction of the hotel, these benefits come at no hard cost to the taxpayer.

CD

Attachments:

Resolution No. 18-15

Operating Covenant Agreement with BLVD Renewal, LP

Economic Impact Report

RESOLUTION NO. 18-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LANCASTER APPROVING AN OPERATING COVENANT
AGREEMENT WITH BLVD RENUAL, LP

WHEREAS, the City of Lancaster (“City”) is a municipal corporation and charter city organized and operating under its city charter and the laws of the State of California; and

WHEREAS, BLVD Renual, LP, a limited partnership (“Hotel Entity”), has proposed to the City an agreement entitled “Operating Covenant Agreement” substantially in the form submitted herewith (the “Agreement”); and

WHEREAS, a copy of the Agreement, together with a report describing the proposed transaction, has been on file with the City Clerk as a public record; and

WHEREAS, notice of a public hearing to consider the Agreement, and which specifically referenced Government Code Section 53083, was published in a newspaper of general circulation serving the City and its inhabitants; and

WHEREAS, under the Agreement, the City would be obligated to make certain payments to Hotel Entity based upon a percentage (50%) of transient occupancy tax received by the City from operations undertaken by Hotel Entity, provided that such payments would only become due in the event the Hotel Entity opens on certain property designated as APN 3133-003-009 (the “Site”) and continuously operates a AAA Three Diamond Hotel, all as more particularly set forth in the Agreement; and

WHEREAS, the generation of transient occupancy tax revenue from a AAA Three Diamond Hotel would not occur but for the Agreement; and

WHEREAS, the Agreement is consistent with and implements the provisions of the Hotel Stimulus Program established by the City under Ordinance No. and

WHEREAS, particularly in light of the elimination of redevelopment agencies as effected by enactments of the California Legislature in 2011 and 2012, including the former Lancaster Redevelopment Agency, the generation of tax revenues available to the City is important in preserving the ability of the City to provide an acceptable level of core municipal services to its inhabitants; and

WHEREAS, the financial participation by the City under the Agreement is in consideration of the activities that will be undertaken by Hotel Entity under the Agreement; and

WHEREAS, the Agreement may constitute an economic subsidy agreement within the meaning of Section 53083 of the California Government Code, and

WHEREAS, notice was published in accordance with Section 53083 of the California Government Code and a public meeting of the City Council on the proposed Agreement was duly noticed; and

WHEREAS, the proposed Agreement, and a staff report have been available for public inspection prior to the public meeting; and

WHEREAS, all actions required by all applicable law with respect to the proposed Agreement have been taken in an appropriate and timely manner; and

WHEREAS, the City Council has duly considered all of the terms and conditions of the proposed Agreement and believes that the Agreement is important to make available to the City for the benefit of its inhabitants an additional source of transient occupancy tax revenues and other revenues and is in the best interests of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LANCASTER DOES RESOLVE AS FOLLOWS:

Section 1. The City Council hereby finds and determines that, by generating additional revenues to the City, the Agreement will benefit the City and its inhabitants.

Section 2. The City Council hereby approves the Agreement in substantially the form presented to the City Council, subject to such revisions as may be made by the City Manager or his designee. The City Manager is hereby authorized to execute the Agreement (including without limitation all attachments thereto) on behalf of the City. A copy of the Agreement when executed by the City shall be placed on file in the office of the City Clerk.

Section 3. The City Manager is hereby authorized, on behalf of the City, to make revisions to the Agreement which do not increase any amounts to be paid by the City or materially or substantially increase the City's obligations thereunder, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the City's obligations, responsibilities and duties to be performed under the Agreement and related documents.

PASSED, APPROVED and ADOPTED this 8th day of May, 2018, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

BRITT AVRIT, MMC
City Clerk
City of Lancaster

R. REX PARRIS
Mayor
City of Lancaster

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF LANCASTER)

CERTIFICATION OF RESOLUTION
CITY COUNCIL

I, _____, _____ City of Lancaster,
California, do hereby certify that this is a true and correct copy of the original Resolution
No.18-15, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this
_____ day of _____, _____.

(seal)

OPERATING COVENANT AGREEMENT

by and between

**CITY OF LANCASTER,
a municipal corporation and charter city**

("City")

and

**BLVD RENUAL,
a limited partnership**

("Developer")

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LIST OF ATTACHMENTS

- Attachment No. 1 - Description of the Site
- Attachment No. 2 - Site Plan
- Attachment No. 3 - Memorandum of Agreement
- Attachment No. 4 - Schedule of Performance
- Attachment No. 5 - Scope of Development

OPERATING COVENANT AGREEMENT

This **OPERATING COVENANT AGREEMENT** (“**Agreement**”) is dated for identification purposes as of May 8, 2018, and is entered into by and between the **CITY OF LANCASTER**, a municipal corporation and charter city of the State of California (“**City**”), and **BLVD RENUAL**, a limited partnership (“**Developer**” or “**Owner**”). The City and the Developer are hereinafter sometimes individually referred to as a “**Party**” and collectively referred to as the “**Parties.**” Capitalized terms are defined in Section 100.

RECITALS

A. Developer is the owner of that certain real property located in the City of Lancaster, County of Los Angeles, State of California, more particularly described in the Legal Description and as shown on the Site Plan (the “**Site**”).

B. Developer desires to develop and operate (i) a 5-story AAA Three Diamond Hotel containing not less than one hundred five (105) rooms as more specifically described herein (“**Project**”) as more fully described in the “**Scope of Development**” as defined below.

C. The City has determined that the development, operation, and maintenance of the Hotel in the City will serve the needs of existing businesses and visitors and families as well as promote and enhance the economy of the City and assist the City in promoting tourism by providing attractive and desirable visitor serving facilities and experiences that will serve the needs of visitors and contribute to the growth and expansion of tourism opportunities in the City, providing employment opportunities for the residents of the City, and raising average daily rates for all hotels.

D. Consistent with the above, the City desires to incentivize operation of a AAA Three Diamond Hotel in the City by implementing the “**Hotel Stimulus Program**” (as defined below) through this Agreement so as to provide economic assistance equal to a portion of the transient occupancy tax revenues generated by the Hotel which, but for this Agreement and the Hotel Stimulus Program, would not operate within the City.

E. The City Council has found and determined that the implementation of the Hotel Stimulus Program through this Agreement is a municipal affair which is (i) consistent with the City’s economic goals and strategies, (ii) a matter of City-wide importance, (iii) necessary for the preservation and protection of the public health, safety and/or welfare of the community, and (iv) in accord with the public purposes and provisions of applicable State and local laws and requirements.

F. The City Council finds and determines that the implementation of this Agreement will provide economic incentives to encourage the development, construction, and operation of the Hotel within the City which will, in turn, (i) provide desirable and attractive experiences for both local residents and tourists, (ii) promote job creation opportunities in the City, (iii) indirectly encourage other property owners to upgrade and enhance properties, (iv) maintain and enhance a consistent business friendly environment, (v) generate net increased transient occupancy tax revenue to the City which will assist in the revitalization of neighborhoods and support the public services provided by the City to its residents, visitors, and businesses, and (vi) increase the economic competitiveness of the City.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

100. DEFINITIONS

“**AAA**” means the American Automobile Association.

“**AAA Three Diamond Hotel(s)**” means a Hotel(s) which provides physical features and operational services which meet or exceed the rating criteria established for AAA Three Diamond Hotels by the American Automobile Association, as such compliance is determined by the American Automobile Association, and the Minimum Development Standards. AAA Three Diamond Hotel(s) does not include Hotels operating on or before January 1, 2018, other than Renovated Qualifying Hotel(s), nor does it include property, including both Existing Hotels and/or undeveloped land, that is/are currently the subject of an agreement with the City of Lancaster which agreement provides a subsidy or financing mechanism for the construction and/or operation of a Hotel or which involved an agreement of the former Lancaster Redevelopment Agency.

“**AAA Three Diamond Requirements**” means any requirements to the ongoing designation of a Hotel as a AAA Three Diamond Hotel as established and implemented from time to time by AAA.

“**Actual Knowledge**” is defined in Section 803.11.

“**Affiliate**” means any Person directly controlling, controlled by or under common control with another Person, which, in the case of a limited liability company, shall include each of the managing members thereof. The term “control”, as used in the immediately preceding sentence, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

“**Agreement**” means this Operating Covenant Agreement and all amendments or modifications hereto.

“**Applicable Transient Occupancy Tax Rate**” means the lesser of the rate of Transient Occupancy Tax, as applicable from time to time, or eleven percent (11%). The Applicable Transient Occupancy Tax Rate shall apply for the calculation of any and all Incentive Payments without regard to any increases, at any time, in the rate of the Transient Occupancy Tax.

“**Brand**” means the distinctive name of a Hotel that, by virtue of its distinctive name, is identified by specific physical and operational features so that guests are assured that they will receive a specified level of service and amenities wherever the property is located.

“**Breach**” is defined in Section 701.

“**CEQA**” is defined in Section 301.1.

“**City**” means the City of Lancaster, a charter city and California municipal corporation, organized and existing under the laws of the State of California, and all successors and assigns of the City of Lancaster.

“**City Benefit Package**” is defined in Section 501.1.

“**City Bodies**” is defined in Section 810.

“**City Code**” means the Municipal Code of the City of Lancaster as may be amended from time to time, and includes, without limitation, the Uniform Codes.

“**City Disbursement Conditions**” is defined in Section 405.

“**City Manager**” means the City Manager of the City or his/her designee.

“**City Rules and Powers**” is defined in Section 810.

“**Complete**” or “**Completion**” is defined in Section 301.2.

“**Construction Commitment**” is defined in Section 302.3(a).

“**Construction Commitment Disapproval Notice**” is defined in Section 302.3(a).

“**Construction Contract**” is defined in Section 302.3(b).

“**Construction Contract Disapproval Notice**” is defined in Section 302.3(b).

“**Construction Lender**” is defined in Section 302.3(a).

“**Construction Loan**” is defined in Section 302.3(a).

“**Covenants**” is defined in Section 604.

“**CPI**” means the Consumer Price Index-All Urban Consumers for the Los Angeles-Orange-Riverside County Average, Subgroup “All Items” (1982-1984 = 100) as established by the Bureau of Labor Statistics of the U.S. Department of Labor.

“**Day**” or “**Days**” is defined in Section 808.

“**Default(s)**” is defined in Section 701.

“**Deferred Developer Impact Fees**” means those Developer Impact Fees as to which an Owner, as a participant under this Hotel Stimulus Program, elects to have payment deferred until the earlier to occur of (i) issuance by City of a certificate of occupancy as to a Hotel or other improvements as to the Site or (ii) the second anniversary of the issuance of building permits as to the Hotel or other improvements as to the Site; provided that any Development Impact Fees so deferred shall bear interest at the Designated Interest Rate. The payment of Deferred Developer Impact Fees shall also be subject to Section 3.37.050.040 hereof.

“Deferred Permit, Plan Check, and Inspection Fees” means those Permit, Plan Check and Inspection Fees as to which an Owner, as a participant under this Hotel Stimulus Program, elects to have payment deferred until the earlier to occur of (i) issuance by City of a certificate of occupancy as to a Hotel or other improvements as to the Site or (ii) the second anniversary of the issuance of building permits as to the Hotel or other improvements as to the Site; provided that any Development Impact Fees so deferred shall bear interest at the Designated Interest Rate.

“Design and Finish” is defined in Section 301.3.

“Designated Interest Rate” means a rate equal to the rate of interest applicable to the construction loan for the Hotel and, if there is no construction loan, then a rate of interest designated by the City Manager as representing a market rate of interest for such deferral.

“Developer” means BLVD Renewal, a limited partnership.

“Development Costs” is defined in Section 302.3(a).

“Development Guidelines” means such development guidelines as may be adopted and amended from time to time by the City pertaining to Qualifying Hotels and AAA Three Diamond Hotels.

“Development Impact Fees” means such developer impact fees as are imposed by City from time to time under the City Code and any implementing resolutions or Entitlements.

“Effective Date” means the date on which this Agreement is attested by the City Clerk of the City of Lancaster after approval by the City Council and execution by the City and Developer.

“Eligibility Phase” means the period commencing on the effective date of Chapter 3.37 (Hotel Stimulus Program) of the City Code and terminating on the earlier to occur of (i) December 31, 2022, (ii) the date on which there are a total of Five Thousand (5,000) Guestrooms comprised of Guestrooms of New Qualifying Hotels which have been Pre-Approved and have Opened for Business, or (iii) the earlier termination of the Hotel Stimulus Program as described under Chapter 3.37.

“Entitlements” means such land use approvals as are hereafter given with respect to the Project by City.

“Existing Hotel” means a building that was constructed, occupied, and used as a facility referenced in Title 5, Chapter 5.20, Section 5.20.010 of the City Code on or before January 1, 2018.

“Flag” means the entity whose Brand is used to identify the Hotel.

“General Contractor” is defined in Section 302.3(b).

“Governmental Requirements” means all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Developer or the Site, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City’s Municipal Code, and all

applicable disabled and handicapped access requirements, including without limitation, all governmental requirements applicable to public works, including without limitation the payment of prevailing wages in compliance with Labor Code Section 1720, *et seq.*, keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto (“Public Works Statutes”), the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Sections 51, *et seq.*

“**Guestroom(s)**” means a room or suite within the Hotel intended for Transient Occupancy by guests for compensation.

“**Hazardous Material**” or “**Hazardous Materials**” means and include any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, the Regional Water Quality Control Board, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a “hazardous waste,” “acutely hazardous waste,” “restricted hazardous waste,” or “extremely hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos and/or asbestos containing materials; (vii) lead based paint, pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, *et seq.*, specifically §§ 4821-4846, and the implementing regulations thereto, or any lead based or lead products; (viii) polychlorinated biphenyls, (ix) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. Section 6903); (xi) Methyl tertiary Butyl Ether; (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. Section 9601); and/or (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities below attainment levels identified in one or more of the enactments identified above as Governmental Requirements, including those products and amounts as are customarily used in the construction, maintenance, rehabilitation, management, and operation of hotels and/or commercial developments or associated buildings and grounds, or typically used in commercial activities in a manner typical of other comparable commercial developments, or substances commonly ingested by a significant population, including without limitation alcohol, aspirin, tobacco and saccharine.

“**Hotel**” means a building which (i) operates as a facility referenced in Title 5, Chapter 5.20, Section 5.20.010 of the City Code, (ii) directly generates Transit Occupancy Tax to the City, and (iii) meets the Minimum Required Density.

“Hotel Operator” means franchisee, manager, lessee, or licensee with whom an Owner has a contract to open as a Qualifying Hotel and thereafter to operate the Qualifying Hotel as a AAA Three Diamond Hotel pursuant to a franchise, management, lease, or license arrangement.

“Hotel Operating Agreement” means the Agreement between the Hotel Operator and the Developer governing the operation of the Hotel.

“Hotel Stimulus Program” means the program set forth in the Hotel Stimulus Program Ordinance.

“Hotel Stimulus Program Ordinance” means Ordinance No. _____ as adopted _____, 2018, a copy of which is on file with the City as a public record and a copy of which has been provided to the Developer prior to the Effective Date.

“Incentive Payments” are the payments to be made by the City to the Developer pursuant to Sections 400-405 hereof.

“Include” or **“Including”** is defined in Section 808.

“Legal Description” means the legal description of the Site attached hereto as Attachment No. 1.

“Losses and Liabilities” as used herein shall mean and include all claims, causes of action, liabilities, losses, damages (including, without limitation, penalties, fines and monetary sanctions), injuries, expenses, charges, penalties or costs of whatsoever character, nature and kind, including reasonable attorney’s fees and costs incurred by the indemnified party with respect to counsel of its choice, whether to property or to person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected, latent or patent.

“Management Entity” is defined in Section 204(a).

“Memorandum of Agreement” means an instrument in the form of Attachment No. 3 and incorporated herein by reference.

“Minimum Development Standards” means development which complies with all of the following: (i) all fees shall have been paid by Owner or, in the case of a deferral of Deferred Development Impact Fees to the extent provided under Sections 3.37.020.021 and 3.37.050.040 of the City Code, so deferred, (ii) all development shall conform to the City Code, all applicable Governmental Requirements, and the Entitlements, and (iii) all development shall satisfy the requirements for a Qualifying Hotel.

“Minimum Required Density” means a minimum density measured by hotel rooms for occupancy of 110 rooms per acre.

“Notice of Breach” is defined in Section 703.

“Open(s)(ing)(ed) for Business” or **“Opening”** means the day on which a Hotel opens or re-opens for business to the general public as a Qualifying Hotel. In the case of a Qualifying Renovated Hotel, the reopening of such Hotel as a Qualifying Hotel shall be treated as the Opening.

“Operating Period” is the period commencing on the Opening of the Hotel and terminating on the eleventh (11th) anniversary date of the Opening.

“Ownership and/or Control” means and includes, without limitation, more than fifty percent (50%) of all voting rights and all beneficial ownership rights and interests, including without limitation, all such rights with respect to all classes of stock, interests in partnerships, limited liability company membership interests and/or beneficial interests under a trust, as may be applicable to the type of entity which is making the particular Transfer in question.

“Party” or **“Parties”** means the City and Developer, as applicable.

“Permit, Plan Check, and Inspection Fees” means permit, plan check, and inspection fees as imposed by City from time to time under the City Code and any implementing regulations or Entitlements.

“Person(s)” means an individual, corporation, limited liability company, partnership, joint venture, association, firm, joint stock company, trust, unincorporated association or other entity.

“Plan Disapproval Notice” is defined in Section 302.2.

“Plans” is defined in Section 302.1.

“Prevailing Wage Statutes” means Labor Code Section 1720, *et seq.*

“Project” is described in Recital B, the Entitlements and Section 301.3.

“Project Completion Date” means the date on which Completion shall have occurred.

“Public Work” is defined in the Public Work Statutes.

“Public Work Statutes” is defined within the definition of the Governmental Requirements.

“Publicly Traded Stock Transfers” is defined in Section 203(e).

“Qualified Hotel Operator” is defined in Section 204(b).

“Qualifying Hotels” means a Hotel which satisfies all of the following: (i) it opens as an Upscale, Upper Upscale or Luxury Hotel as designated under the Applicable STR Chain Scale; (ii) it is approved during the Eligibility Phase; (iii) it opens and operates with a Three Diamond Hotel designation by the American Automobile Association during the Eligibility Phase; and (iv) it meets the Minimum Required Density.

“Records” means all books and records of the Developer and its contractors to the extent necessary to confirm construction costs.

“Representatives” as used herein shall mean the agents, employees, members, independent contractors, affiliates, principals, shareholders, officers, directors, council members, board members, committee members, and planning and other commissioners, partners, attorneys, accountants, representatives, and staff of the referenced entity and the predecessors, heirs, successors and assigns of all such Persons.

“Related Component” is defined in Recital B.

“Schedule of Performance” means Attachment No. 4.

“Scope of Development” means Attachment No. 5.

“Site” means that certain real property, which property is more particularly described in the “Legal Description” attached hereto as Attachment No. 1 and shown on the Site Plan attached hereto as Attachment No. 2.

“Site Plan” means the Site Plan attached hereto as Attachment No. 2 and incorporated herein by reference showing the Site.

“Temporary Closure” means a period of time, no longer than reasonably necessary for repairs, reconstruction or resolution, of maintenance issues, but in no event longer than two hundred (200) days.

“Transfer” as used herein shall mean and include any direct or indirect conveyance, transfer, sale, assignment, lease, sublease, license, concession, franchise, gift, management agreement, operating agreement, hypothecation, mortgage, pledge, encumbrance, or the like of this Agreement, the Site, the Project and/or Ownership and/or Control of Developer. “Transferee” shall mean and refer to the person or entity receiving any Transfer.

“Transfer Documents” is defined in Section 201.

“Transient Occupancy” means an uninterrupted stay of no more than twenty-nine consecutive calendar days.

“Transient Occupancy Tax” means the transient occupancy tax levied and collected pursuant to Chapter 3.16 of Title 3 of the Lancaster Municipal Code, as it may be amended from time to time and held in the City’s general fund for unrestricted use. Chapter 3.16 of the Lancaster Municipal Code, as it may be amended from time to time, is referred to therein as the “Transient Occupancy Tax Code.”

“Uniform Codes” means each of the following as in effect from time to time as approved by City: the Uniform Building Code, the Uniform Housing Code, the National Electrical Code, the Uniform Plumbing Code, the Uniform Mechanical Code, and the Uniform Code for the Abatement of Dangerous Buildings.

“Verification of AAA Classification” is defined in Section 401.

“Year” means a fiscal year mutually agreeable to City and Developer; it is anticipated that the initial Year will commence approximately eight (8) months following the Opening.

200. RESTRICTIONS ON TRANSFER

201. Prohibition Against Assignment or Change of Ownership or Control. The restrictions contained in this Section 201 upon any Transfer to any Transferee are imposed because the qualifications and identity of Developer are of particular concern to the City, and it is because of those qualifications and identity that the City has entered into this Agreement with Developer.

Developer hereby agrees that no voluntary or involuntary successor to any interest of Developer under a Transfer not permitted by this Agreement shall acquire any rights pursuant to this Agreement, and any purported Transfer of this Agreement in violation of the provisions set forth herein shall be of no legal force or effect. The Parties specifically affirm City's reliance upon the qualifications and identity of Developer to undertake and perform the items set forth in the Agreement in exchange for City's assistance, which assistance Developer intends to employ to generate additional income from the Project, and that Developer's qualifications and performance under this Agreement were specifically bargained for by the City in exchange for City's assistance.

At any time Developer desires to effect a Transfer requiring the consent of City under this Agreement, Developer shall request consent from the City in writing and shall submit to City all proposed agreements and documents memorializing, facilitating, and evidencing the proposed Transfer (collectively, the "**Transfer Documents**"). City agrees to notify Developer in writing of its decision with respect to Developer's request for consent to such Transfer, as promptly as possible, and, in any event, not later than thirty (30) days after City receives the Developer's written request for consent to the Transfer and all of the Transfer Documents. In the event City consents to a proposed Transfer pursuant to this Section 201, then such Transfer shall not be effective unless and until City receives copies of all executed and binding Transfer Documents, which Transfer Documents shall conform in all material respects to the proposed Transfer Documents originally submitted by Developer to City, and a certificate, addressed to City, setting forth the representation of Developer, and, in the case of a Transfer of Developer's interest under this Agreement, of Transferee, stating that all requirements of this Section 201 applicable to such Transfer have been met. If such request is denied, City shall state the reasons for such disapproval in their notice of denial of Developer's request.

Notwithstanding anything in this Agreement which is or appears to be to the contrary, Developer agrees that, in addition to all other City rights with respect to Transfers subject to City approval under this Agreement, the City shall have the right to refuse to consent to any Transfer if Developer is then in Breach or Default of any of its obligations under this Agreement; provided that if such Breach or Default is a non-monetary Breach or Default for which the cure has commenced and which will be cured on or prior to the effectiveness of such proposed Transfer, City may, rather than withholding consent to the proposed Transfer solely because of such Breach or Default, condition such consent upon the complete cure of such Breach or Default on or prior to the effectiveness of the Transfer; and, provided further, that City's waiver of this restriction on Transfer shall not be construed as a waiver of any Breach or Default or of City's remedies arising therefrom, nor shall any Transfer in any way restrict or limit City's rights and remedies arising from any Breach or Default hereunder, whether such Breach or Default occurred prior to or after such Transfer.

The provisions of this Section 201 shall apply to each successive Transfer and Transferee in the same manner as initially applicable to Developer under the terms set forth herein.

202. Restrictions on Transfer of the Agreement, the Site, the Project and/or Ownership and/or Control of Developer.

(a) Except as set forth in section 203, following the Effective Date and continuing until the expiration or termination of the Operating Period, Developer shall not Transfer all or any part of its interest in or rights under this Agreement, and/or any part of its interest in or rights to the Site and/or the Project, or any part thereof, and/or Ownership and/or Control of Developer, without the City's prior written consent, which consent shall not be unreasonably

withheld. Notwithstanding the foregoing, the Developer may not Transfer the right to receive the Incentive Payments separate and apart from the Project.

The failure of the City to consent to any proposed Transfer of Developer's rights under or interest in the Agreement, the Site, or the Project, or any part thereof, pursuant to this Section 202, shall be deemed to be reasonable if (x) the proposed Transferee is not (i) financially capable and/or responsible, (ii) of good standing and repute, and/or (iii) able to demonstrate the capability and experience to successfully manage developments of the size and character of the Project and/or (y) the City has a reasonable basis for concluding that the proposed Transfer would have a material adverse impact upon the value, operation or quality of the Project or upon the timing or quantum of benefits to be received by the City in accordance with the implementation of this Agreement. In the event of any disapproval by the City based on the foregoing standard of reasonableness, the City shall, in connection with such disapproval, identify in writing the reasons for the City's disapproval, and, in the event of Developer's disagreement with such determination, such dispute shall be resolved by a judicial reference proceeding under Section 705.1 below. Upon any approved assignment of this Agreement or the Project (other than for security purposes), and/or Ownership and/or Control of Developer, said assignee shall expressly assume the liability of Developer for the obligations of Developer under this Agreement to the extent of said assignee's interest, and, upon a Transfer of all of its interest in the Project which was approved by the City pursuant to this Section, the transferring owner shall be released from further liability hereunder with respect to events occurring or obligations first arising after the date of such sale.

203. Permitted Transfers. Notwithstanding the provisions of Sections 201 and 202 to the contrary, the following transfers shall be permitted without City consent ("**Permitted Transfers**"); provided that Developer shall nonetheless provide City with the Transfer Documents with respect thereto prior to the proposed Transfer:

(a) Transfers of Ownership and/or Control resulting from the death or mental or physical incapacity of an individual shareholder or member of Developer;

(b) Transfers of Ownership and/or Control in trust for the benefit of a spouse, children, grandchildren, or other immediate family members of any individual owner of Developer;

(c) The granting of easements to public or quasi-public entities in connection with development of the Site in accordance with this Agreement;

(d) Transfer for financing purposes in connection with recordation of any Construction Loan or any bona fide permanent loan replacing the Construction Loan following Completion.

(e) Public trading of stock or securities in any corporation or partnership if the stock or securities of such party are traded publicly on a national stock exchange or in the over-the-counter market and if the price of such stock or securities are regularly quoted in a recognized national quotation service, provided this exception shall not apply if the Transfer is the result of the original issuance of such stock or security interests or if the Transfer at issue is being undertaken for the purpose and with the intent of circumventing the restrictions on Transfer otherwise applicable under this Section 203 (the foregoing Transfers described in this Section 203 are referred to herein as "**Publicly Traded Stock Transfers**").

204. Qualified Hotel Operator.

(a) Except as to a Qualified Hotel Operator, Developer shall not retain or authorize any Person to perform any management and/or supervisory functions (“**Management Entity**”) with respect to the development and/or operation of the Project without the prior written consent of City, which consent shall not be unreasonably withheld.

(b) Not later than the date specified in the Schedule of Performance, Developer shall retain a reputable, responsible and experienced operator (“**Qualified Hotel Operator**”) to supervise the operation of the Hotel. The City shall approve, conditionally approve or reject, acting in its reasonable discretion, the identity of the Qualified Hotel Operator within forty five (45) days after submittal of a completed package with respect thereto. The Developer shall also submit the form of the Hotel Operating Agreement to the City. The Qualified Hotel Operator shall operate and manage the Hotel pursuant to the Hotel Operating Agreement and in strict compliance with all of the requirements hereof and thereof. Should the original Qualified Hotel Operator, or its successor, cease to manage the Hotel for any reason, a replacement Qualified Hotel Operator shall be secured within ninety (90) days after the occurrence of such an event, so that throughout the term, the Hotel will at all times be managed by a Qualified Hotel Operator. If the Hotel is operated under a franchise agreement, the identity of the franchisor shall be reasonably approved in writing by City to ensure consistency of the proposed franchise with the AAA Three Diamond Requirements. Notwithstanding anything to the contrary above, Developer may terminate its employment of a particular Qualified Hotel Operator for the Hotel without being required to secure City’s consent to said termination, but Developer shall thereafter be obligated to replace said Qualified Hotel Operator as provided above. Unless City’s prior written consent is obtained, which consent shall not be unreasonably withheld, Developer shall not permit the Transfer of more than forty-nine percent (49%) of the ownership and/or control in the aggregate, taking all transfers into account on a cumulative basis, of said original Qualified Hotel Operator or any permitted Transferee during the period it is supervising operation of the Hotel, excluding Transfers consisting of Publicly Traded Stock Transfers.

205. Termination of Restrictions on Transfer. The restrictions of this Section 200 shall terminate upon the expiration or termination of the Operating Period and shall not be construed or understood to terminate or modify any of the provisions of Section 604 hereof with respect to the Project or any restrictions applicable to the Project under any documents recorded against the Site or any portion thereof pursuant hereto.

300. DEVELOPMENT OF THE SITE

301. Developer’s Construction Obligations.

301.1 Construction of Project. The Project shall be constructed in accordance with the Entitlements, Schedule of Performance, the Scope of the Development, the Design and Finish, the Plans, all Governmental Requirements, and the terms and provisions set forth in this Agreement, including without limitation the requirement that the Project shall satisfy the Minimum Development Standards and the Minimum Required Density. Without limitation of the foregoing, Developer specifically acknowledges and agrees that the Developer shall satisfy all conditions necessary to ensure that the Project conforms to all applicable California Environmental Quality Act (“**CEQA**”) requirements.

301.2 Entitlements; Construction Drawings. The Project shall be completed in one (1) construction phase, including all general grading, site preparation, utility lines and infrastructure. “**Complete**” or “**Completion**” shall mean the last to occur of (i) completion of construction of the Project in substantial compliance with this Agreement, (ii) issuance of a final certificate of occupancy by the City with respect to the Project, or (iii) the opening of all guestrooms and facilities for use and occupancy by the general public.

The Developer has submitted to the City, and the City has approved, the Entitlements. The Entitlements depict the overall development plan for the Site and shall guide all subsequent development. All changes to or adjustments of the Entitlements by Developer shall require the prior written consent of the City, which approval shall not be unreasonably withheld so long as such alteration does not affect the size of the Project, and/or the quality or nature of the amenities to be constructed on the Site. The Developer specifically acknowledges that, notwithstanding anything in this Agreement which is or appears to be to the contrary, the Developer shall be obligated to separately apply for and obtain all governmental approvals required by Governmental Requirements in connection with the construction of the Project, and any City approval under this Agreement shall not waive or eliminate the requirement for such review and approval by the City in accordance with those Governmental Requirements, acting in its municipal capacity and exercising its police powers. City shall cooperate with Developer to coordinate approvals required under this Agreement.

Developer shall make all submissions and secure all approvals in connection with construction of the Project prior to the deadlines set forth in the Schedule of Performance and in accordance with the Entitlements. Developer further agrees that, once Developer commences construction of the Project, or any portion thereof, Developer shall diligently prosecute the same to completion without substantial interruption, except as expressly excused or permitted by the provisions of this Agreement.

If not sooner paid in full, Developer shall remit to City the full amount of the Deferred Developer Impact Fees, plus interest thereon as determined in conformity with this Agreement, on or before the issuance by City of a certificate of occupancy as to the Hotel or any other improvements on the Site.

301.3 Architectural Quality. Developer acknowledges and understands that the materials, workmanship, finish, design, components and general architectural quality of the Project will have a significant and continuing impact on the Site and nearby area and that City’s agreement to participate in assisting this Project is based upon Developer’s representation that the Project will be high quality in design, construction, and finish. Accordingly, Developer understands and agrees that if it constructs the Project it will be required to develop the Site by means of materials, workmanship and an overall design that will result in a Hotel that is of high quality and of benefit to the Site and nearby area in order to be entitled to receive the Incentive Payments.

In this connection, Developer acknowledges and agrees that, in addition to the City’s review of the Plans pursuant to Section 302.2, the City will also review the interior architectural design and appearance and the interior materials, components, fixtures, furnishings, finish, graphics and signage location and plans (with specifications), lighting locations (with specifications) for exterior and interior public spaces, including parking garages, (all such interior items are collectively referred to as the “**Design and Finish**”) within the Project, and within all common areas located on the Site to ensure that the quality of the Design and Finish is consistent with the Entitlements, the

requirements for a Qualifying Hotel, and the Development Guidelines. Accordingly, prior to the deadline set forth in the Schedule of Performance, Developer shall obtain City's approval of the Design and Finish as to whether or not the Design and Finish is consistent with the Entitlements, The requirements for a Qualifying Hotel, and the standards set forth in the Development Guidelines, which approval shall be granted or denied in City's reasonable discretion within forty five (45) days after City receives Developer's written request and complete supporting materials, including, without limitation, material pallets and such other information or materials as City shall reasonably request. The Design and Finish shall be reviewed by the City solely to ensure that the quality of the Design and Finish is consistent with the Entitlements, this Agreement, and the requirements for a Qualifying Hotel.

302. Submissions and Approvals.

302.1 Plans. Prior to the time set forth in the Schedule of Performance, Developer shall obtain City's approval of preliminary and final construction drawings, grading plans, site development plans, signage plans, architectural, mechanical, electrical, structural and other plans, specifications, building elevations and renderings, landscape plans, material pallets and parking plans and other like materials and plans required by City in connection with review of the Project (collectively, the "**Plans**"). City's approval pursuant to this Section 302 shall be limited to ensuring that the quality of the Project is consistent with the Entitlements and the requirements for a Qualifying Hotel. This Section 302.1 shall not limit the exercise of City's authority as a charter city and municipality in connection with its police powers.

302.2 Submission of Plans.

(a) Not later than the respective times set forth therefor in the Schedule of Performance and in accordance with the provisions set forth in Attachment No. 5, Developer shall submit to City the Plans for the Project to be constructed on the Site by Developer. In connection with processing any Plans, the City shall have the right to request such additional information or detail as City shall determine reasonably necessary in order for City to act upon any proposed submission, and the period for City review under the Schedule of Performance shall not commence until each submission is so completed.

All Plans submitted to the City must be approved, conditionally approved or disapproved or rejected by City within the time set forth in this Agreement. City shall consider such plans in light of all Governmental Requirements, the Entitlements and any other Plans which have been previously approved by City, and architectural review requirements and aesthetic concerns and all AAA Three Diamond Requirements and other requirements for a Qualifying Hotel relating to the appearance of the Project (and the Design and Finish thereof) and to the appearance of all public spaces to be constructed in connection with the Project. The City and Developer shall communicate and consult informally, as frequently as is necessary, to ensure that the formal submission of all documents and Plans to the City can receive reasonably prompt and speedy consideration.

Any approval by the City for purposes of this Agreement shall not waive, limit or satisfy any requirement for approval from the City under any Governmental Requirements or be construed or understood to create any time period or deadline for the City with respect to such actions in its municipal capacity; nor shall anything herein be construed to require the City to act in any particular way in connection with its approval of such plans.

In the event of any disapproval, City shall, concurrently with delivery of the notice of such disapproval to Developer, inform Developer in writing of the reasons for disapproval and the required changes to the Plans or other submissions. Developer shall have ten (10) business days from receipt of any notice from the City specifying required changes (“**Plan Disapproval Notice**”), within which to notify City that Developer agrees to make such changes or objects to any requested changes. If Developer does not notify City in writing within such 10-day period of its objections to the requested changes, Developer shall be deemed to have approved all of such requested changes. If Developer timely notifies City of its objections to the requested changes, then the City and Developer shall meet at a mutually acceptable time to discuss the differences within ten (10) days after the Developer gives such notice. Following such meeting, Developer shall revise such Plans or other submissions and resubmit them for approval to the City by the later of (i) thirty (30) days after receipt of the Plan Disapproval Notice, or (ii) ten (10) days after such meeting. Any such resubmissions shall be approved or disapproved and revised within the same time periods as set forth herein with respect to initial submissions. Any such resubmissions shall not extend any of the outside dates set forth in the Schedule of Performance.

Notwithstanding the above time periods, if the City deems it appropriate or necessary to hold a public meeting of the City, or any body or committee thereof, before the action specified is to be taken, the period for such action by the City shall be extended by a reasonable amount of time, not to exceed thirty (30) days, in each case, for the holding of such public meeting; provided that the period of delay attributable to said public meeting shall extend the Schedule of Performance by a period of time equal to the period of delay caused by that meeting.

Any Plans, once approved in writing by City for purposes of this Agreement shall not be subject to subsequent disapproval by the City under this Agreement. Developer acknowledges that the exercise by City of its right to inspect or review the Plans under this Agreement does not constitute inspection of and shall not be understood as a determination by the City with respect to the engineering or structural design, sufficiency or integrity of the Project, nor a determination of the compliance of such Plans with any Governmental Requirements, including any applicable building codes, safety features or standards. Any inspection or approval of Plans made or granted pursuant to this Agreement shall not constitute an inspection or approval of the quality, adequacy or suitability of such Plans, any specifications applicable thereto, or any labor, materials, services or equipment to be furnished or supplied in connection therewith, and City shall have no responsibility or liability for any acts, omissions or errors of any architects, designers, engineers or other persons responsible for drafting or formulating the Plans.

(b) If any material revisions or corrections of Plans previously reviewed and approved by the City shall be required by any governmental official, agency, department or bureau having jurisdiction over the Site or the development on the Site, or any lending institution involved in financing the development of the Project, then the Developer and the City, at the request of Developer, shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative. If no such waiver is obtained or mutually acceptable alternative developed within a reasonable period of time, then, at the request of Developer, City will review any proposed changes to the Plans, within the time set forth in this Agreement, in accordance with the standards for approval set forth above (except that, notwithstanding anything which is or appears to be to the contrary, the proposed revisions or corrections to the Plans shall not be required to be consistent with that aspect of the previously approved Plans which is the subject of objection under this Section and which would be superseded by the proposed revision or correction).

(c) If Developer desires to make any changes in the Plans after their review and approval by the City, Developer shall submit such proposed changes to the City for their review and approval in accordance with the standards for approval set forth above.

302.3 Submission of Evidence of Financing; Submission of Evidence of Construction Contract.

(a) **Construction Loan.** By the respective times set forth therefor in the Schedule of Performance, the Developer agrees to deliver to City, for its reasonable approval, a written commitment(s) (“**Construction Commitment**”) from a lender acceptable to City in its reasonable discretion and licensed to do business in California that is financially secure and possesses a sound credit rating (“**Construction Lender**”), by which said Construction Lender shall represent that it has agreed, subject to customary closing conditions and final loan documentation consistent with the terms of said written commitment(s), to make a construction loan to Developer (the “**Construction Loan**”) for the development and construction of the Project.

In the event of any disapproval, City shall, concurrently with delivery of the notice of such disapproval to Developer, inform Developer in writing of the reasons for disapproval and the required changes to the Construction Commitment. Developer shall have ten (10) business days from receipt of any notice from the City specifying required changes (“**Construction Commitment Disapproval Notice**”) within which to notify City that Developer and Construction Lender agree to make such changes or object to any requested changes. If Developer timely notifies City of its objections to the requested changes, then the City and Developer shall meet at a mutually acceptable time to discuss the differences within ten (10) days after the Developer gives such notice. Following such meeting, Developer and Construction Lender shall revise the Construction Commitment and resubmit it for approval to the City, as required by this Agreement, by the later of (i) thirty (30) days after receipt of the Construction Commitment Disapproval Notice, or (ii) ten (10) days after such meeting. Any such resubmissions shall be approved or disapproved and revised within the times set forth herein with respect to the initial submission, and, so long as the City does not unreasonably delay the resubmission process, such resubmissions shall not extend any of the outside dates set forth in the Schedule of Performance.

The amount of the Construction Commitment shall not be less than (i) the amount of the “**Construction Contract**,” as defined below, for the Project, plus (ii) an amount equal to all consultant and loan fees, “points,” commissions, charges, furnishings, fixtures, taxes, interest, start-up costs, Developer’s overhead and administration, and other costs and expenses of developing and completing the Project (the costs listed in clauses (i) and (ii) of this Section are sometimes referred to collectively as “**Development Costs**”), less (iii) the amount of the Developer’s documented and committed equity contribution to the cost of constructing the Project.

In the event Developer will finance a portion of the Development Costs by means of an equity contribution or equity financing source, Developer agrees to demonstrate, to City’s reasonable satisfaction, the source of the funds providing the equity contribution and that (i) such funds are committed without qualification to funding of the Development Costs, and (ii) the amount of funds committed is sufficient to cover all contemplated Development Costs (other than those financed by the Construction Loan) necessary to fully complete and render the Project operational.

In connection with submission of the Construction Commitment, Developer shall submit to and obtain City's approval, which approval shall not be unreasonably withheld or delayed, of a construction budget, showing the projected pre-development and development costs of the Project and a sources and uses statement showing that the projected funding sources will be available as needed to fund all such projected costs at the time incurred.

The Construction Loan shall be consistent with the terms and provisions of this Agreement. Prior to execution of any final Construction Loan documents by Developer, Developer shall secure the City's approval of the terms and conditions of those Construction Loan documents, which approval shall be limited to and only for the purpose of assuring compliance of the Construction Loan documents with the requirements of this Agreement and the previously approved Construction Commitment and which shall not be unreasonably withheld. City shall approve or disapprove said Construction Loan documents within ten (10) working days of their submission. Concurrent with any disapproval, City shall inform Developer in writing of the reasons for such disapproval. Developer shall draw upon and utilize the full amount of the Construction Loan only for financing the Development Costs for the Site and any other purposes approved by City, and the Construction Loan shall be disbursed and applied in accordance with the approved construction budget.

(b) **Construction Contract.** By the respective times set forth therefor in the Schedule of Performance, Developer agrees to deliver to City, for its review and approval, which approval shall not be unreasonably withheld, a fully executed and effective construction contract(s) (the "**Construction Contract**") for the Project, which Construction Contract shall obligate a reputable and financially responsible general contractor(s) ("**General Contractor**"), capable of being bonded and licensed in California and with experience in completing developments similar in size and character to the Project, to commence and complete the construction of the Project in accordance with this Agreement and at the price stated therein.

City shall approve or disapprove said Construction Contract within ten (10) working days of its submission.

In the event of any disapproval, City shall, concurrently with delivery of the notice of such disapproval to Developer, inform Developer in writing of the reasons for disapproval and the required changes to the Construction Contract. Developer and General Contractor shall have ten (10) business days from receipt of any notice from the City specifying required changes ("**Construction Contract Disapproval Notice**"), within which to notify City that Developer agrees to make such changes or objects to any requested changes. If Developer notifies City within said 10-day period of its objections to the requested changes, then the City and Developer shall meet at a mutually acceptable time to discuss their differences within ten (10) days after the Developer gives such notice. Following such meeting, Developer and the General Contractor shall revise the Construction Contract and resubmit it for approval to the City as required by this Agreement by the later of (i) thirty (30) days after receipt of the Construction Contract Disapproval Notice, or (ii) ten (10) days after such meeting. Any such resubmissions shall be approved or disapproved and revised within the times set forth herein with respect to the initial submission, and such resubmissions shall not extend any of the outside dates set forth in the Schedule of Performance.

(c) **Limitation on Review by City.** Notwithstanding anything herein to the contrary, the City's review of the items described in this Section 302.3 shall be limited to compliance with this Agreement.

303. Costs of Development. Developer shall bear all costs incurred in connection with the construction, operating, and maintenance of the Project, including without limitation all costs incurred in connection with the acquisition, investigation and/or preparation of the Site for development, all costs of preparation of any Plans or other submissions made by Developer pursuant to this Agreement, and all on and off-site costs incurred in connection with the construction, operation or maintenance of the Project.

Before commencement of construction or development of any buildings, structures or other works of improvement upon the Site by Developer, the Developer shall secure or cause to be secured any and all permits and environmental clearances which may be required by the City or any other governmental agency affected by such construction, development or work. Such permits and clearances shall be secured at the Developer's own expense. The Developer shall be required to comply with all conditions to approval of all zoning changes, general plan amendments, subdivision maps, conditional use permits, CEQA approvals, or any other land use approvals, and all costs of compliance shall be at the sole expense of the Developer. Without limitation of the foregoing, the Developer shall carry out the construction of the Improvements in conformity with all Governmental Requirements, including, without limitation, any applicable federal and state labor laws or standards, including any applicable provisions thereunder relating to the payment of prevailing wages.

304. Hazardous Materials. In the event that, following the execution of this Agreement, Developer discovers the presence of Hazardous Materials under or upon the Site, Developer shall, within five (5) days of such discovery, notify City in writing of such discovery, which writing shall describe the conditions discovered with reasonable particularity, and promptly thereafter provide the City with a reasonably detailed description of the location, extent and nature of the Hazardous Materials discovered. Developer shall be obligated to fully remediate such Hazardous Materials, in accordance with Governmental Requirements, at the Developer's sole cost and expense.

305. [Reserved].

306. Security Financing; Rights of Lenders. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion. However, nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than the Project.

307. Notice of Default to Construction Lender; Right to Cure; No Modification Without Lender Consent. Whenever City shall deliver any notice or demand to Developer with respect to any Breach or Default by Developer under this Agreement, City shall at the same time deliver a copy of such notice or demand to the Construction Lender, provided City has received written request for such notice or demand. The Construction Lender shall (insofar as the rights of City are concerned) have the right, at its option, within sixty (60) days after receipt of the notice, to cure or remedy or commence to cure or remedy any such Breach or Default and to add the cost thereof to the lien of its encumbrance. Nothing contained in this Agreement shall be deemed to obligate, permit or authorize such holder to undertake or continue the construction or completion of the Project pursuant to this Agreement (beyond the extent necessary to conserve or protect the Project or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. The holder, in that event, must agree to complete, the Project, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations.

308. Failure of Holder to Complete Project. In any case where, sixty (60) days after receipt by the Construction Lender of the notice of the Developer's Breach, the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site, or any part thereof, has not exercised the option to operate, or, if it has exercised the option, is not proceeding diligently with operation of the Project, the City may proceed with termination of this Agreement and any further obligations of City hereunder.

400. INCENTIVE PAYMENTS

In order to induce the Developer to construct and operate the Project, the City has agreed to provide to Developer the incentive described in Section 402 upon the terms set forth herein.

401. Confirmation that the Hotel has been Constructed and is Operating in Accordance with this Agreement. Upon request by the Developer to initiate incentive payments, projected to be approximately eight (8) months after Opening, City staff shall verify that Hotel is operating consistent with the AAA Three Diamond Hotel Requirements, as defined herein (the "Verification of AAA Classification"), based on published AAA data.

402. Incentive Payments for AAA Three Diamond Hotel. Upon the fulfillment of the City Disbursement Conditions described in Section 405, subject to Section 405, the City shall pay Incentive Payments to the Developer pursuant to this Agreement, in an amount equal to fifty percent (50%) of the Transient Occupancy Tax collected and remitted to the City during the Operating Period based on the Applicable Transient Occupancy Tax Rate with respect to the Hotel. Incentive Payments shall commence by the first anniversary of the Opening and, subject to ongoing satisfaction of the City Disbursement Conditions, shall continue every six (6) months thereafter with payment to be made thirty (30) days after the applicable semi-annual period.

403. Cessation of Incentive Payments. Incentive Payments shall cease upon the expiration of the applicable Operating Period or at such time as the Hotel ceases to operate consistent with the AAA Three Diamond Hotel Requirements or the Developer fails to make available to City on a continuous basis throughout the Operating Period the City Benefit Package. In the event the Developer notifies, and City Manager in the reasonable exercise of discretion confirms City in writing, within fifteen (15) days of the initial occurrence of the onset of such condition or conditions that cause a Temporary Closure, that the closure constitutes a Temporary Closure, no Incentive Payments shall be made with respect to the corresponding Year, but this Agreement shall remain in effect with the possibility that the Developer will qualify for payments in future Years within so long as this Agreement remains in effect. In the event of all other closures, whether permanent or with respect to which no notice is received from Developer indicating that the closure is a Temporary Closure, no payments shall be made for the corresponding Year or any future Year and, at the discretion of City, this Agreement may be terminated by City upon giving written notice thereof to Developer.

404. Deferred Developer Impact Fees. In the event the Developer causes a Hotel to Open as a Qualifying Hotel and operate as a AAA Three Diamond Hotel, the City shall waive collection of the Deferred Developer Impact Fees, including any interest applicable with respect thereto. This Section 404 shall not apply to Permit, Plan Check and Inspection Fees or any other fees.

405. Setoff as to Unpaid Fees. As to any Permit, Plan Check and Inspection Fees, Developer Impact Fees (excepting to the extent a waiver of Developer Impact Fees has been made by City pursuant to Section 404), and any other fees collected by City in connection with the development undertaken by Developer, City shall setoff against any payments otherwise provided under Section 402 any amounts which have not been paid to City together with interest determined using the Designated Interest Rate.

406. No Pledge. The making of Incentive Payments pursuant to this Agreement shall not be deemed to constitute a pledge of any particular funds by the City, but instead an obligation contingent upon the construction and operation of the Hotel in accordance with this Agreement.

407. City Disbursement Conditions. Notwithstanding anything in this Agreement which is or appears to be to the contrary, in no event will City pay any Incentive Payments to Developer unless all of the following conditions precedent (collectively, the “City Disbursement Conditions”) are satisfied on the date of the applicable disbursement: (i) there shall be no Breach or Default by Developer as to this Agreement, (ii) this Agreement shall remain in full force and effect and not have been terminated, (iii) any administrative fee and deposit payable under the Hotel Stimulus Program shall have been paid by Developer to City, (iv) City shall have received confirmation in the form of a Verification of AAA Classification as to the corresponding period as to which payment is to be made confirming that the Hotel is operating consistent with the AAA Three Diamond Hotel Requirements, and (v) there shall be no default by the Developer under this Agreement and/or the Hotel Operating Agreement which remains uncured on the date such Incentive Payments would otherwise be made to the Developer, including, without limitation, failure to Complete the Project prior to the time set forth in the Schedule of Performance and/or failure to operate the Hotel consistent with the AAA Three Diamond Hotel Requirements.

500. OPERATING COVENANTS

501. Operating Covenants. In consideration of the Covenants of the City set forth herein, including, without limitation, the City’s covenant to make the Incentive Payments upon the terms set forth herein, Developer shall, on or prior to the date specified in the Schedule of Performance, cause the Memorandum of Agreement to be recorded against the Site, providing, among other things, that if the Project is Completed the Hotel shall be operated for a period of at least eleven (11) Years in accordance with the requirements of this Agreement, including without limitation, the AAA Three Diamond Requirements and the provision throughout the Operating Period of the City Benefit Package.

501.1 City Benefit Package. As a material portion of the consideration for the City to enter into this Agreement, but for which the City would not have entered into this Agreement, Developer shall make available to City without charge throughout the Operating Period use of rooms at the Hotel as follows: City shall be entitled to reserve and utilize rooms for official City business, including without limitation use by visiting consultants, artists/crews for the Lancaster Performing Arts Center, attorneys, consultants, and business prospects which City staff is seeking to attract to locate within the city limits of the City of Lancaster for up to fifteen (15) nights per month. The following parameters shall apply to the reservation and use of rooms under this Section 501.1: (i) up to five (5) room nights, valid Friday through Sunday nights only, are to be booked up to thirty (30) days in advance; (ii) an additional five (5) room nights, valid any night of the week, are to be booked up to twenty four (24) hours in advance; and (iii) an additional five (5) room nights, valid any night of the week, are to be booked the same day as use, beginning at 9:00 a.m.. Reservations shall be

made by the City Manager. In the event the allotted number of rooms is not utilized during a particular month, the unused nights shall not carry forward. No room rent or charges (including parking) shall apply with respect to the rooms reserved under this Section 501.1 (“City Rooms”) and no transient occupancy tax will be payable with respect to the City Rooms as utilized under this Section 501.1. Hotel guests using City Rooms shall be subject to payment of meals and incidentals, as applicable. The benefits available to City under this Section 501.1 shall constitute the “City Benefit Package.”

502. Hiring Preferences. Developer shall use good faith efforts to hire local residents and contract with local subcontractors, suppliers and other businesses.

503. City Reserved Discretion. Developer acknowledges and agrees that, if the Operating Covenant Agreement is approved by the City prior to consideration by the City of any land use application, entering into the Operating Covenant Agreement does not commit the City to consider or undertake acts or activities requiring subsequent independent exercise of discretion, including, but not limited to, the approval of any development proposal (including the Project) or land use approval governing the Site where the Project is proposed. The Developer agrees that the City retains discretion on potential future actions to approve, deny, modify, and consider alternatives to a proposed project, as well as to impose adequate mitigation measures as may be required by the California Environmental Quality Act.

504. Nondiscrimination During Operating Period. Developer agrees for itself, its successors, assigns or designees, that for the period commencing as of the Effective Date and continuing until the last day of the Operating Period the Developer and any of its employees shall not discriminate against any person on the basis of sex, marital status, race, color, religion, ancestry, national origin, physical handicap, sexual orientation, or domestic partnership status.

600. USE, OPERATION AND MAINTENANCE OF THE SITE

601. Uses and Operation. The Developer covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Developer, that during development of the Site pursuant to this Agreement and thereafter, neither the Site nor the Project, nor any portion thereof, shall be improved, used or occupied in violation of any Governmental Requirements or the restrictions of this Agreement. Furthermore, Developer and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Site or within the Project, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Site and/or the Project, or any portion thereof. The Developer further covenants and agrees on behalf of itself and its successors and assigns to develop the Site in conformity with the Qualifying Hotel Requirements and to devote, use, operate and maintain the Site in accordance with this Agreement, including without limitation, the AAA Three Diamond Requirements.

Notwithstanding anything to the contrary or that appears to be to the contrary in this Agreement, Developer hereby covenants, on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Developer, that Developer and such successors and assigns shall use the Site solely for the purpose of constructing, maintaining and operating the Project.

602. Maintenance of Site; Damage or Destruction. If the Project is Completed and throughout the term of this Agreement, Developer shall at its expense maintain the Project in first-class order, condition, and repair and in accordance with the approved Plans for the Project, all Governmental Requirements and the AAA Three Diamond Requirements attached hereto. In the event of any damage or destruction of the Project, the Developer shall promptly commence and diligently pursue to completion the repair and reconstruction of those improvements damaged or destroyed so that they are returned to an operable whole in accordance with the original approved Plans and Design and Finish at the earliest feasible date.

603. Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion thereof.

604. Effect and Duration of Covenants. Except as otherwise expressly provided in this Agreement, the indemnities, covenants, conditions, restrictions, warranties and representations (“**Covenants**”) established in this Agreement shall without regard to technical classification or designation, be binding upon and inure to the benefit of the successors, transferees and assigns of each of the Parties hereto, whether by merger, consolidation, sale, transfer, liquidation or otherwise and as to the Covenants of Developer, shall run with the land. Each of the Covenants is for the benefit of real property under the jurisdiction of the City and owned by City within the boundaries of the City.

City is a beneficiary of the terms and provisions of this Agreement and of the restrictions and Covenants running with the land, for and in its own right and for the purpose of protecting the interests of the community in whose favor and for whose benefit the Covenants running with the land have been provided. The Covenants in favor of the City shall run without regard to whether City has been, remains or is an owner of any land or interest therein in the Site, and shall be effective as both Covenants and equitable servitudes against the Site. City shall have the right, if any of the Covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. The Covenants contained in Sections 501, 601 and 602 shall remain in effect for the Operating Period. The Covenants described in Section 603 shall remain in effect in perpetuity. The Covenants described in Section 502 shall remain in effect until the applicable statute of limitation expires with respect to the Public Works Statutes.

700. DEFAULTS, REMEDIES AND TERMINATION

701. Defaults. Occurrence of any of the following (a “**Breach**”) shall, after the giving of the notice required by Section 702, constitute a default (“**Default(s)**”) under this Agreement by the non performing Party:

(i) failure or delay in the due, timely and complete observance and performance of each and every condition, restriction, covenant or obligation applicable to the non-performing Party including, without limitation, the failure of a Party to accomplish one or more of the matters to

be accepted as set forth on the Schedule of Performance by the respective times set forth therefor in the Schedule of Performance; or

(ii) failure or delay in the due, timely and complete observance and performance of each and every condition, restriction, covenant or obligation to be observed or performed by Developer under this Agreement; or

(iii) failure or delay by Developer in paying to City the Deferred Developer Impact Fees, including interest thereon as determined in conformity with this Agreement, on or before the issuance by City of a certificate of occupancy as to the Hotel or any other improvements on the Site; or

(iv) a default under any Construction Loan or any Hotel Operating Agreement which is not cured within the applicable cure period, if any, provided therein.

702. Right to Cure Following a Breach/Default. Unless a different cure period is expressly provided elsewhere in this Agreement, the Party whose acts or omissions to act give rise to a Breach as defined in Section 701 shall be entitled to cure, correct, or remedy such Breach, if (i) such defaulting Party commences curing said Breach within thirty (30) days of receipt of the Notice of Breach, as defined in Section 703, and (ii) such defaulting Party thereafter diligently and continuously pursues the curing of said Breach, and (iii) such defaulting Party fully completes such cure, correction or remedy within sixty (60) days of receipt of said Notice of Breach, or, if such Breach cannot reasonably be cured within said 60-day period, within such additional time as is reasonably necessary to cure such Breach, but in no event more than one hundred and fifty (150) days; provided, that (A) in the event the Breach is a failure to pay or discharge any monetary obligation hereunder when due (i.e., a monetary default), the defaulting Party shall fully complete such cure, correction or remedy within ten (10) days of receipt of the Notice of Breach and (B) in the event of a Breach under Section 701 (iii) above, there shall be no additional cure period under this Agreement. If a Breach is not cured within the applicable period provided above, it shall thereafter constitute a “Default”.

703. Notice of Breach. The non-breaching Party shall give written notice of default (“Notice of Breach”) to the non-performing Party, specifying the breach of this Agreement complained of by the non-breaching Party. Failure or delay in giving such notice shall not constitute a waiver of any breach of this Agreement.

704. Waiver of Breach or Default. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any rights or remedies in connection therewith or of any other rights and remedies provided by this Agreement or by law, or deprive 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.

705. Legal Actions and Remedies.

705.1 Institution of Legal Actions; Judicial Reference. Any of the Parties may institute legal action to enforce the provisions of Section 706. All actions arising under this Agreement or relating to its interpretation shall be heard by a referee of the Los Angeles County Superior Court pursuant to Code of Civil Procedure Sections 638, *et seq.* With respect to all judicial

reference proceedings under this Agreement, Developer and City shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy. If Developer and the City are unable to agree on a referee within ten (10) days of a written request to do so by either Party, either Party may seek to have one appointed pursuant to Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by Developer and the City, but shall ultimately be borne by the Party who does not prevail. Any referee selected pursuant to this Section shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED WITHIN THE SCOPE OF THE JUDICIAL REFERENCE PROVISION ABOVE DECIDED BY A NEUTRAL REFEREE AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE JUDICIAL REFERENCE PROVISION OR THE STATUTES INCORPORATED THEREIN BY REFERENCE. IF YOU REFUSE TO SUBMIT TO JUDICIAL REFERENCE AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO SUBMIT UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS JUDICIAL REFERENCE PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF MATTERS INCLUDED IN THE JUDICIAL REFERENCE PROVISION TO A NEUTRAL REFEREE.

Developer's Initials

City's Initials

705.2 Applicable Law. The laws of the State of California applicable to agreements executed and to be performed in this state shall govern the interpretation and enforcement of this Agreement.

706. Limitation on Remedies.

706.1 Limitation on Developer Remedy. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IF THE CITY COMMITS A DEFAULT UNDER THIS AGREEMENT, THE DEVELOPER'S REMEDIES SHALL BE LIMITED TO THE RIGHT TO COMPEL PAYMENT OF ALL INCENTIVE PAYMENTS OWED. IN NO EVENT SHALL DEVELOPER SEEK OR SHALL CITY BE LIABLE FOR ANY OTHER OR FURTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY ACTUAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE. DEVELOPER ACKNOWLEDGES THAT THE CITY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THIS LIMITATION UPON THE DAMAGES WHICH MAY BE RECOVERED FROM THE CITY IN THE EVENT OF A BREACH.

Developer's Initials

City's Initials

706.2 Limitation on City Remedy. EXCEPTING TO THE EXTENT PROVIDED IN SECTION 809 HEREOF, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT (OTHER THAN SECTION 809), IF THE DEVELOPER COMMITS A DEFAULT UNDER THIS AGREEMENT, THE CITY'S REMEDIES SHALL BE LIMITED TO TERMINATING ALL FURTHER RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, TERMINATING, AFTER THE COMMENCEMENT OF THE OPERATING PERIOD, THE OBLIGATION OF THE CITY TO PAY ANY INCENTIVE PAYMENTS TO DEVELOPER. PROVIDED HOWEVER, IN THE EVENT THAT ANY SUCH DEFAULT THAT OCCURS DURING THE OPERATING PERIOD IS CURED DURING THE OPERATING PERIOD AND WITHIN TWO (2) YEARS OF THE INITIAL OCCURRENCE OF SUCH DEFAULT, THEN ALL RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE OBLIGATION OF THE CITY TO PAY ANY INCENTIVE PAYMENTS TO DEVELOPER SHALL BE REINSTATED FOR THE BALANCE OF THE TERM. NO SUCH REINSTATEMENT SHALL ACT TO EXTEND THE OPERATING PERIOD. IN NO EVENT SHALL CITY SEEK OR SHALL DEVELOPER BE LIABLE FOR ANY OTHER OR FURTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY ACTUAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE. CITY ACKNOWLEDGES THAT THE DEVELOPER WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THIS LIMITATION UPON THE DAMAGES WHICH MAY BE RECOVERED FROM THE DEVELOPER IN THE EVENT OF A BREACH.

Developer's Initials

City's Initials

707. 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 either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Breach or Default or any other Breach or Default by the other Party.

708. Right of Inspection. City and its authorized Representatives shall have the right during business hours, upon not less than twenty-four (24) hours' oral or written notice to Developer (except in the case of an emergency, the existence of which shall be determined by City in its reasonable discretion, in which event no advance notice shall be required) to enter upon the Site and/or Project for purposes of inspection and exercising its rights under this Agreement, provided that such inspections shall not unreasonably interfere with Developer's construction on or operation of the Site and/or Project. If any work or materials on the Site and/or Project are not in conformity with any Plans approved pursuant to this Agreement, any provisions of this Agreement, or any Governmental Requirements, City may, upon no less than five (5) business days' notice to Developer, stop the work and order correction of any such work or materials. Inspection by City of the Site and/or Project is for the sole purpose of protecting the interests of the City and is not to be construed as an acknowledgment, acceptance or representation by City that there has been compliance with any Plans approved pursuant to this Agreement or any terms or provisions of this Agreement, or that the Site and/or Project will be free of faulty materials or workmanship. Any lender holding or owning a mortgage encumbering the Site and/or Project shall make or cause to be made such other independent inspections as it deems necessary for its own protection, and nothing contained herein shall be construed as requiring City to supervise construction of any improvements on the Site and/or Project or any portion thereof for the benefit of any third party. Nothing in this Section shall be understood or construed to in any way limit, restrict or waive any rights City may

have in its municipal capacity with respect to inspection of any work of improvement upon the Site and/or Project. During the periods of construction on the Site and/or Project by Developer, Developer shall submit to the City written reports of its progress on the construction when and as requested by the City. Those reports shall be in such form and detail as may be reasonably required by the City, including periodic construction photographs showing the progress of the construction since the last report.

709. Right of Termination. If the Developer fails to comply with the development and construction schedule as set forth in the Schedule of Performance, such failure shall be considered a failure of a condition and not a Breach. Upon notice of any such failure, Developer shall have thirty (30) days to commence to satisfy the failed condition and thereafter, diligently pursue such remedy to completion. Developer's failure to commence to satisfy the condition within thirty (30) days after notice of such failure and, thereafter, diligently pursue such remedy to completion shall entitle City to terminate this Agreement without further notice. City shall, at its election, terminate this Agreement in the event of an uncured breach or default hereunder or in the event there is not continuous operation of a AAA Three Diamond Hotel on the Site as further set forth in Section 403 of this Agreement.

800. GENERAL PROVISIONS

801. Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the City and Developer shall be deemed sufficiently given if delivered to the principal offices of the City or the Developer, as applicable, by (i) personal service or (ii) express mail, federal express, or other like overnight delivery service, (iii) telecopy, if such telecopy is followed by a notice sent out on the same day by mail or overnight delivery service, or (iv) registered or certified mail, postage prepaid, return receipt requested. Such notice shall be addressed:

To City:	City of Lancaster 44933 N. Fern Avenue Lancaster, California 93534 Attention: City Manager
with a copy to:	Stradling, Yocca, Carlson & Rauth 660 Newport Center Drive, Suite 1600 Newport Beach, California 92660 Attention: Allison E. Burns, Esq.
To Developer:	Insite Development, LLC 6330 Variel Avenue, Suite 201 Woodland Hills, CA 91367 Attention: Steve Eglash, Managing Partner

Any such notices shall be deemed given on (i) actual receipt, if delivered personally, (ii) the date of actual or attempted delivery provided such attempted delivery is made on a business day, if by federal express, express mail or another like overnight delivery service, (iii) upon transmission on any business day (if prior to 5:00 p.m. in the recipient's time zone; but if after 5:00 p.m., then as of 9:00 a.m. on the next business day after such transmission) if transmitted by telecopy, if such telecopy is followed by a notice sent by mail or overnight delivery service on the same day as the

telecopy transmission, or (iv) the date of actual delivery as shown by the addressee's registry or certification of receipt or the third business day after mailing, whichever is earlier, if mailed to the person to whom notice is to be given, by first class mail, registered or certified, postage prepaid, return receipt requested and properly addressed as provided above. The person and the place to which notices are to be mailed may be changed by either Party by notice to the other in accordance with this Section.

802. Conflict of Interest. No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

803. Developer's Covenants, Representations and Warranties. Developer jointly and severally covenants, represents, and warrants to City as follows:

803.1 Warranty Against Payment of Consideration for Agreement. Developer 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 the normal cost of conducting business and the costs of professional services such as architects, engineers, attorneys, and brokers' commissions payable in connection with the development of the Project.

803.2 Organization and Standing of Developer. Developer is a limited partnership duly organized, qualified and validly existing and in good standing under the laws of the State of California, and duly qualified to do business in the State of California, and has all requisite power and authority to enter into and perform its obligations under this Agreement. Developer has provided to the City true and complete copies of all of its governing documents, and the percentage ownership interests reflected therein are accurate as of the date of this Agreement.

803.3 Licenses. Developer will obtain and maintain all material licenses, permits, consents and approvals required by all applicable governmental authorities to develop the Project.

803.4 Authorization And Consents. The execution, delivery and performance of this Agreement is consistent with Developer's articles of organization and operating agreement and has been duly authorized by all necessary action of Developer's managing members. All consents, approvals and authorizations of all applicable governmental authorities, other than City, and all consents or approvals of Developer's members required in connection with the execution and delivery by Developer of this Agreement will have been obtained and delivered to the City on or before the Effective Date.

803.5 Due and Valid Execution. This Agreement and all other instruments to be executed in connection herewith, will, as of the date of their execution, have been duly and validly executed by Developer.

803.6 Tax Returns and Reports. All filings, reports and tax returns of Developer which are required to be made or filed with any governmental authority with respect to the Site or the Project have been duly made and filed, and all taxes, assessments, fees and other governmental charges upon Developer or upon the Site, which are due and payable by Developer, have been paid, other than those which are presently payable without penalty or interest, or which Developer is in good faith contesting.

803.7 Litigation and Compliance. To Developer's actual knowledge, there are no suits, other proceedings or investigations pending or threatened against, or affecting the business or the properties of Developer or any of its officers which could materially impair its ability to perform its obligations under this Agreement, nor is Developer or any of its officers in violation of any laws or ordinances which could materially impair Developer's ability to perform its obligations under this Agreement.

803.8 Default. To Developer's actual knowledge, there are no facts now in existence which would, with the giving of notice or the lapse of time, or both, constitute a "Default" hereunder, as described in Section 701.

803.9 Notice From Governing Jurisdiction. To Developer's actual knowledge, Developer has not received any notice from any governing jurisdiction of any violation of laws and ordinances with respect to the Site.

803.10 Adverse Conditions, Etc. To Developer's actual knowledge, there is no adverse condition or circumstance, pending or threatened litigation, governmental action, or other condition which could prevent or materially impair Developer's ability to develop the Site as contemplated by the terms of this Agreement.

803.11 Actual Knowledge Defined. As used herein, Developer's "actual knowledge" shall be defined and construed as the actual knowledge of Paul Sanford.

804. Insurance.

804.1 Liability Insurance. Prior to demolition of the existing structure on Site, Developer shall obtain and shall thereafter at all times maintain, at its sole expense, with a reputable and financially responsible insurance company that is acceptable to City, in its reasonable discretion, commercial general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy or condition of the Site, the Improvements thereon, or any abutting public rights-of-way, which insurance shall provide combined single limit protection, including contractual liability, of at least Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate, written on an occurrence form, naming, by endorsement, City and its respective officers, agents, representatives, volunteers, and employees as additional insureds. Provided it meets all applicable requirements set forth in this Section, a portion of such coverage may be provided pursuant to the terms of a customary umbrella coverage policy.

The insurance required by this Section 804 shall be carried only with responsible insurance companies licensed to do business in California. The City's minimum acceptable Best's rating of an insurer is generally A VII. The insurance required by this Section shall be nonassessable and shall contain language to the effect that (i) the policy is primary and noncontributing with any insurance or self-insurance that may be carried or maintained by City, and (ii) the policy cannot be canceled or materially changed except after thirty (30) days' notice by the insurer to City. All such insurance shall have a deductibility limit of not more than Fifty Thousand Dollars (\$50,000).

804.2 Property Insurance. Prior to commencement of construction of the Project, Developer shall maintain comprehensive all-risk property insurance on the Site in an amount equal to the full replacement costs of all improvements, including equipment and contents, now or hereafter located on the Site. The form of such property insurance shall be: (i) during construction, such

coverage shall be written on an all-risk builders risk (course of construction) form, extended to include transportation risks, or (ii) during operations after substantial completion and with no gap in coverage from that provided by the builders risk insurance, such coverage shall be written on an all-risk property insurance form and shall include, without limitation, boiler and machinery coverage. The insurance carrier(s) providing such insurance shall have a rating by Bests of not less than A VII. Developer shall provide certificates evidencing such insurance to City upon request, and such insurance shall not be cancelled or modified without at least thirty (30) days prior written notice to the City. In the event of any physical damage to the Site or Project, City shall cooperate with Developer and any Mortgagee in connection with the repair and reconstruction of the Project and City shall not take any position inconsistent with repair and reconstruction of the Project.

805. Nonliability of City Officials; Joint and Several Liability. No City Representative shall be personally liable to the 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 the Developer or any successor or on any obligation under the terms of this Agreement.

806. Inspection of Books and Records. Without limitation of any other provisions of this Agreement, City has the right to inspect (at the Developer's office, upon not less than seventy-two (72) hours' notice, and during regular business hours) the books and records of the Developer pertinent to the purposes of this Agreement.

807. Incorporation of Attachments. All Attachments referred to in this Agreement are hereby incorporated herein by such reference and made a part hereof.

808. Time of Essence; Context and Construction. Time is hereby declared to be of the essence of this Agreement and of every part hereof. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. Whenever the word "Day" or "Days" is used herein, such shall refer to calendar day or days, unless otherwise specifically provided herein. Whenever a reference is made herein to a particular Section of this Agreement, it shall mean and include all subsections and subparts thereof. The word "Include" or "Including" shall describe examples of the antecedent clause, and shall not be construed to limit the scope of such clause.

809. Indemnity. From and after the execution of this Agreement, Developer hereby agrees to indemnify, defend and hold harmless City and any and all City Representatives and each of them, from and against all Losses and Liabilities related directly or indirectly to, or arising out of or in connection with (i) any of Developer's acts or omissions under, related to, or in any respect connected with this Agreement and/or the development, ownership (or possession), and operation of the Site and/or the Project, the condition of the Site, and/or Developer's activities on the Site and/or the Project (or the activities of Developer's agents, employees, lessees, representatives, licensees, guests, invitees, successors, assigns, contractors, subcontractors or independent contractors on the Site and/or the Project), including without limitation the construction of the Project or the use or condition of the Project, (ii) the failure of Developer to pay the property, transient occupancy or other taxes, imposed on the Site and/or the Project or the operation thereof, (iii) any claim, litigation or administrative proceeding asserting that this Agreement or the Developer's actions pursuant to or in implementation hereof violate any Governmental Requirements, (iv) any claim, litigation or administrative proceeding concerning the Entitlements or this Agreement or the Prevailing Wage Statutes; or (v) any claim, litigation or administrative proceeding arising from the ownership (or possession), operation or use of the Site and/or the Project, including any claim relating to or arising

from the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release on or from the Site and/or the Project of any Hazardous Materials, and any Losses and Liabilities arising from or related to any Governmental Requirements applicable to Hazardous Materials located on the Site and/or the Project. Notwithstanding anything in this Agreement which is or appears to be to the contrary, this indemnity shall survive any termination or cancellation of this Agreement, regardless of how caused.

810. Police Power. Nothing contained in this Agreement shall be deemed to limit, restrict, amend or modify, nor to constitute a waiver or release of, any ordinances, notices, orders, rules, regulations or requirements (now or hereafter enacted or adopted and/or as amended from time to time) of the City, its departments, commissions, agencies and boards and the officers thereof (for the purposes of this Section 810, collectively referred to as “**City Bodies**”), including, without limitation, any precise or general plan or any zoning ordinances, or any duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of any City Bodies in the furtherance of the public health, welfare and safety of the inhabitants thereof, including, without limitation, the right under law to make and implement independent judgments, decisions and/or acts with respect to planning, environmental, and development (including, without limitation, approval or disapproval of plans and/or withholding of building permits) whether or not consistent with the provisions of this Agreement, any Exhibit attached hereto or any other documents contemplated hereby (collectively, “**City Rules and Powers**”). In the event of any conflict, inconsistency or contradiction between any terms, conditions or provisions of this Agreement, the Attachments or such other documents, on the one hand, and any such City Rules and Powers providing additional or broader rights to the City, on the other hand, the latter shall prevail and govern in each case.

In addition, the parties agree that consistent with the intent and goals of Chapter 3.37 of the City Code, the City Manager may interpret the provisions of Chapter 3.37 and may adopt administrative rules and regulations for implementation and furtherance of the requirements of Chapter 3.37.

This Section 810 shall be interpreted for the benefit of the City.

811. No Obligation to Third Parties. This Agreement shall not be deemed to confer any rights upon, nor obligate either of the Parties to this Agreement to, any person or entity not a Party to this Agreement, except that (i) with respect to a Lender owning or holding a mortgage encumbering the Site which is authorized by this Agreement, such Lender shall be entitled to the benefit of the Lender protection rights included herein expressly for its benefit, and (ii) with respect to the estoppel certificate provisions set forth in Section 822 below, the third parties described therein shall be entitled to rely upon the provisions expressly provided for their benefit in that Section.

812. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

813. Amendments in Writing. The provisions of this Agreement may not be amended or altered except by a written instrument fully executed by each of the Parties hereto.

814. Further Acts; No Deemed Approval. Each of the Parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent

of the Parties and carry out the terms of this Agreement. City agrees not to unreasonably withhold its consent to any requested modification to the lender protection provisions of this Agreement requested by the project lender(s) financing the development of the Project, to the extent any such modification is necessary to facilitate the financing of the Project; provided, City shall not, in any event, be obligated to agree to any modification or amendment to this Agreement if it would result in any impairment of the rights or increase in the obligations and responsibilities of the City under this Agreement or any document to be executed pursuant hereto or include approval of a hotel that is not a AAA Three Diamond Hotel or which would materially change the Related Component. Except as otherwise expressly provided in this Agreement, in no event shall the failure of a Party to act within the time prescribed by this Agreement with respect to processing of any approval result in or be construed to constitute a deemed approval of any matter or item submitted to such Party for its review in accordance with the terms of this Agreement.

815. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes thirty-two (32) pages, plus signature pages, and Attachment Nos. 1 through 5, each of which is incorporated herein.

816. Severability. Should any part, term, portion or provision of this Agreement, or the application thereof to any person or circumstance be held to be illegal, invalid or in conflict with any Governmental Requirements, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

817. Waiver. The waiver by either Party of the breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach whether of the same or another provision of this Agreement.

818. Authority. Each person executing this Agreement on behalf of Developer and on behalf of City hereby represents and warrants (i) his authority to do so, and (ii) that such authority has been duly and validly conferred by that entity's governing body or board.

819. Enforced Delay; Extension of Times for Performance. In the event that any of the Parties to this Agreement are prevented from proceeding with any of their obligations under this Agreement by reason of events that are completely and strictly beyond that Party's control, such as supernatural causes, strikes, lockouts, earthquake, war, insurrection, riots, floods, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, delays or inaction of independent contractors, delays caused by a shortage of materials or skilled labor due to circumstances beyond Developer's control, delays caused by actions or omissions of the City or any public or governmental entity (provided that the acts of, or failure to act by, the City shall not excuse performance by the City), litigation brought against the Site or the Project or a Party without that Party's consent, including a land use challenge, remediation of Hazardous Materials located upon the Site, or similar events which are completely and strictly beyond that Party's control,

then that Party shall be entitled to an additional grace period or extension of time in which to perform the obligations whose performance is precluded by such event, equal to the period of delay caused by such event beyond that Party's control, which period shall commence to run from the time of the commencement of the cause for delay and shall terminate upon termination of that cause. A Party wishing to invoke this Section shall notify in writing the other Parties to this Agreement of that intention within thirty (30) days of the commencement of any such cause for delay and shall, at that time, specify the reasons therefor, the provisions of this Agreement that will be delayed as a result, and the period of such extension, if known, or, if not known, the party's best estimate thereof. The failure to so notify the other Parties within that period as to the cause for delay shall constitute a waiver of any right to later rely upon this Section with respect to that cause. In the event any such extension continues for more than one hundred eighty (180) days, any Party not then in Default of its obligations hereunder, shall be entitled to terminate this Agreement upon written notice to the other and, in that event, the Parties shall have no further obligations hereunder. Notwithstanding and in addition to the above, in the event any administrative or legal claim is filed challenging the City's approval of this Agreement, and/or the Project, all times for performance set forth herein shall be automatically extended by a period of time equal to the period of time from the date such claim or action is filed until the date said claim or action, including any appeal thereof, is finally resolved, plus ninety (90) days, and, to the extent permitted by law, this Agreement shall remain in full force and effect and shall not be subject to termination by either party during such period of time.

820. Record of Extensions; Effect of Extension on Schedule of Performance. Any Party is also entitled, as often as reasonably required, to request any other Party to confirm in writing the then applicable deadlines for performance of each Party's obligations or the exercise of each Party's rights under this Agreement, and each Party shall, within twenty (20) days after receipt of such a written request, respond thereto. The failure of a Party to respond to a request from another Party under this Section as required above shall constitute a waiver of any right to later rely on any asserted extension(s) inconsistent with the deadlines set forth in such written request.

821. Administrative Extensions; Approval of Items. The City Manager or his designee is authorized to approve extensions of time hereunder (but shall have no obligation to do so) provided that:

(a) such extension is in writing and is signed by the City Manager or his designee and Developer; and

(b) no single extension of time granted under this Section shall exceed ninety (90) days and all such extensions in the aggregate shall not exceed one hundred eighty (180) days without a formal amendment hereto duly approved by the City Council.

Where City approval of any Developer submissions or requests specified in Sections 200 *et seq.* or 300 *et seq.* is required, the City Manager, or his designee, may, acting on behalf of the City, grant, in writing, such approval or, in the City Manager's sole discretion, refer such matters to the City Council for their approval or disapproval. If the City Manager, or his designee, elects to approve any Developer submissions or requests tendered pursuant to the foregoing Sections, such approval, in order to be effective, shall be express and in writing. Once a final City approval is granted by the City Manager, or his designee, on behalf of the City, in the required written form, it may thereafter be relied upon by Developer.

822. Statement of Compliance. Within ten (10) days following receipt of any written request which either City or Developer may make from time to time, but no more frequently than twice annually, the other Party shall execute and deliver to the requesting Party a statement certifying that: (1) this Agreement is unmodified and in full force and effect, if such be the case, or, if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications; (2) to the knowledge of the certifying Party, there are no current Defaults under this Agreement or specifying the dates and nature of any such Defaults; and (3) any other reasonable information requested. The City Manager, or his designee, is hereby authorized to execute any certificate requested by Developer under this Section.

The Party requesting such statement shall reimburse the other Party, within ten (10) days after written request, for all actual and direct third party costs incurred by such Party in connection with preparation of such statement.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

“CITY”

CITY OF LANCASTER
a municipal corporation and charter city

By: _____
Mark A. Bozigian
City Manager

ATTEST:

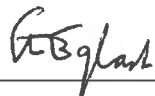
City Clerk

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Special Counsel

“DEVELOPER”

BLVD RENUAL,
a limited partnership

By:  _____

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF THE SITE

For APN/Parcel ID(s): 3133-003-009

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LANCASTER, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 2 IN BLOCK 30 OF THE TOWN OF LANCASTER, IN THE CITY OF LANCASTER, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 5 PAGES 470 AND 471, MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE WESTERLY 177 FEET OF SAID LOT.

ATTACHMENT NO. 2

SITE PLAN

[to come]

ATTACHMENT NO. 3

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of Lancaster)
44933 N. Fern Avenue)
Lancaster, California 93534)
)

Exempt From Recording Fee Pursuant
to Government Code Section 27383

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** (the "Memorandum") is entered into as of _____, 20__ by and between the **CITY OF LANCASTER**, a municipal corporation and charter city duly organized and existing under the Constitution and laws of the State of California (the "City"), and **BLVD RENUAL**, a limited partnership (hereinafter referred to as "Developer").

RECITALS

1. Recordation of Memorandum of Agreement. This Memorandum of Agreement evidences that certain unrecorded agreement entitled "Operating Covenant Agreement" between the City and the Developer dated as of _____, 201_ ("**Agreement**") and when recorded shall encumber that certain property referred to herein as the "Site", which Site is more particularly described in Exhibit A attached hereto and incorporated herein by reference. Capitalized terms not defined herein shall have the meaning set forth in the Agreement. The City and the Developers have agreed, among other things, that the Project shall contain the facilities and amenities, and be of a design, finish and overall quality meeting the standards set forth in the Agreement and be operated as an Hotel in compliance with the Agreement for a period commencing as of the recording of this Memorandum and continuing until the eleventh (11th) anniversary of the Opening of the Hotel (the "Operating Covenant Period") in accordance with the requirements of the Agreement, including without limitation, the requirement that it be constructed and operated as a AAA Three Diamond Hotel. The Agreement is on file with the City as a public record.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Agreement as of the ____ day of _____, 2018.

All signatures must be notarized.

“CITY”

CITY OF LANCASTER

a municipal corporation and charter city

By: _____

Mark A. Bozigian
City Manager

ATTEST:

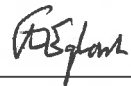
City Clerk

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Special Counsel

“DEVELOPER”

BLVD RENUAL,
a limited partnership

By: _____


Name:

Title:

EXHIBIT A

Legal Description

For APN/Parcel ID(s): 3133-003-009

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LANCASTER, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 2 IN BLOCK 30 OF THE TOWN OF LANCASTER, IN THE CITY OF LANCASTER, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 5 PAGES 470 AND 471, MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE WESTERLY 177 FEET OF SAID LOT.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____ before me, _____, Notary Public,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

ATTACHMENT NO. 4

Schedule of Performance

Project Economic and Development Agreement

ITEMS TO BE PERFORMED

DEADLINE FOR PERFORMANCE

- | | |
|---|---|
| 1. <u>City Approval of Entitlements.</u> | Concurrently with approval of the Agreement by the City |
| 2. <u>Submission of Contract/Construction Documents.</u> Submissions including:
a) construction budget; b) construction drawings; c) Design and Finish;
d) landscape plans; e) operating plan;
g) Hotel Operating Agreement;
h) qualifications for Qualified Hotel Operator | Within eighteen (18) months after approval of the Agreement |
| 3. <u>Approval or Denial of Contract/Construction Documents (including Construction Contract).</u> | Within forty-five (45) days after submittal of a complete package of the applicable Contract/Construction Documents |
| 4. <u>Submission of Construction Commitment.</u> | Within thirty (30) days after approval by City of Construction Commitment. |
| 5. <u>Commencement of Construction.</u> | Within sixty (60) days after approval of the Contract/Construction Documents |
| 6. <u>Completion of Construction</u> | Within thirty-two (32) months after commencement of construction |

ATTACHMENT NO. 5

Scope of Development

Hotel Program

The applicant, BLVD Renewal, proposes to construct a new 105-room, four stories over podium parking, approximately 83,420-square-foot hotel on a 1.27-acre parcel, of which 0.45 acres is currently developed and 0.82 acres will serve for the planned hotel. The hotel will be located at the southwest corner of Gadsden and Kildare Avenues. The program consists of 75,330 square feet of guest room areas; a 16,740-square-foot podium parking structure; 1,200 square feet retail; a pool; a fitness center; a breakfast area; meeting space; and supporting services such as back of house and mechanical areas, to total a program of 83,420 square feet.

Building Design and Landscaping

The project is designed in a contemporary palette of materials, such as glass, stone, and metal. The frontage on Lancaster Boulevard will include 1,200 square feet of retail on the ground floor to continue the pedestrian atmosphere of The BLVD. The hotel will feature a third-floor rooftop pool.

Proposed landscaping will be in keeping with the design of the hotel and The BLVD.

The proposed program and design features of the hotel satisfy the Lodging Rating Guidelines for Three Diamond Accommodations of the American Automobile Association (AAA) and adopted by the City of Lancaster as development standards. The proposed project shall fulfill all of the conditions of approval associated with the Entitlements.

ECONOMIC IMPACT REPORT

City of Lancaster

Date: May 8, 2018

Subject: **Operating Covenant Agreement with BLVD Renewal, LP**

BACKGROUND

BLVD Renewal, LP (“BLVD Renewal”) owns a property at 843 West Lancaster Boulevard (the “Site”), which is currently underutilized. The principals of BLVD Renewal (“Developer”) have approached City staff with a proposal for the development of a Marriott Residence Inn (“Marriott”), which will be designed as an Upscale or above hotel under the Chain Scales published by Smith Travel Reports (“STR”) that will also open as a AAA Three Diamond Hotel as such designation is published from time to time by the American Automobile Association (“AAA”); under the City’s Hotel Stimulus Program (as referenced below), a hotel that meets both criteria as of the opening of the hotel constitutes a “Qualifying Hotel” under the Hotel Stimulus Program as established under Title 3, Chapter 3.37 of the City of Lancaster Municipal Code.

The proposed development would be a 105-room, four stories over podium parking, approximately 83,420-square-foot hotel on a 1.27-acre parcel, of which 0.45 acres is currently developed and 0.82 acres will serve for the Marriott. The hotel will consist of 75,330 square feet of guest room areas; a 16,740-square-foot podium parking structure; 1,200 square feet of retail; a pool; a fitness center; a breakfast area; meeting space; and supporting services such as back of house and mechanical areas, to total a program of 83,420 square feet.

Staff has reviewed materials submitted by the Developer and, based upon such preliminary review, it appears that Developer will meet the qualifications for a developer of a hotel that will open as a Qualifying Hotel and will thereafter operate as a AAA Three Diamond Hotel. BLVD Renewal has been a longtime partner of the City of Lancaster in its efforts to revitalize downtown Lancaster, and has successfully redeveloped such properties as the three-story BLVD Cinemas facility; Don Sal/Buckle & Boots complex; several multi-family housing complexes; and much more. BLVD Renewal has proposed to the City an Operating Covenant Agreement in the form submitted herewith (the “Agreement”) wherein BLVD Renewal will commit to operate on the Site, following its completion, a AAA Three Diamond Hotel. Under the proposed Agreement, which is substantially in the form prescribed under the Hotel Stimulus Program, assuming the continuous conforming operation of a AAA Three Diamond Hotel by Developer, City would remit to Developer annually payments equal to 50% of Transient Occupancy Tax received by the City for the preceding year. Additional provisions governing the relationship between the Developer and the City are set forth in the Agreement.

Prior to the consideration of this item, a notice of public hearing was published concerning the proposed Agreement; that notice alludes to Government Code Section 53083, as more fully described below. A copy of the Agreement and this report have been on display as public records with the City Clerk.

ANALYSIS

In light of the elimination of redevelopment agencies as affected by enactments of the California Legislature in 2011 and 2012, including the former Lancaster Redevelopment Agency, the generation of tax revenues available to the City is important in preserving the ability of the City's ability to provide an acceptable level of core municipal services to its residents. The foregoing is an important public purpose associated with the Agreement.

The City is a chartered city; in that capacity, the City would enter into the proposed Agreement in consideration of the activities that will be undertaken by BLVD Renewal in the City. BLVD Renewal has executed the Agreement which, upon approval by the City Council and execution by the City Manager on behalf of the City, would immediately go into effect.

Staff estimates that, upon review of data provided by BLVD Renewal, BLVD Renewal will generate approximately \$360,000 of annual transient occupancy tax, as well as \$147,000 of annual property tax. Assuming a 3% escalator for inflation, this equates to \$5.4 million in property tax, of which the City receives a share of 6%, and \$13.1 million in transient occupancy tax over the Marriott's first 25 years in operation. Under the agreement, it is estimated that BLVD Renewal would be entitled to annual economic Stimulus estimated at \$180,000, with the City retaining an estimated \$180,000 annually as transient occupancy tax and approximately \$10,451 in property tax; such figures for annual tax revenues are only estimates: the actual figures will be a function of such activity as is actually consummated by BLVD Renewal from time to time.

Approval of this resolution will authorize the City Manager to execute the Agreement (including without limitation all attachments thereto) on behalf of the City. The City Manager is also authorized, on behalf of the City, to make revisions to the Agreement which do not increase any amounts to be paid by the City or materially or substantially increase the City's obligations thereunder, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the City's obligations, responsibilities and duties to be performed under the Agreement and related documents.

Government Code Section 53083 is a codification of Assembly Bill 562 from 2013, and which became effective as of January 1, 2014. Section 53083 provides, in pertinent part, as follows:

53083. (a) On and after January 1, 2014, each local agency shall, before approving any economic development subsidy within its jurisdiction, provide all of the following information in written form available to the public, and through its Internet Web site, if applicable:

(1) The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.

(2) The start and end dates and schedule, if applicable, for the economic development subsidy.

(3) A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

(4) A statement of the public purposes for the economic development subsidy.

(5) Projected tax revenue to the local agency as a result of the economic development subsidy.

(6) Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

(b) Before granting an economic development subsidy, each local agency shall provide public notice and a hearing regarding the economic development subsidy. A public hearing and notice under this subdivision is not required if a hearing and notice regarding the economic development subsidy is otherwise required by law.

The elements enumerated within Section 53083 as set forth above are included within this report, particularly under the heading “ANALYSIS.”

This report will remain posted on the City Internet Web site with a link leading to it under the economic development page.

ENVIRONMENTAL

This agreement is not considered a project per section 15378(b)(4) of the California Environmental Quality Act in that the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

FINANCIAL IMPACT

The Agreement will make available to the City an additional source of tax revenues, primarily consisting of transient occupancy tax but also including property tax and sales tax, and is in the best interests of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

It is estimated that there will be between fifteen and twenty full-time positions created in the City with the resultant economic stimulus. There will also be a direct impact of an additional estimated \$11.4 million from all tax revenue streams as combined brought to and retained by the City over the hotel’s first 25 years of operation.