

**6/4/19 Draft
Subject to Continued
Review and Edit**

**DRAFT PROJECT DEVELOPMENT
AND COOPERATION AGREEMENT**

between

[_____]

and

THE CITY OF ROCKY MOUNT, NORTH CAROLINA

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PROJECT DEVELOPMENT AND COOPERATION AGREEMENT

This **PROJECT DEVELOPMENT AND COOPERATION AGREEMENT** (this "Agreement") is made and entered as of [July 22], 2019 by and between the **CITY OF ROCKY MOUNT, NORTH CAROLINA**, a municipal corporation duly created under the laws of the State of North Carolina (the "City"), and [_____], [_____] authorized to do business in North Carolina (as more particularly described below, the "Developer").

RECITALS

WHEREAS, the City has determined that the development of a hotel, retail, residential and parking facilities in the area around the Rocky Mount Event Center is critical to the revitalization of downtown Rocky Mount, and has determined to develop critically needed parking facilities under the provisions of N.C.G.S. Section 143-128.1C that permit public-private partnerships to construct certain capital improvement projects (the "PPP Act"); and

WHEREAS, the Developer is experienced in the development of hotels, retail, residential and parking facilities in urban areas; and

WHEREAS, the City reviewed the qualifications of the Developer to serve as its development partner to develop critically needed parking facilities as part of a mixed-use project, commonly known as Event Center Village, consisting of the Hotel, the Mixed-Use Building and the Parking Facility (each as defined below, and collectively hereinafter referred to as the "Project" as more particularly described herein) to be developed on certain real property located within the corporate limits of the City, including an approximately 2.45 acre parcel owned by the City (as more particularly described below, the "City Land"), including review of the Developer's: (i) financial stability, (ii) experience in constructing buildings such as the Project, (iii) experience and that of its project team and its proposed method of design and construction of the Project, and (iv) the proposed timeline for construction; and

WHEREAS, after conducting such review, the City and has determined to enter into this Agreement with the Developer in order to accomplish the purposes set forth herein; and

WHEREAS, the City and the Developer have agreed to cooperate with each other in order to facilitate the planning, design, financing, construction, and operation of the Project; and

WHEREAS, as part of the Project, the Developer will construct the Parking Facility, and will lease them to the City pursuant to a Capital Lease between the City and the Developer; and

WHEREAS, it is the intent of the City and the Developer that the development of the Project and the design, construction and leasing of the Parking Facility constitute a public-private project and that this Agreement be a "development contract" under the PPP Act; and

WHEREAS, the parties hereto have common and compelling interests in developing the Project in order to foster the success of the Rocky Mount Event Center and the revitalization of downtown Rocky Mount.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows:

ARTICLE 1

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.1 Definitions.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in the recital paragraphs above shall have the meanings assigned to them in such paragraphs. The terms defined in this Article have the meanings assigned to them in this Article. Singular terms shall include the plural as well as the singular, and vice versa. All defined terms shall include any and all amendments, modifications, replacements, supplements or substitutions thereof or thereto.

(b) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to “generally accepted accounting principles” refer to such principles as they existed on the Date of Delivery.

(c) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(d) The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(e) The term “person” shall include any individual, corporation, partnership, joint venture, association, trust, unincorporated organization and any government or any agency or political subdivision thereof.

“**Affiliate**” of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For purposes of this definition, “control” when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting rights, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Approved Hotel Flag**” means a hotel mark, trademark, tradename, logotype, brand and/or “flag” approved by the City. For purposes of this Agreement, any hotel operated under either the Hilton or Marriott brands shall automatically be considered to be a hotel operated under an Approved Hotel Flag.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which banking institutions in the State of North Carolina are authorized to be closed.

“**Capital Lease**” means, collectively, one or more capital leases, substantially in the form attached hereto as Exhibit B and as further described in Section 3.7 with a term of approximately [20] years pursuant to which the Developer will (i) lease [700] parking spaces within the Parking Facility to the City and (ii) grant an option to the City whereby, at the expiration of the term of such lease, the City will have the option to purchase the Parking Facility for a nominal amount.

“**City**” means the City of Rocky Mount, North Carolina, or any municipal corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

“**City’s Cost of Capital**” means the prevailing rate of interest at which the City could borrow money on a tax-exempt basis to construct the Parking Facility if it financed the construction and development of such facilities itself, as certified by the City’s municipal advisor as of the Date of Delivery.

“**City Financing Documents**” means, collectively, the Capital Lease, the Ground Lease, the SNDA and each other document executed and delivered by the City at the time of Closing.

“**City Land**” means the approximately 2.45 acre parcel of land owned by the City specifically described in Exhibit A-1 of this Agreement on which substantial portions of the Improvements will be constructed. The City Land is located on the block bounded by Albemarle Avenue, Goldleaf Street, Atlantic Avenue and Ivy Street in Rocky Mount, North Carolina, and is across Albemarle Avenue from the Rocky Mount Event Center.

“**Closing**” means the closing which marks the execution and delivery of all of the City Financing Documents, which will occur after each of the conditions set forth in Section 4.1 have been fully satisfied.

“**Completion of the Project**” means completion of construction of the Project pursuant to Section 3.4(a).

“**Construction Lender**” means, collectively, whether one or more, any entity providing a Construction Loan to the Developer secured by a Leasehold Deed of Trust.

“**Construction Loan**” means, collectively, whether one or more, any construction loan obtained by the Developer to fund the Developer’s obligations for the construction of the Project.

“**Construction Loan Documents**” means any notes, agreements, leasehold deeds of trust, including the Leasehold Deed of Trust, between the Developer and any Construction Lender relating to a Construction Loan.

“**Date of Delivery**” shall mean one (1) Business Day following the date on which the governing body of the City approves the execution of this Agreement, subject to LGC approval, or other date mutually acceptable to the City and the Developer.

“**Developer**” means [_____], [_____], and includes its successors and assigns permitted hereunder and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party, as permitted hereunder.

“**Developer Documents**” means, collectively, this Agreement, the Capital Lease, the Construction Loan Documents, the Ground Lease, the SNDA and any other documents executed and delivered by the Developer at the time of Closing. For purposes of Article 5 and the representations made therein as of the Date of Delivery, the Developer Documents means this Agreement.

“**Developer Land**” means the land on which any portion of the Project is located that is owned by the Developer.

“**Final Parking Facility’ Costs**” has the meaning assigned in Section 3.7 below.

“**Ground Lease**” means the ground lease, substantially in the form attached hereto as Exhibit C, with an initial term of at least sixty-five (65) years pursuant to which the City will lease the City Land to the Developer.

“**Hotel**” means an approximately 107 room, limited service hotel to be constructed on the City Land in the approximate location depicted on the Site Plan and to be operated under an Approved Hotel Flag. The Hotel shall meet the minimum requirements set forth in Section 3.6 of this Agreement.

“**Improvements**” means, collectively, the Hotel and the Parking Facility.

“**Leasehold Deed of Trust**” means, collectively, whether one or more, any leasehold deed of trusts given by the Developer to secure any Construction Loans.

“**LGC**” means the North Carolina Local Government Commission, or any successor entity with similar jurisdiction over the City.

“**Mixed-Use Building**” means, collectively, one or more buildings consisting of residential use (apartments or condos) above retail uses as depicted on the Site Plan. The Mixed-Use Building shall meet the minimum requirements set forth in Section 3.6 of this Agreement.

“**Parking Facility**” means a structured parking facility providing at least [700] parking spaces available for off-street parking for the benefit of the Project, the Rocky Mount Event Center and other local attractions as depicted on the Site Plan. The Parking Facility shall meet the minimum requirements set forth in Section 3.6 of this Agreement.

“**Partial Lease Termination Agreement**” means an agreement, whether one or more, in recordable form and content reasonably acceptable to the Developer, by and among the City and Rocky Mount DCF, LLC and any other parties that may be necessary or convenient in order to effect the termination as to the City Land of (i) that certain Ground Lease dated May 24, 2017 between the City and Rocky Mount DCF, LLC, (ii) that certain Operating Lease Agreement dated as of May 24, 2017 between the City and Rocky Mount DCF, LLC and (iii) that certain Operating Lease Agreement dated as of May 24, 2017 between Rocky Mount DCF, LLC and Opportunities Industrialization Center, Incorporated that as to the City Land.

“**Partial Release of Leasehold Deed of Trust**” means an agreement, in recordable form and content reasonably acceptable to the Developer, by and among the City and Rocky Mount DCF, LLC and any other parties that may be necessary or convenient in order to effect the release of the City Land from that certain leasehold deed of trust recorded in Book 1662, Page 473 of the Edgecombe County Registry.

“**PPP Act**” has the meaning assigned to it in the recitals to this Agreement.

“**Project**” means, collectively, the Hotel, the Mixed-Use Building and the Parking Facility. All plans and specifications for the Project shall be approved by the City in accordance with the normal permit approval provisions in the City and the applicable provisions of this Agreement.

“**Project Construction Plans**” means the plans and specifications for the Project as the same may be amended and modified from time to time.

“**Project Costs**” means all costs and expenses of any kind or nature whatsoever paid or incurred by or on behalf of the Developer for or in connection with the development and design of the Project and the Project Work.

“**Project Work**” means all administration, labor, equipment and materials whether on or off the real estate depicted on the Site Plan necessary to produce and fully effect the Completion of the Project.

“**Site Plan**” means the initial site plan attached hereto as Exhibit A respecting the City Land and the Developer Land, including the Project, as the same may be amended from time to time.

“**SNDA**” means a subordination, non-disturbance and attornment agreement entered into by and among the City, the Construction Lender, the Developer and any other party that may be deemed necessary or convenient.

SECTION 1.2 Effect of Heading and Table of Contents.

The Article and Section headings herein and in the Table of Contents are for convenience of reference only and shall not affect the construction hereof.

SECTION 1.3 Severability Clause.

If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 1.4 Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of North Carolina. Each party hereto consents to and submits to in personam jurisdiction and venue in the Edgecombe, North Carolina and in the federal district courts for the Eastern District of North Carolina.

SECTION 1.5 Counterparts.

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

SECTION 1.6 Approval of the City or the Developer.

Whenever this Agreement indicates that a matter is subject to the City’s or the Developer’s approval or consent, and no standard is otherwise provided, then such approval or consent shall not be unreasonably withheld, conditioned, or delayed and, except as set forth in Section 6.3 below, shall be deemed to be given if the City or the Developer, as applicable, has not responded to any written request for such approval or consent within 60 days of the City’s or the Developer’s, as applicable, receipt thereof. The City or the Developer shall be entitled to such additional time for approvals or consent as is reasonable under the circumstances, not to exceed an additional 45 days.

ARTICLE 2

PURPOSE AND PLAN OF FINANCE

SECTION 2.1 Purpose.

The purpose of this Agreement is to evidence the agreement of the City and the Developer in connection with the planning, designing, and constructing of the Project on the City Land and the Developer Land, payment of the Project Costs and to address certain other matters of mutual concern to the parties hereto. This Agreement is intended to be a “development contract” for purposes of the PPP

Act. The City and the Developer hereby desire to cooperate with one another in order to cause the timely and efficient completion of the Project and grant the Developer the exclusive right to develop a hotel on the City Land. This Agreement shall be interpreted in such a manner as may be most consistent with the foregoing purposes.

SECTION 2.2 Plan of Finance for the Project.

The parties hereto understand and agree that:

- (a) It is in the best interests of the parties hereto to provide for the planning, design, financing, construction, development and operation of the Project;
- (b) The City Land will be owned by the City and will be leased to the Developer pursuant to the Ground Lease;
- (c) The Developer will be solely responsible for acquiring the Developer Land on which a portion of the Project will be located;
- (d) The Developer will have the exclusive right to develop a hotel on the City Land and will design, develop and construct the Hotel on the City Land and adjacent Developer Land, and the Developer will own the Hotel;
- (e) The Developer will design, develop and construct the Parking Facility, which will be owned by the Developer and leased to the City pursuant to the Capital Lease; and
- (f) The Developer will design, develop and construct the Mixed-Use Building, which will be owned by the Developer and occupied by third party tenants or owners.

ARTICLE 3

CONSTRUCTION OF THE PROJECT

SECTION 3.1 Construction.

Subject to the terms of the Ground Lease and the Capital Lease, the Developer agrees to design, develop and construct the Hotel, the Parking Facility and the Mixed-Use Building on the real estate depicted on the Site Plan, including the City Land and the Developer Land, by constructing the Project substantially in accordance with the Project Construction Plans. The parties hereto expressly indented for the development of the Property, including the design, development and construction of the Project (including the Parking Facility), to constitute a public-private partnership as contemplated under the PPP Act.

SECTION 3.2 Site Plans; Project Construction Plans.

- (a) The City and the Developer recognize and agree that the Site Plan shows only the general concept of the Project and that in the course of the development of the Project, numerous changes relating to the Project will have to be made because no final plans or specifications have been rendered at the time of the execution of this Agreement. The City reserves the right to approve any change in the basic concept of the Project.
- (b) The City and the Developer recognize and agree that the Project Construction Plans shall be approved by the City before the implementation thereof. The City's approval shall not be unreasonably

withheld, conditioned or delayed provided such plans and specifications are consistent with the Site Plan as originally presented to the City or as modified with the City's consent; provided that, the City shall have no obligation to consent to any modifications to the Site Plan that increases the rental amount to be paid by the City under the Capital Lease.

(c) During the construction of the Project, the Developer may make changes to the Site Plan as it relates to the Project, the Project Construction Plans, or any aspect the foregoing, including, but not limited to, modifying the construction schedule, modifying the areas in which the Improvements and the Mixed-Use Building are to be constructed, expanding or deleting items, and making any and all such other changes as site conditions or other issues of feasibility may dictate or as may be required to meet the reasonable requests of prospective tenants or owners or as may be necessary or desirable in the sole determination of the Developer to enhance the economic viability of the Project as may be in furtherance of the general objectives of the Project; provided, however, that the Developer may not make any material changes to the Site Plan or the Project Constructions Plans, without the prior written consent of the City. For purposes of this paragraph, "material" shall mean any change that does not substantially conform to the basic concept of the Site Plan or that would increase the cost of the Parking Facility or the rental amount to be paid by the City under the Capital Lease.

SECTION 3.3 Construction of the Project.

(a) The Developer agrees to commence construction of the Project, at the latest, within ninety (90) days after the Date of Delivery and to use its best efforts to effect Completion of the Project (including the Mixed-Use Building, Hotel and Parking Facility) on or before [December 31, 2021], subject to delays incident to strikes, riots, acts of God or the public enemy, adverse economic conditions and other causes beyond the reasonable control of the Developer. The obligations of the Developer set forth in the immediately preceding sentence are expressly contingent upon the City obtaining approval of the City Financing Documents (and the transactions contemplated therein) by the LGC no later than August 6, 2019. It is understood and acknowledged that although the City Land may include improvements other than the Project, the Developer's construction obligations under this Agreement shall be satisfied with the Completion of the Project.

(b) The Developer shall not commence construction of the Hotel or the Parking Facility until it has provided written notice to the City that it has obtained all of the insurance required by the Ground Lease.

(c) The Developer shall complete the Project in conformity with the Project Construction Plans.

(d) The Project shall be constructed in a good and workmanlike manner and in compliance with all applicable laws. The Developer shall complete the Project with reasonable diligence and shall, promptly after Completion of the Project, obtain all certificates, sign-offs, licenses, permits, and approvals required by law to be obtained with respect to the Project and with respect to all equipment, machinery and fixtures installed in connection with the Project.

(e) The Developer shall put forth a good-faith effort, in compliance with the PPP Act, to recruit and select small business entities with respect to the development, design and construction of the Project and to comply with N.C.G.S. Sections 143-128.2 and 143-128.4 regarding participation by minority and historically underutilized businesses in developing the Project.

(f) For purposes of this Section, "commence construction" by a party shall be deemed to occur on the latter of (i) the date on which such party executes a contract with a licensed contractor to

construct improvements on the real estate depicted on the Site Plan, or (ii) the date on which soil-disturbing activities begin on the real estate depicted on the Site Plan pursuant to one or more permits issued by the City.

(g) The Developer shall provide a performance and payment bond in the amount of 100% of the total anticipated amount of the construction contracts for the Project as required by N.C.G.S. Section 143-128.1C(g). For the purposes of this section, the Developer certifies that \$[60,980,000.00] is the total anticipated amount of the cost of construction of the Project as of the date of this Agreement. The Developer believes this amount is a good-faith projection of the total cost to construct the Project.

SECTION 3.4 Completion of the Project.

(a) The Completion of the Project shall be deemed to have occurred when all of the following have been substantially completed: the construction of the Project and the substantial completion of all other Project Work in accordance with the Project Construction Plans, including but not limited to achievement of “substantial completion” as defined in the construction contracts relating to every aspect of the Project, including the issuance of a certificate of occupancy for all portions of the Project.

(b) Promptly after Completion of the Project as defined in Section 3.4(a), the Developer shall deliver to the City an architect’s certificate of Completion of the Project, certifying that the Project has been completed in accordance with this Agreement. Certification by such architect shall be a conclusive determination of the satisfaction of the Developer’s agreements and covenants to complete construction of the Project.

(c) The Developer shall deliver to the City copies of the “as-built” plans for the Parking Facility and all material alterations (including replacements of or material alterations to building systems, structural alterations to the structural elements of the buildings, and additions to the buildings), including AutoCAD drawings within sixty (60) days of the final completion of the Parking Facility or any alterations.

(d) No later than 45 days after the Completion of the Project, the Developer shall satisfactory evidence, in the reasonable determination of the City, that the Developer has arranged for permanent financing to take out the Construction Loan upon completion of each phase of the Project.

SECTION 3.5 Cooperation.

The City agrees to cooperate with the Developer in the development of the Project and agrees not to unreasonably withhold its consent or agreement to modifications to the Project, the Project Construction Plans, the Site Plan or any matter related thereto.

Subject to the provisions hereof, the Developer will enter into such other contracts, and do, or cause to be done, all other acts or things that may be necessary or proper to complete the construction of the Project in order to enable Developer and the City to perform fully their respective obligations under this Agreement.

The Developer and the City each agree to comply with the requirements of the PPP Act in developing and constructing the Parking Facility and the Project.

The Developer will be responsible for obtaining financing for the entire Project. The Developer shall provide evidence satisfactory to the City of the availability of such financing, and that such financing meets the requirements of N.C.G.S. Section 143-128.1C(a)(4).

SECTION 3.6 Description of the Hotel, Parking Facility, and Mixed-Use Building.

The Developer acknowledges its understanding and agreement that the construction of the Project in conformance with this Agreement and in particular this Section 3.6 constitutes an important, material, and substantial inducement to the City to enter into this Agreement. Consequently, all requirements of this Section 3.6 apply except to the extent specifically modified by the parties.

- a) Hotel. The Hotel shall consist of not less than 100 rooms and not more than 130 rooms. The Hotel will be located on the City Land (although a portion of the Hotel may be on the Developer Land that is contiguous to the City Land). The Hotel shall be operated under an Approved Hotel Flag. The Developer estimates that the Project Costs relating to the Hotel will be at least \$[14,755,000.00].
- b) Parking Facility. The Developer shall construct one (1) Parking Facility on the City Land in close proximity to the Hotel. The total number of parking spaces in the Parking Facility shall not be less than 700. The total cost of the Parking Facility shall not exceed \$[18,650,000.00] unless such increased cost is expressly approved by the City.
- c) Mixed-Use Building. The Mixed-Use Building will consist of not less than 20,000 square feet of retail space on the ground floor, and an estimated 60 units of residential condominiums or apartments in one or more stories above the ground floor. The Developer estimates that the Project Costs relating to the Mixed Use Building will be at least \$[16,825,000.00].

SECTION 3.7 Capital Lease.

The City and the Developer intend to enter into the Capital Lease pursuant to which the Developer will construct the Parking Facility and lease it to the City. The Capital Lease shall be approved by the LGC and in substantially the form attached hereto as Exhibit B attached hereto and made a part hereof (or such other form as mutually agreed to be between the parties hereto and approved by the LGC). The Project Costs related to the Parking Facility have been determined and verified to the Developer's and the City's satisfaction, and have been verified to be reasonable and fair by an independent third party. The parties shall execute the Capital Lease only after the Developer has entered into a guaranteed maximum price construction contract consistent with such determination and verification. The Capital Lease shall provide, among other terms and conditions, that (i) the amount of the lease payments due under the Capital Lease reflect the final costs of construction of the Parking Facility plus \$[600,000.00] for land acquisition (the "Final Parking Facility Costs"), (ii) no lease payments shall be due under the Capital Lease until the earlier to occur of [September 1, 2020] or the date on which a certificate of occupancy is issued for the Parking Facility, and (iii) the [monthly/quarterly] lease payment due under the Capital Lease after such 24-month period shall be equal to the Final Parking Facility Costs, amortized over eighteen (18) years at an interest rate equal to the City's Cost of Capital.

ARTICLE 4

CONDITIONS TO CLOSING; TERMINATION

SECTION 4.1 Conditions Precedent to the Closing.

Prior to or contemporaneously with the Closing, each of the following conditions shall have been fully satisfied:

- (a) the City shall lease the City Land to the Developer pursuant to the Ground Lease;
- (b) favorable opinion(s) of bond counsel to the City have been issued as to the impact of the transactions contemplated in this Agreement on the tax-exempt status of the City's Special Obligation Bonds, Series 2016;
- (c) favorable opinion of new markets tax credit counsel has been issued as to the impact of the Partial Ground Lease Termination Agreement, the Partial Release of Leasehold Deed of Trust and the release of the City Land from the new markets tax credit transaction that financed the Rocky Mount Event Center;
- (d) the City has obtained all necessary consents, amendments, modifications and waivers from the appropriate third parties in order to consummate the Project and enter into the City Financing Documents, including in particular approval from the LGC of the Capital Lease;
- (e) the Developer shall have provided a signed franchise agreement with an Approved Flag for the Hotel;
- (f) the Developer shall have obtained commitments from any private lending sources ("Financing Commitments") for the Construction Loan and delivered copies thereof to the City; and the Developer has complied with all of the materials terms and conditions of the Financing Commitments and no default exists thereunder;
- (g) to the extent the referenced exhibits to this Agreement are not attached as of the execution of this Agreement, the same shall be satisfactory in all respects to the City and the Developer and shall be affixed hereto and, as applicable, executed in counterpart originals; and
- (h) the City and the Developer shall have received such other opinions of counsel as are customary for a transaction of this nature.

SECTION 4.2 Termination.

At any time prior to Closing, the Developer may, by giving written notice to the City, terminate this Agreement and the Developer's obligations hereunder, if Developer, in its sole discretion, determines (i) that the Project is not economically feasible, or (ii) that any aspect of its due diligence investigations of the Project is unsatisfactory (such due diligence investigations will include, without limitation, title and encumbrance review and analysis, boundary line, easement and topographical surveys, soil sampling and boring tests, environmental and hazardous waste and substance investigations and such other engineering and mechanical analysis and investigations as the Developer may require). In the event of termination of this Agreement, the City shall have no liability to the Developer under this Agreement or otherwise as a result of such termination.

In the event the conditions precedent to Closing set forth in Section 4.1 have not been satisfied on or prior to [August 30, 2019] (or such later date as the parties may agree to), the Developer may terminate this Agreement by giving written notice to the City, at any time prior to the satisfaction of such conditions precedent. Within thirty (30) days of notice of such termination, the City shall reimburse the Developer for all of its costs and expenses incurred (including, but not limited to, the reasonable fees of all attorneys and design professionals engaged by the Developer) prior to the date of termination in furtherance of the performance of the Developer's obligations under this Agreement. Upon such payment by the City to the Developer, except as set forth in Section 6.9 below, neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

SECTION 5.1 Representations and Warranties of the City.

The City hereby represents and warrants to the Developer as of the Date of Delivery and as of Closing:

(a) All consents, approvals, authorizations and orders of governmental authorities (including, but not limited to, the LGC) which are required as a condition to the execution and delivery of this Agreement and each of the City Financing Documents and the consummation of the transactions contemplated by this Agreement and each of the City Financing Documents either have been obtained or will be obtained by or on behalf of the City and are or will be in full force and effect.

(b) The execution and delivery by the City of this Agreement and each of the City Financing Documents and the consummation of the transactions contemplated herein and therein will not conflict with, be in violation of or constitute (upon notice or lapse of time, or both) a default under the certificate of incorporation or bylaws of the City, any indenture, mortgage, deed of trust or other contract, agreement or instrument to which the City is a party or is subject, or any resolution, order, rule, regulation, writ, injunction, decree or judgment of any governmental authority or court having jurisdiction over the City.

(c) There is no action, suit, proceeding, inquiry or investigation pending before any court or governmental authority, or, to the City's knowledge, threatened against or affecting the City or the properties of the City, which involves the consummation of the transactions contemplated by this Agreement or any of the City Financing Documents, the validity of such documents, the organization of the City, the election or qualification of its directors or officers, or the powers of the City.

(d) This Agreement and each of the City Financing Documents constitutes the legal, valid and binding obligations of the City and is enforceable against the City in accordance with its terms, except insofar as the enforceability thereof may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights and (ii) general principles equity, regardless of whether such enforceability is considered in a proceeding at equity or at law.

(e) The City has complied with the requirements of Section 143-128.1C of the North Carolina General Statutes in entering into this Agreement, and has followed the requirements of Section 160A-272 in entering into the Ground Lease.

SECTION 5.2 Representations and Warranties of the Developer.

The Developer hereby represents and warrants to the City as of the Date of Delivery and as of Closing:

(a) The Developer is duly organized and validly existing as a limited liability company under the laws of the State of [_____], is duly qualified to do business in North Carolina, and is in good standing under its organization documents and the laws of _____ and North Carolina.

(b) The Developer has the power to consummate the transactions contemplated by the Developer Documents.

(c) By proper company action, the Developer has duly authorized the execution and delivery of the Developer Documents to which it is a party and the consummation of the transactions contemplated therein.

(d) The Developer has obtained all consents, approvals, authorizations and orders of governmental authorities that are required to be obtained by it as a condition to the execution and delivery of the Developer Documents.

(e) The execution and delivery by the Developer of the Developer Documents and the consummation by the Developer of the transactions contemplated therein will not (i) conflict with, be in violation of, or constitute (upon notice or lapse of time or both) a default under its operating agreement, or any agreement, instrument, order or judgment to which it is a party or is subject, or (ii) result in or require the creation or imposition of any lien of any nature upon or with respect to any of its properties now owned or hereafter acquired, except as contemplated by the Developer Documents.

(f) The Developer Documents constitute legal, valid and binding obligations and are enforceable against it in accordance with the terms of such instruments, except as enforcement thereof may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors’ rights and (ii) general principles of equity, regardless of whether such enforceability is considered in a proceeding at equity or at law.

(g) With respect to the Project, the Developer has made no attempt to become a “design-builder” within the meaning of that term as it is defined in N.C.G.S. Section 143-128.1B.

ARTICLE 6

MISCELLANEOUS

SECTION 6.1 Notices.

All notices or other communications required to be given under this Agreement shall be given in writing and shall be deemed to have been duly given on the date delivered, if delivered personally; or the next Business Day, if delivered to a nationally recognized overnight courier service, addressed as follows:

If to the City:

With copies to:

If to the Developer:

With a copy to:

C. Randall Minor, Esq.
Maynard Cooper & Gale, P.C.
1901 Sixth Avenue N. Suite 2400
Birmingham, AL 35203

The City and the Developer may specify a different address for the receipt of such documents by giving notice of the change in address to the other parties named in this Section.

SECTION 6.2 Cost and Expense.

Each party hereto agrees to pay its own costs incurred in connection with the negotiation and preparation of this Agreement. Except as set forth in Section 4.2, the Developer acknowledges that it shall be responsible for all costs of developing the Project, including but not limited to, the cost of all improvements required to the real property depicted on the Site Plan in order to implement the Project and the cost of planning, developing and maintaining the real property depicted on the Site Plan, such as legal, engineering, architectural, construction and environmental services. The Developer shall not hold itself out as an agent of the City and shall not make any representation or take any action which shall convey the impression to any contractor, subcontractor, laborer or supplier that the City has any obligation or responsibility for any payment to such contractor, subcontractor, laborer or supplier in connection with the Project.

SECTION 6.3 Amendments.

This Agreement may not be amended or supplemented without the written consent of the parties hereto.

SECTION 6.4 Successors and Assigns.

All covenants and agreements in this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, whether so expressed or not.

SECTION 6.5 Assignment.

This Agreement may not be assigned by either party without the prior written consent of each party; provided, however, the Developer may assign its rights and obligations hereunder or certain of its

rights and obligations, without the prior written consent of the City, to (a) the Construction Lender as a collateral assignment without the consent of the City, and the Construction Lender may subsequently assign such rights and obligations to any person or entity which succeeds to the Construction Lender's interest in the Leasehold Deed of Trust or to any other person or entity in connection with Construction Lender's exercise of its rights or remedies under such assignment or under any Construction Loan Documents, (b) an Affiliate of the Developer or an Affiliate of Hunt Properties, an unincorporated Tennessee general partnership ("Hunt Properties"). In the event of an assignment to an Affiliate of the Developer or an Affiliate of Hunt Properties, the Developer shall notify the City in writing within fifteen (15) days of the effective date of any such assignment.

SECTION 6.6 Benefit of Agreement.

Nothing in this Agreement, express or implied, is intended to give any person, other than the parties hereto and their respective successors and permitted assigns, any benefit or any legal or equitable right, remedy or claim under this Agreement.

SECTION 6.7 Further Assurances.

The City and the Developer will do, execute, acknowledge and deliver such further acts, instruments and assurances, and otherwise cooperate with one another as necessary or appropriate for accomplishing the purposes of this Agreement, including, but not limited to, executing any and all instruments or providing any and all documentation reasonably requested by any Construction Lender.

SECTION 6.8 Counterparts

This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement.

SECTION 6.9 Term.

The term of this Agreement shall commence on the Date of Delivery, and, unless earlier terminated, shall terminate at 5:00 p.m. local time in Rocky Mount, North Carolina on the third anniversary of the Date of Delivery; provided, however that to the extent any obligations of either party have accrued as of the date of such termination but have not yet been performed, such obligations shall survive such termination. For avoidance of doubt, in the event this Agreement is terminated by the Developer pursuant to the provisions of Section 4.2, it is the express intent of the parties hereto that the City shall, in no event, allow the City Land to be used for any hotel use for a period of three (3) years following the Date of Delivery.

SECTION 6.10 Prior Agreements.

This Agreement supersedes in its entirety any and all other agreements, verbal or written, concerning the payment the other subject matters dealt with herein. In furtherance (but not in limitation) of the foregoing, the parties hereto hereby acknowledge and agree that the terms and provisions of this Agreement shall govern and control with respect to the subject matter hereof.

SECTION 6.11 Project Delivery Method.

After due consideration, the City has determined that it is in the public interest to pursue the public private partnership reflected by this Agreement for the delivery of the Project rather than to pursue a design-build method of delivery for the Parking Facility. Accordingly, nothing within this Agreement should be construed as creating a design-build relationship between the Developer and the City.

SECTION 6.12 Compliance with Applicable Laws.

The Developer shall comply with all applicable laws and regulations in providing services under this Agreement. In particular, the Developer represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Agreement. The Developer shall also require that its contractor (and will require the contractor to require its subcontractors (of any tier)) remain in compliance with these laws at all times while providing contracted or subcontracted services in connection with this Agreement.

SECTION 6.13 Compliance with Iran Divestment Act of 2015.

The Developer certifies that as of the date of this Agreement, the Developer is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. Section 147-86.58. The Developer understands that it is not entitled to any payments whatsoever under this Agreement if this certification is false. The individual signing this Agreement certifies that he or she is authorized by the Developer to make the foregoing statement.

[remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties have executed this Project Development and Cooperation Agreement as of the date first set forth above.

CITY OF ROCKY MOUNT, NORTH CAROLINA

By: _____
Print Name: _____
Its: _____

[LEGAL NAME OF THE DEVELOPER]

By: _____
Print Name: _____
Its: _____

EXHIBIT A

Site Plan

[See attached.]

EXHIBIT A-1

City Land

BEING ALL of Tract 5 containing 2.45 acres, as shown on map or plat entitled "Recombination Survey for Downtown Community Facility Tract 5 Rocky Mount Township, Edgecombe County, North Carolina" dated April 28, 2017, by Mack Gay Associates, P.A., a copy of which is recorded in Plat Book 12, Page 88, Edgecombe County Registry.

EXHIBIT B
Form of Capital Lease

[See attached.]

EXHIBIT C
Form of Ground Lease

[See attached.]