

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

DRAFT

DEVELOPMENT AND FINANCING AGREEMENT

for the
Oregon Convention Center
Hotel

between

Metro

And

Mortenson Development, Inc.

1
2 DEVELOPMENT AND FINANCING AGREEMENT
3

4 THIS DEVELOPMENT AGREEMENT (the “Agreement”), is made as of this ____ day of
5 _____, 2014 (the last date of signature below) (“Effective Date”), between Metro, a
6 municipal corporation organized under the laws of the State of Oregon and the Metro Charter
7 (“Metro”), and Mortenson Development, Inc., a Minnesota corporation (“Developer”) (either of
8 them individually, a “Party,” or collectively, the “Parties”).

9
10 RECITALS:

11
12 A. Metro and its subsidiary the Metropolitan Exposition and Recreation Commission
13 (“MERC”) are responsible for ownership and/or management of several facilities and a number
14 of programs to support regional tourism and spectator facilities, the visitor and hospitality
15 industry and to maximize the economic development benefits associated with the visitor
16 industry, including the Oregon Convention Center (the “OCC”).

17 B. The OCC is an economic development tool that attracts tourists and business
18 travelers to the state, infusing millions of dollars each year into the local economy. In addition to
19 creating and sustaining thousands of jobs, business activity at the OCC generates hundreds of
20 millions of dollars in state and local tax revenues that fund important services upon which
21 Oregonians rely. For fiscal year 2011-12, regional economic impact totaled \$451 million, 4,400
22 jobs were supported and state and local taxes generated approximately \$18.0 million.

1 C. Since the OCC opened in 1990 and was expanded in 2004, meeting planners have
2 consistently rated the facility as one of the best convention centers in the country. OCC is widely
3 recognized as a national leader in sustainable operations and excellent customer service.
4 However, meeting planners also say OCC's and Portland's desirability cannot overcome the lack
5 of an immediately adjacent block of at least 500 hotel rooms reserved specifically for larger
6 conventions. As a result, OCC, the community and the men and women who work in the
7 region's hospitality industry lose lucrative national convention opportunities.

8 D. The principal mission of Metro with respect to the OCC is to maximize the
9 economic benefits for the metropolitan region and the State of Oregon, while protecting the
10 public investment in the OCC. Continued, ongoing and strategic investments in the convention
11 business are necessary, as with any industry, to maintain national convention market share,
12 ensure long-term financial viability of past investments, and maximize the community economic
13 impacts.

14 E. Metro believes that a successful, first-class, premium-branded and adjacently
15 located convention center hotel ("Hotel") is critical to the success and marketability of the OCC
16 and to meet the goals of the region for bringing national conventions to the OCC and thereby
17 increasing tourism and economic development to the City of Portland ("City"), the metropolitan
18 region, and the State of Oregon.

19 F. In May 2012, Metro issued a Request for Proposals for a development team to
20 build, own and operate a private Hotel and related improvements.

21 G. In September 2012, the Metro Council selected the Mortenson Development, Inc.
22 team as the party with whom Metro would begin negotiations for the development of the Hotel

1 adjacent to the OCC and related improvements more particularly described in Attachment 3.1
2 (“Project”). Developer proposed and Metro accepted that Hyatt Hotels Corporation, through one
3 of its wholly owned subsidiaries (“Hyatt”) or another assignee will purchase the Project from
4 Developer or its successor, and thereafter an affiliate of Hyatt will manage and operate the Hotel,
5 subject to applicable Related Agreements (as defined in Section 2) and the terms and conditions
6 of this Agreement. Hyatt and its successors, or other assignees of the Hotel (and any subsequent
7 owner of the Project is referred to in this Agreement as the “Hotel Owner”).

8 H. In August and September 2013, Metro, the City and Multnomah County
9 (“County”) approved a thorough set of revisions to the existing Visitor Facilities Trust Account
10 Intergovernmental Agreement dated October 25, 2013, the general purpose of which was to
11 reflect updated priorities and needs of the region’s visitor facilities and tourism promotion
12 programs, including the Hotel. The Visitor Facilities Trust Account Intergovernmental
13 Agreement, as amended through October 25, 2013, is referred to herein as the “VF IGA”. One of
14 the amendments to the VF IGA provided Metro with the ability to issue revenue bonds with
15 anticipated net proceeds of up to \$60 million (“Metro Revenue Bonds”), secured by Visitor
16 Facilities Trust Account Transient Lodging Tax Net Revenues (as defined in the VF IGA), based
17 on debt service capacity of the equivalent site-specific Transient Lodging Tax Revenues (as
18 defined in the VF IGA) (herein the “SSTLTR”) from the Hotel.

19 I. In August 2013, Metro and the Developer completed negotiations of a non-
20 binding Development and Financing Agreement Term Sheet attached as Attachment I (“Term
21 Sheet”) which was approved by Metro Council on August 15, 2013 and has been executed by the
22 Parties. The Term Sheet includes a Metro conditional commitment to support the construction of
23 the Project by granting \$4,000,000 (“Metro Grant”) and issuing, or causing to be issued, the

1 Metro Revenue Bonds, supported by the SSTLTR. The Term Sheet also includes a commitment
2 by the Hotel Owner to operate the Hotel with a 500-room block commitment in support of
3 national convention business at the OCC under terms to be agreed upon between the parties.

4 J. In July 2013, the State of Oregon committed \$10 million in lottery revenue bond
5 proceeds payable to Metro to fund a portion of the construction of the Hotel (“Lottery Funds”).

6 K. The Portland Development Commission (“PDC”), the duly authorized and acting
7 urban renewal agency of the City, and Developer are negotiating the general terms of a parking
8 management agreement whereby PDC will construct a parking structure adjacent to the Hotel
9 and the Hotel Owner will have the right to use a minimum of 300 parking spaces for the Hotel
10 uses. The parking needs of the Hotel will be provided off-site in the PDC-owned parking
11 structure. For purposes of this Agreement, the PDC-owned parking structure is not part of the
12 Project, but is a condition thereof.

13 L. On October 3, 2013, Metro, the City and the County agreed to a Memorandum of
14 Understanding setting out the key public objectives for the development of a Hotel (“MOU”).

15 M. On December 19, 2013, the County adopted an ordinance amending Multnomah
16 County Code Chapter 11.401(E) to implement the VF IGA changes approved in September
17 2013, providing among other modifications, the ability for Metro to issue Metro Revenue Bonds
18 supported by transient lodging taxes (“County Code Amendments”). The County Code
19 Amendments went into effect January 18, 2014.

20 N. As of the Effective Date, PDC conditionally committed to a \$4,000,000
21 construction loan to Developer for development of the Project.

1 O. On _____, 2014, Metro Council awarded this contract to Developer
2 and now Metro and Developer intend to enter into this Development and Financing Agreement
3 for the development of the Project, upon terms and conditions satisfactory to the Parties, which
4 terms and conditions shall be consistent with the Term Sheet and the MOU.

5 NOW, THEREFORE, in consideration of the mutual promises of the Parties set
6 forth in this Agreement the Parties agree as follows:

7 **SECTION 1 DEFINITIONS**

8 Words that are capitalized, and which are not the first word of a sentence, are defined
9 terms. A defined term has the meaning given it when it is first defined in this Agreement. Some
10 defined terms are first defined in the text of this Agreement and some are first defined in
11 Attachment 1, which is a glossary of all defined terms. Defined terms may be used together and
12 the combined defined term has the meaning of the combined defined terms. A defined term that
13 is a noun may be used in its verb or adjective form and vice-versa. If there is any difference
14 between the definition of a defined term in the text of this Agreement and the definition of that
15 term in Attachment 1, the definition in the text controls. Defined terms may be used in the
16 singular or the plural. Unless a contrary intent is expressed in a Related Agreement, defined
17 terms shall have the same definition in this Agreement and each of the Related Agreements.

18 **SECTION 2 IDENTIFICATION OF RELATED AGREEMENTS**

19 Subject to Sections 17.1 and 17.2 of this Agreement, the following agreements, which
20 collectively comprise the “Related Agreements”, will be executed or ready for execution as
21 conditions to Closing, as set forth with particularity below. In some cases the Related
22 Agreements will include the same provisions as this Agreement, and/or additional provisions, but

1 in all cases, the Related Agreements must conform to this Agreement except as may be otherwise
2 agreed by the Parties.

3 **2.1 Room Block Agreement**

4 A Room Block Agreement between Metro and the Hotel Owner shall be agreed upon and
5 executed, as provided in Section 17.1.2.7 and 17.2.1 below, before issuance of the Metro
6 Revenue Bonds (defined above and further described in Section 2.5 below) to provide
7 availability of rooms reserved as a block for support of OCC conventions and city-wide events,
8 under agreed-upon time frames. The Parties anticipate that the Room Block Agreement will be
9 substantially in the form attached hereto as Attachment 2.1 and will continue until it is
10 terminated according to its terms. The Room Block Agreement will be recorded upon execution
11 and shall run with the Project Site and bind all successors in title, but shall be subject and
12 subordinate to the Developer Contribution Mortgage and any successor first lien Mortgage, and
13 superior to all other Mortgages against the Project Site. To implement the immediately preceding
14 sentence, Developer as owner of the Project Site during construction of the Project, will consent
15 to the recording of the Room Block Agreement at execution.

16 **2.2 Labor Peace Agreement**

17 Unite Here, Local 8, Developer and Hyatt have entered into a Labor Peace Agreement
18 dated October 31, 2012 to establish procedures for the purpose of assuring an orderly
19 environment for the exercise by the future employees of their rights under Section 7 of the
20 National Labor Relations Act and to avoid picketing and/or other economic action directed at
21 Hyatt in the event the Unite Here, Local 8 decides to conduct an organizing campaign among the
22 Hotel employees.

1 **2.3 Visitor Facilities Trust Account Intergovernmental Agreement**

2 The City, County and Metro have approved amendments to the VF-IGA that provide for
3 the issuance of the Metro Revenue Bonds and support of other tourism related initiatives.

4 **2.4 Oregon Convention Center Hotel Project Memorandum of**
5 **Understanding**

6 The City, County and Metro have entered into the MOU which describes public goals for
7 the development agreement negotiation process.

8 **2.5 Metro Revenue Bond Documents/ SSTLTR Guaranty**

9 As an integral part of issuing the Revenue Bonds, certain documents must be executed by
10 Metro, Hyatt and potentially, the Developer. The Parties anticipate that some or all of the
11 conditions to Closing will necessarily be satisfied or waived prior to Metro issuing the Revenue
12 Bonds. Metro and Developer will work together in good faith to negotiate with Hyatt a possible
13 agreement (the “SSTLTR Guaranty”) pursuant to which Hotel Owner would provide a limited
14 performance guaranty during the initial years of Hotel operation. The obligation to provide the
15 SSTLTR Guaranty, and the terms and conditions of such, are subject to the mutual agreement of
16 Hyatt and Metro.

17 **2.6 Metro/ Developer Grant Agreement**

18 Metro and Developer will execute an agreement substantially in the form attached hereto
19 as Attachment 2.6 for Metro to grant the \$4,000,000.00 to the Developer (the “Metro Grant”).

20 **2.7 Metro Grant of Revenue Bond Proceeds**

21 Metro and Developer will execute an agreement substantially in the form attached hereto
22 as Attachment 2.7 for Metro to grant the Revenue Bond Proceeds to Developer (the “Metro
23 Grant of Revenue Bond Proceeds”).

1 **2.8 Metro State Lottery Revenue Bond Grant Agreement**

2 Metro and the State of Oregon Department of Administrative Services (“DAS”) will
3 execute the necessary documents for Metro to receive up to \$10,000,000 of Lottery Funds from
4 the State of Oregon to be used for capital funding of the Project. Developer will acknowledge
5 the terms of use of the Lottery Funds in such form as is reasonably acceptable to the Parties.

6 **2.9 PDC Loan Agreement**

7 If Developer borrows funds from PDC for the Project, Developer and PDC will enter into
8 such documents as are necessary to close the funding (the “PDC Loan Agreement”).

9 **2.10 PDC/Developer Land Acquisition Agreement**

10 PDC and Developer will have agreed to such agreements as they deem necessary for
11 Developer’s acquisition of a PDC owned portion of Block 47 (“Block 47 Property”) for
12 incorporation of the Block 47 Property into the Hotel development (“PDC/Developer Block 47
13 Acquisition Agreement”).

14 **2.11 Private Land Acquisition Agreement**

15 In addition to the PDC/Developer Block 47 Acquisition Agreement, Developer will enter
16 into one or more agreements to acquire the remainder of the real property upon which the Project
17 will be built (together with the Block 47 Property, the “Project Site”). The Project Site is
18 described and depicted in Attachment 2.11.

19 **2.12 Developer/ Owner Entity for Construction (SPE) Agreement**

20 The initial Project owner is expected to be a special purpose entity (the “SPE”) to be
21 created by Developer for purposes of this Project. The Developer and the SPE shall enter into an
22 agreement whereby Developer will act as managing member or managing partner of the SPE
23 until such time as the Project is sold or assigned pursuant to an Initial Hotel Sale Agreement.

1 Developer will assign and the SPE will assume the Developer's outstanding rights and
2 responsibilities of the Developer under this Agreement, except the Guaranty of Completion
3 which shall remain an obligation of Developer through Substantial Completion. All references
4 herein to Developer apply to the SPE after such assignment and assumption.

5 **2.13 Project Funding Agreement**

6 Given the multiple sources of construction funding, there will be a Project Funding
7 Agreement substantially in the form attached hereto as Attachment 2.13 for disbursement of the
8 Metro Grant, the Metro Revenue Bond Proceeds, the State of Oregon Lottery Funds, and the
9 Developer Contribution for construction of the Project. The Parties acknowledge that the Project
10 Funding Agreement will be completed before Closing taking into account the terms pursuant to
11 which the Lender and Disbursing Agent (each as defined in the Project Funding Agreement) is
12 added as a party to the Project Funding Agreement. Metro and Developer shall agree to the
13 identity of the Disbursing Agent. If Metro and Developer are unable to agree prior to Closing,
14 then Lender shall appoint a Disbursing Agent. If Lender does not appoint a Disbursing Agent
15 prior to Closing, then at Closing, Metro shall appoint a Disbursing Agent.

16 **2.14 Parking Structure Development Agreement between PDC and** 17 **Developer**

18 PDC and the Developer will enter into an agreement for the PDC construction of a public
19 parking structure which provides Hotel parking sufficient to support the Hotel uses (the "Public
20 Parking Structure") and minimizes the neighborhood impacts of the Public Parking Structure
21 ("Parking Structure Development Agreement"). Neither the Metro Grant nor the proceeds of the
22 Metro Revenue Bonds will be used for development of the Public Parking Structure.

1 **2.15 Parking Management Agreement for Hotel Parking**

2 **(PDC/Private)**

3 Not later than Closing PDC and the Developer will enter into an agreement for
4 management of the Public Parking Structure which assures the availability of not less than 300
5 parking spaces for Hotel parking for the term of the Metro Revenue Bonds (“Parking
6 Management Agreement”).

7 **2.16 Architect Agreements (Private)**

8 Design-Builder (defined in Section 7.1) shall enter into architectural services agreements
9 with Elness Swenson Graham Architects, which will serve as the lead design firm, and Ankrom
10 Moisan Associated Architects which will serve as the local design partner (each an “Architect
11 Agreement”).

12 **2.17 Construction Completion and Performance Guaranty**

13 At Closing, Developer will provide a construction completion and performance guaranty,
14 in substantially the form attached hereto as Attachment 2.17 (“Guaranty of Completion”).

15 **2.18 Hotel Operation Conditions**

16 Before Closing, Developer will enter into an agreement (the “Initial Hotel Sale
17 Agreement”) to transfer the Hotel to Hyatt, a Hyatt assignee, or another party (as applicable, the
18 “Initial Hotel Owner”) upon completion of construction. The Initial Hotel Sale Agreement and
19 (and, if Hyatt is the purchaser, a subsequent agreement by Hyatt to sell the Hotel) shall require
20 that any agreement thereafter to sell the Hotel shall require that:

21 **2.18.1** The Hotel will be encumbered by a Hyatt Regency franchise or
22 management agreement or if such franchise or management agreement terminates, to otherwise
23 require that the Hotel be managed and maintained as an upper-upscale convention center hotel,

1 managed by a qualified team experienced in large convention center hotels of similar quality to
2 Hyatt Regency. Hotel Owner shall notify Metro not later than thirty (30) days prior to closing of
3 a sale or the change in Hotel flag of such proposed sale and/or change in the Hotel flag;

4 **2.18.2** Hotel Owner will bind the operator of the Hotel (“Hotel Operator”) to the
5 following:

6 **2.18.2.1** To comply with the reporting requirements established by the
7 SSSLTR review process, as those may be changed from time to time, subject to the terms of
8 any Hotel Operator management agreement for the Hotel;

9 **2.18.2.2** To provide Metro with a waiver to Portland City Code
10 6.04.130.D, including agreement to periodic updates of such waiver, to allow sharing of the
11 site-specific transient lodging tax information during the term of the Metro Revenue Bonds
12 consistent with the terms of the VF IGA;

13 **2.18.2.3** To, in accordance with the terms of the VF IGA and the
14 MOU, provide a quarterly pro forma variance report to the Financial Review Team, as
15 defined in the VF IGA, during the first two years of Hotel Operation, subject to a
16 confidentiality agreement, to enable the Financial Review Team to monitor Hotel
17 performance during such period;

18 **2.18.2.4** During the term of the Room Block Agreement, Hotel
19 Operator will take reasonable steps to comply with the Employee Recruitment policy of
20 Metro’s First Opportunity Target Area Hiring program (FOTA). In addition, during the term
21 of the Room Block Agreement, Hotel Operator will comply with Contractor Recruitment
22 policy of FOTA as to those service sub-contracts that would be unique to the Hotel.

1 **2.18.2.5** During the term of the Room Block Agreement, Hotel
2 Operator shall make reasonable efforts to implement a marketing strategy with Travel
3 Portland (or its successor) and OCC pursuant to which Hotel room rates are competitive for
4 the central Portland hotel market and are intended to achieve the objective of long-term
5 maximization of profits for the Hotel.

6 **2.18.2.6** To operate the Hotel in a commercially reasonable manner
7 that generally supports and encourages sustainable practices in hotel operations, consistent
8 with the Hyatt brand standards, as applicable.

9 Developer shall take no action, nor shall Developer agree to any change in or termination
10 of the Initial Hotel Sale Agreement that results in the termination of the Hyatt Regency franchise
11 agreement or management contract unless the Developer has secured the commitment of a
12 replacement Hotel Owner for the Project bound by that franchise or management agreement or if
13 such franchise or management agreement terminates, otherwise require that the Hotel be
14 managed and maintained as an upper-upscale convention center hotel, managed by a qualified
15 management team experienced in large convention center hotels of similar quality to Hyatt
16 Regency.

17 Developer’s obligations under this Section 2.18 are met when Developer transfers the
18 Hotel pursuant to the Initial Hotel Sale Agreement. Hyatt’s obligations under this Section 2.18
19 are met when Hyatt transfers the Hotel pursuant to subsequent hotel sale agreement that contains
20 the contractual covenants and obligations set forth in this Section 2.18.

21 **2.19 Restrictive Covenant**

22 At Closing, Developer shall execute and record a deed restriction (the “Deed
23 Restriction”) on the Project Site that limits use of the Project Site to an upper, upscale hotel in

1 accordance with the Hotel Standards of Operations described in Article 5 of the Room Block
2 Agreement. It is the Parties' intent that the Deed Restriction be a covenant running with the land
3 for a period of 30 years, binding all future owners of the Project Site, for the benefit of Metro as
4 adjacent owner of the OCC property. For the avoidance of doubt, the Deed Restriction will not
5 be subordinate to the Developer Contribution Mortgage or future mortgages or deeds of trust
6 encumbering the Hotel Site.

7 **2.20 Design-Build Contract**

8 The Agreement between Developer or the SPE, as Project owner, and M. A. Mortenson
9 Company, as Design-Builder, for the construction of the Hotel ("Design-Build Contract"), which
10 Design-Build Contract shall be consistent with the terms of this Agreement.

11 **2.21 District Energy System**

12 Developer will explore the concept of a district energy systems to determine its feasibility
13 for the Project with Metro and PDC, but only if there is an unconditional commitment, made to
14 Developer prior to commencement of the plans for the Project, and satisfactory to Developer in
15 its absolute discretion, that such system will be completed and operating prior to Substantial
16 Completion of the Project. If such commitment is accepted by Developer, then Metro and
17 Developer shall enter into appropriate agreements, including any other appropriate parties, to
18 facilitate construction and operation of the system.

19 **2.22 Payment and Performance Bond.**

20 Developer will at its expense obtain a payment and performance bond covering all
21 Project Costs under the Design-Build Contact, but not including FF&E or OS&E. Metro and the
22 holder of the Development Contribution Mortgage will be beneficiaries of such bond. Prior to

1 Closing, Developer will provide to Metro the final form of payment and performance bond for
2 Metro's approval, not to be unreasonably withheld.

3 **SECTION 3 DEVELOPER; RETAINED PARTIES**

4 **3.1 Developer; Project Description**

5 The Project is generally described in Attachment 3.1 and will be further refined through
6 Drawings (as defined in Section 6.4.1) approved by Metro according to this Agreement. The
7 Project Site is described and depicted in Attachment 2.11. On and subject to the terms and
8 conditions of this Agreement, Developer shall take all actions, retain all persons and firms and
9 employ all means to design, install and construct, or cause to be designed, installed and
10 constructed, the Project in the manner and within the times contemplated by this Agreement,
11 consistent with the Public Objectives stated in Section 4 below.

12 **3.2 Approval of Project Team; Substitute Retained Parties**

13 Metro has approved the firms identified in Section 7 as members of the Developer's
14 project team (each a "Retained Party," and collectively, "Retained Parties"). If the Developer
15 intends to substitute other firms for the firms identified in Section 7, or to add design or
16 engineering professionals to perform material services, Developer shall notify Metro in writing
17 of the proposed substitution, and the type of work to be performed by the substitute firm. Metro
18 shall have ten (10) days to approve in its reasonable discretion the substitution; provided that
19 Metro's conditions to its approval may not be inconsistent with requirements of Hyatt.

20 **SECTION 4 PUBLIC GOALS, OBJECTIVES, AND REQUIREMENTS**

21 Developer will undertake and endeavor to complete all actions required by Section 4.1
22 through 4.7 in support of Metro's stated public goals (collectively, the "Public Objectives").
23 Developer shall submit to Metro, within twenty (20) Business Days after written request, written

1 reports from time to time at reasonable intervals (based on the nature of the information involved
2 and in such form as may be reasonably required by Metro), detailing compliance with Sections
3 4.3, and 4.4 and achievement of the following Public Objectives. Developer shall implement any
4 reasonable suggestions of Metro as to how to better fulfill the Public Objectives, subject to the
5 availability of funds in the Project Budget and in all cases consistent with the Hyatt brand
6 standards. Developer shall cause all of Developer's books and records that are directly related to
7 fulfillment of the Public Objectives to be made available for Metro review upon reasonable
8 advance notice. Failure of compliance with the requirements of this Section 4 by Developer after
9 notice and cure period shall constitute a Developer Event of Default (as defined in Section 21.1).
10 These Public Objectives may also appear in more detail in the Related Agreements recited
11 above. This section is setting them out specifically in this Agreement for consistency and clarity.

12 **4.1 Revitalization and Activation of Area Surrounding the OCC**

13 The Hotel design will include features which will, in addition to compliance with the
14 generally-applicable City design review and permitting process, reasonably consider the
15 following goals, to the extent consistent with Hyatt brand standards, a) activate the edges of the
16 block and provide active ground floor uses, b) incorporate urban design features that create an
17 iconic presence in the district, especially at the NE Holladay and MLK, Jr. Boulevard
18 intersection and c) create interesting and safe pedestrian connections through the Project Site, as
19 presented in the August 2013 "Convention District Urban Design Study" by SERA architects
20 and sponsored by PDC. Particular focus will be given to public spaces and connections and
21 entrances that relate to existing OCC facilities and other key neighborhood connections, such as
22 streetcar stops, and light rail stations. Metro shall work with partners to create and implement
23 economic incentives to further revitalize and invest in the OCC to maintain national convention

1 market share, ensure long-term financial viability of past investments, and maximize the
2 community economic impacts of the OCC.

3 **4.2 LEED Certification**

4 Developer shall cause the Project to be designed and constructed so as to comply with the
5 requirements of, at a minimum, Silver level LEED certification, in accordance with the U.S.
6 Green Building Council LEED rating system as it exists as of the Effective Date, including
7 without limitation, rectifying, or requiring Design-Builder to rectify, with no additional cost to
8 Metro, any reasonable requests the LEED certification authority requires to bring the Project up
9 to Silver level LEED certification requirements as they exist as of the Effective Date, whether or
10 not such rectifying actions will occur after Final Completion. Developer will aspire, in
11 cooperation with Metro to achieve Gold level LEED certification for the Hotel.

12 **4.3 PDC Business and Work Force Equity Requirements**

13 Developer will comply with PDC's Business and Work Force Equity requirements as
14 they existed in September 2012. Developer will provide Metro with copies of all reporting,
15 documentation, and correspondence provided to PDC regarding Developer's compliance with
16 the requirements of this policy, provided that, if Developer is not required to provide the
17 foregoing information to PDC, then Developer will provide to Metro all reporting,
18 documentation, and correspondence regarding Developer's compliance with the requirements of
19 this policy.

20 **4.4 Prevailing Wage for Construction**

21 Design-Builder and Developer will comply with ORS 279C.800 et seq. in the Project
22 construction.

1 **4.5 Labor Peace Agreement**

2 Metro required a Labor Peace Agreement (described above) prior to the Effective Date
3 and Developer and Hyatt entered into such agreement on October 31, 2012, as attached in
4 Attachment 4.5.

5 **4.6 Room Block Agreement**

6 Hotel Owner and Metro shall enter into the Room Block Agreement described in Section
7 2.1 above.

8 **4.7 Public Outreach**

9 Metro will lead a public outreach effort with Developer participation in order to assure
10 on-going public information in an open and transparent manner. Outreach may include, for
11 example, open house(s), presentations to stakeholder organizations (e.g. Travel Portland Board,
12 VDFI Board, Metro Council, Lloyd District organizations, PBA, etc.), and dialogue with groups
13 interested in construction employment opportunities. In addition, Developer may be required to
14 participate in public meetings with Metro Council and other elected bodies as needed. Prior to
15 Closing, the Parties will agree to an Outreach Plan which will apply through the Final
16 Completion and during the first two years of Hotel Operation.

17 **SECTION 5 TITLE TO THE PROPERTY**

18 As a condition to Closing, Developer will acquire the Project Site. The purchase price for
19 the Project Site, excluding the Block 47 Property, shall be less than or equal to the Appraised
20 Value. “Appraised Value” means the value established in an appraisal (“Appraisal”) by a third
21 party MAI appraiser retained by the holder of the Developer Contribution Mortgage
22 (“Appraiser”), with the valuation date being no earlier than ninety (90) days prior to the Closing

1 date. Developer will provide the Appraisal to Metro within ten (10) days of Developer's receipt
2 of the completed Appraisal and no less than 30 days prior to Closing.

3 **SECTION 6 PREDEVELOPMENT ACTIVITIES**

4 **6.1 General**

5 In order to meet an aggressive construction schedule, the Parties agree that Developer
6 will undertake and be responsible for certain predevelopment activities in support of the design
7 and construction of the Hotel, subject to the terms of this Agreement. The Parties have
8 conceptually agreed to share certain Predevelopment Costs incurred by Developer during the
9 Predevelopment Period, as provided for in the Agreement below.

10 **6.2 Definitions**

11 For purposes of this Section 6, the following definitions apply:

12 **6.2.1** "Predevelopment Period" means the period from the Effective Date to the
13 Closing Date, estimated to be June 30, 2015, as such period may be extended by the Parties'
14 mutual agreement.

15 **6.2.2** "Predevelopment Costs" means the reasonable and necessary Hotel related
16 costs of Inspections, architectural and engineering services performed by Developer's
17 contractors (including Metro-approved Retained Parties, where applicable) and transportation
18 studies, and applications for and pursuit of entitlements, for the development of the Project and
19 incurred by Developer during the Predevelopment Period. Notwithstanding the immediately
20 preceding sentence, Predevelopment Costs do not include the following: (a) Developer's legal
21 costs and expenses; (b) Developer's internal management, administrative and overhead costs; (c)
22 costs of entitlement permits, building permits, or other fees charged as a condition to issuance of
23 building permits, including but not limited to, System Development Charges; (d) travel and meal

1 costs of the Developer and any contractor or consultant; (e) Design-Builder charges for
2 marketing-related expenses; (f) costs incurred by Developer after a termination of this
3 Agreement; (g) land acquisition related costs, including but not limited to Appraisal costs; (h)
4 Hyatt predevelopment costs, as identified in the Initial Project Budget; and (i) costs not incurred
5 during the Predevelopment Period.

6 **6.2.3** “Inspections” means studies, tests, investigations, or analyses Developer
7 deems necessary with respect to the physical condition of the Project Site, including surveys,
8 utility analyses, architectural and engineering studies, a current conditions study, soils studies
9 and environmental assessments.

10 **6.3 Collaboration during Predevelopment Period.**

11 During the Predevelopment Period, the Parties shall make good faith efforts to maintain a
12 close and collaborative relationship at the highest decision making level to expedite crucial
13 Project decisions, including Metro design review, in coordination with the OCC management.

14 **6.4 Developer Predevelopment Responsibilities**

15 During the Predevelopment Period Developer shall, with diligence and in good faith, and
16 without cost to Metro except as provided under Section 6.6 below:

17 **6.4.1** Acquire the architectural and engineering services for the Project necessary
18 to develop Project design drawings prepared by an approved Retained Party consistent with the
19 Scope Documents, as modified by the Drawings Metro approves pursuant to Section 6.5.3
20 below, and Hyatt brand standards (collectively, “Drawings”). The Drawings will be advanced to
21 at least the level of detail and specificity required pursuant to the City Design Review process,
22 the Initial Hotel Sale Agreement and Developer Contribution Mortgage;

1 **6.4.2** Undertake and complete all Inspections of the Project Site to determine
2 whether or not the Project Site is suitable for Developer’s intended use. The determination of the
3 suitability of the Project Site shall be subject to Developer’s satisfaction in its sole discretion
4 exercised in good faith;

5 **6.4.3** Prepare and complete the Closing Project Budget, including a mutually-
6 agreed lump sum price based on “open book” subcontractor bidding and cost take-offs,
7 developed from Drawings that will be advanced to at least the level of detail and specificity
8 required pursuant to the City Design Review process, the Hotel Sale Agreement and Developer
9 Contribution Mortgage. To verify the fair market value of the Project costs and validate the
10 public funding commitment, the Closing Project Budget and the lump sum price will be
11 determined pursuant to the Budget and Construction Management Process described in
12 Attachment 6.4.3 attached hereto.

13 **6.4.4** Actively participate in negotiations for any documents required for Closing
14 that have not been agreed to as of the Effective Date;

15 **6.4.5** Secure all land use entitlement permits, and building permits for the
16 Project; and

17 **6.4.6** Use commercially reasonable efforts to secure the Developer Contribution
18 for the Project, including the Developer Contribution Mortgage.

19 **6.5 Metro Predevelopment Responsibilities**

20 During the Predevelopment Period, Metro shall, with diligence and in good faith:

21 **6.5.1** Actively participate in negotiations for any documents required for Closing
22 that have not been agreed to as of the Effective Date;

1 **6.5.2** Review and approve Drawings to be prepared by Developer to update the
2 Drawings attached as Attachment 3.1, to reflect subsequent circumstances including the
3 elimination of underground parking. Upon Metro’s approval of such updated Drawings they
4 shall become the “Scope Documents.”

5 **6.5.3** Review and approve the Drawings, from the Scope Documents through and
6 including the Drawings that Developer presents during the Predevelopment Period to the City
7 Design Review process (“City Design Drawings”); provided that Metro’s approval rights will be
8 limited to the specific matters listed in Section 6.5.5, provided Metro’s approval regarding
9 6.5.5(c) shall be limited to consistency with the design parameters as resolved in the
10 “superblock” design review process, and regarding 6.5.5(d) shall be limited after City Design
11 review to consistency with the exterior design parameters as resolved in the City Design Review
12 process. Metro shall respond to any request for approval within fifteen (15) Business Days. If
13 Metro does not object in writing, stating its objection in reasonable detail, Metro shall be deemed
14 to have waived its approval right with respect to the requested approval. Prior to Developer’s
15 formal submittal for City Design Review, Developer will submit progress Drawings to Metro for
16 its review and comment, and Metro and Developer will work collaboratively, using such
17 advisors as each may retain, toward the Drawings to be formally submitted. Collaboration shall
18 include, but not be limited to, Metro’s attendance and participation in any City Design Advisory
19 Review meetings prior to the formal submittal.

20 **6.5.4** Review and comment on the Drawings Developer prepares after the City
21 Design Documents; provided that Metro may disapprove any such Drawings that are inconsistent
22 with the City Design Documents.

1 **6.5.5** The Parties anticipate that the Drawings during the Predevelopment Period
2 will include, as the basis for the mutually-agreed lump sum price, at least the level of detail and
3 specificity required pursuant to the City Design Review process, the Hotel Sale Agreement and
4 Developer Contribution Mortgage.

5 In its review, and where applicable approval or disapproval, of the Drawings Metro will
6 consider: (a) the consistency of the Drawings with the Scope Documents until the City Design
7 Documents are approved; (b) the consistency of the Drawings with the City Design Documents
8 after the City Design Documents are approved; (c) the design objectives stated in Section 4.1
9 above; (d) the design aesthetic of the proposed Hotel exterior; (e) the functionality of the
10 proposed improvements in relation to the OCC; (f) the features included in the Hotel design to
11 meet at least LEED Silver level certification (for avoidance of doubt, if the features meet LEED
12 Silver level Metro may not require features to meet a higher standard); (g) the consistency with
13 the Hyatt Regency brand standards, including the interior elements, including FF&E; and (h) the
14 hard and soft construction costs anticipated to construct the proposed Hotel.

15 **6.5.6** Approve the Closing Project Budget and Schedule;

16 **6.5.7** Approve Developer invoices for Predevelopment Costs, as more
17 specifically described in Section 6.6.

18 **6.6 Predevelopment Cost Sharing.**

19 During the Predevelopment Period Metro will reimburse Developer in an amount equal to
20 forty percent (40%) of the Predevelopment Costs to a maximum reimbursement amount of Six
21 Hundred Thousand and no/100 Dollars (\$600,000). Developer may submit invoices for
22 Predevelopment Costs to Metro not more frequently than once a month. To receive the foregoing
23 reimbursement, Developer will submit to the Metro Project Manager an invoice detailing by

1 category and by provider, all Predevelopment Costs incurred, authorized and paid within the
2 preceding month, and include proof of payment for all services in the invoice. If Metro Project
3 Manager objects to the invoice and Developer does not revise the invoice to satisfy the
4 objections within five (5) Business Days of receipt of the objection, the objection shall be settled
5 by Dispute Resolution. If Metro Project Manager has no objection to the invoice, or when an
6 objection to an invoice has been resolved, then forty percent (40%) of the amount of the invoice,
7 as it may have been adjusted by agreement or Dispute Resolution, shall be paid within thirty (30)
8 days of its receipt or adjustment, whichever is later. If the Parties Close pursuant to this
9 Agreement, each Party's payment of Predevelopment Costs will be deemed part of the respective
10 Party's funding of the Project, and as to Metro, specifically part of the disbursement of the Metro
11 Grant.

12 **SECTION 7 DEVELOPER TEAM**

13 Developer has identified the following as its Project Team. Each of these contractors and
14 consultants is deemed an approved Retained Party.

15 **7.1 M. A. Mortenson Company** will act as Design-Builder for the Project
16 (“Design-Builder”);

17 **7.2 Elness Swenson Graham Architects** will serve as the lead design firm, with
18 **Ankrom Moisan Associated Architects** as the local design partner (each an “Architect”
19 and together, “Architects”).

20 **7.3 Piper Jaffray & Co.** has and will continue to provide Developer financing
21 services.

22 **7.4 Hyatt Hotels Corporation** through an affiliate or through an assignee, is
23 expected to acquire the Hotel upon Substantial Completion; Hyatt Hotels Corporation will

1 operate or license to a third party the right to operate the Hotel according to the standards
2 required by this Agreement.

3 In addition, Developer will retain an Engineer to perform services in relation to the
4 Project, which Engineer shall be approved by Metro prior to Closing, with approval not to be
5 unreasonably withheld.

6 **SECTION 8 PROJECT BUDGET**

7 **8.1 Initial Project Budget**

8 The Initial Project Budget sets forth all expected Project Costs as of the Effective Date.
9 The Initial Project Budget is attached as Attachment 8.1.

10 **8.2 Closing Project Budget**

11 Developer will revise the Initial Project Budget based on the Design-Builder's mutually-
12 agreed lump sum price which will be developed from Drawings of at least the level of detail and
13 specificity required pursuant to the City Design Review process, the Initial Hotel Sale
14 Agreement and Developer Contribution Mortgage (the "Closing Project Budget"). The Closing
15 Project Budget shall include a comprehensive statement of all Project Costs and shall be in the
16 same format as the Initial Project Budget. Closing shall not occur unless Metro has approved of
17 the Closing Project Budget, including the Design-Builder's lump sum price.

18 **8.3 Components of Project Budget**

19 Except as provided below, the Initial Project Budget and the Closing Project Budget, and
20 all updated Project Budgets shall include the full cost of the Project, including a developer fee
21 ("Developer Fee") line item not to exceed 3.5% of total Project Cost. Metro shall not be liable
22 for costs in excess of the lump sum development price.

1 **SECTION 9 DESIGN AND CONSTRUCTION DOCUMENTS**

2 **9.1 Drawings**

3 The Architect will prepare all Drawings for the Project through final Construction
4 Drawings.

5 **9.2 Metro Approval**

6 Developer will prepare and Metro will review and may comment on any Drawings not
7 completed during the Predevelopment Period. Metro may approve or disapprove of any
8 Drawings which are materially changed from Drawings Metro approved during the
9 Predevelopment Period, in its proprietary capacity, using the criteria and process in Section 6.5
10 above.

11 **9.3 FF&E**

12 The Project will include furniture, fixtures, and equipment (“FF&E”). Developer agrees
13 to acquire the FF&E as necessary for Substantial Completion of the Project and enable Hyatt to
14 operate at its Hyatt Regency standard level or higher in accordance with the Hyatt brand
15 standards.

16 **SECTION 10 CONSTRUCTION OF PROJECT IMPROVEMENTS**

17 **10.1 Contract with Design-Builder, License**

18 **10.1.1** Metro has approved the Design-Builder. Developer shall enter into a
19 DBIA 525 Contract with the Design-Builder for the construction of the Project.

20 **10.1.2** Developer agrees to notify Metro of any material breach of the Design-
21 Build Contract by the Design-Builder or any circumstances which with only the passage of time
22 would constitute a material breach of the Design-Build Contract.

1 **10.1.3** Developer and the Design-Builder, each at its own cost and expense, shall
2 obtain any and all contractor or developer licenses required by applicable Laws. Developer shall
3 provide Metro with copies of any and all such licenses obtained.

4 **10.2 Project Improvements**

5 **10.2.1** Developer shall construct or cause the construction of the Project, in a
6 good and workmanlike manner, in accordance with this Agreement and within the Project
7 Schedule (defined in Section 11.1), subject only to Excused Delays.

8 **10.2.2** Developer shall be responsible for securing all necessary approvals,
9 consents and permits for the design and construction of the Project. In accordance with the
10 Project Schedule, Developer shall obtain all occupancy, use and operation permits from the City
11 or any of its departments or agencies required to be obtained for the Project, and such other
12 licenses, permits and similar authorizations from governmental authorities having jurisdiction
13 over the Project as may be necessary.

14 **10.3 Metro's Right To Inspect and Receive Information**

15 Developer shall provide to Metro timely information regarding the progress of the Project
16 through every phase of design and construction.

17 **10.3.1** After Closing, and during construction, Developer and Metro will comply
18 with the applicable provisions of the Budget and Construction Management Process, Attachment
19 6.4.3.

20 **10.3.2** During the design and construction of the Project, including during the
21 period prior to Closing, Developer shall submit to Metro's Project Manager not less frequently
22 than monthly a report in such form and detail as may be reasonably acceptable to Metro, as to the

1 progress of design, financing, budgets, schedules, cost estimates and upcoming approvals, and
2 the fulfillment of conditions related to the Project.

3 **10.3.3** Developer shall provide Metro’s Project Manager access to copies of all
4 daily, weekly and monthly reports or bulletins prepared by the Architect, the Design-Builder, or
5 the Project Manager with respect to the Project. Developer shall cause to be maintained at the
6 Project Site for review by Metro’s Project Manager one record copy of all drawings,
7 specifications, addenda, and Change Orders, in good order and marked currently to record field
8 changes and selections made during construction, and one record copy of approved shop
9 drawings, product data, samples and similar submittals. These shall be available to Metro’s
10 Project Manager to review at any reasonable time.

11 **SECTION 11 PROJECT SCHEDULE, TIME OF COMPLETION**

12 **11.1 Project Schedule**

13 The Parties agree that Metro has a substantial interest in the dates of commencement and
14 completion of the Project. The projected predevelopment, construction and post-construction
15 schedule for the Project, including an agreed Substantial Completion date for the Project is
16 attached as Attachment 11.1 (the “Project Schedule” or “Schedule”). Pursuant to Section 6.5.6,
17 Developer and Metro will agree to a revised Project Schedule before Closing. Any revised
18 Schedule will become the “Project Schedule” after such approval. Developer shall commence, or
19 shall have commenced, construction of the Project according to the Project Schedule, and shall
20 achieve Substantial Completion of the Project by a deadline to be agreed upon with Hyatt and the
21 holder of the Developer Contribution Mortgage (the “Substantial Completion Deadline”), subject
22 to Excused Delays.

1 **11.2 Changes In Project Schedule**

2 Any change to the Project Schedule shall require Metro’s prior written consent, except
3 for:

4 **11.2.1** A change caused by an Excused Delay;

5 **11.2.2** Changes in the Project Schedule to which the Design-Builder is entitled
6 under the Design-Build Contract;

7 **11.2.3** Changes not to exceed ninety (90) days in the aggregate; or

8 **11.2.4** Changes approved by Hyatt, the holder of the Developer Contribution
9 Mortgage, and Metro. Metro’s approval will be limited to changes exceeding ninety (90) days in
10 the aggregate.

11 **SECTION 12 DEVELOPER FUNDING**

12 **12.1 Developer Contribution**

13 Developer will fund the Developer Contribution (defined below) using private equity and
14 debt as it may determine. At Closing and upon Developer’s execution of the Project Funding
15 Agreement, Developer shall pay the Developer Contribution when and as required by the Project
16 Funding Agreement.

17 **12.2 Developer Financing to Bridge Lottery Funds Availability**

18 Notwithstanding any stated obligation for funding of the Metro Contribution, Developer
19 agrees that the Metro Contribution attributable to the Lottery Funds will be deposited and used
20 pursuant to the Project Funding Agreement from and after the time Metro receives the Lottery
21 Funds. Provided the conditions to Closing are satisfied Developer will fund the Project to the
22 extent required to continue the Project on Schedule, notwithstanding that the Lottery Funds are
23 not available at Closing.

1 **SECTION 13 METRO FUNDING**

2 Metro will provide the following Metro Funding:

3 **13.1** A Metro Grant in the amount of Four Million and no/100 Dollars
4 (\$4,000,000) reduced by any Predevelopment Costs that Metro has reimbursed during the
5 Predevelopment Period;

6 **13.2** The net proceeds of the sale of the Metro Revenue Bonds, anticipated to
7 be up to Sixty Million and no/100 Dollars (\$60,000,000). The price, the aggregate principal
8 amount, and terms of the Metro Revenue Bonds shall be established by the terms of the VF IGA
9 and Metro, in its sole discretion, based on the final Metro-approved projections of Hotel
10 SSTLTR provided before the Metro Revenue Bonds closing; and

11 **13.3** The Lottery Funds, with the following understandings: Metro will use its
12 best efforts to complete all required processes and execute the documents required to secure the
13 Lottery Funds and to obtain disbursement of the Lottery Funds at the earliest possible date.
14 However, Metro anticipates that the Lottery Funds will not be available to Metro at Closing and
15 are not likely to be available before May 2015 at the earliest. If for any reason some or all of the
16 Lottery Funds are not obtained by Metro, Metro shall have no obligation to provide alternative
17 funding for this source. The qualifications set forth in this Section 13.3 shall not be construed as
18 limiting the condition set forth in Section 17.1.3.3.

19 **SECTION 14 FUNDING OBLIGATIONS**

20 **14.1 Definitions**

21 **14.1.1** The “Developer Contribution” is that amount necessary to fully fund the
22 Final Project Budget costs, less the amounts of the Metro Contribution and the PDC Loan. The
23 Developer Contribution is anticipated to be \$135,000,000 as of the Effective Date. The

1 Developer Contribution will be comprised of private equity and private debt as Developer may
2 determine prior to Closing.

3 **14.1.2** The “Project Payment Account” is one or more interest bearing accounts
4 held by the Disbursing Agent, as defined in the Project Funding Agreement, which will receive
5 the Developer Contribution, and the Metro Contribution and out of which Project Costs will be
6 paid. The Project Payment Account is established and administered pursuant to the Project
7 Funding Agreement. Interest earned on the funds in the Project Payment Account shall be held
8 in the Project Payment Account and used to pay Project Costs.

9 **14.1.3** The “Metro Contribution” is anticipated to be up to \$74,000,000, which
10 amount is comprised of (a) \$4,000,000 of cash from the Metro Grant; (b) a grant of up to
11 \$60,000,000 from the Metro Bonds Proceeds, and (c) a grant of \$10,000,000 of cash from the
12 Lottery Funds.

13 **14.2 Funding**

14 Developer, Metro, the holder of the Developer Contribution Mortgage and a Disbursing
15 Agent to be mutually agreed upon by the Parties will enter into the Project Funding Agreement at
16 the Closing. Developer and Metro each agree to perform their respective obligations under the
17 Project Funding Agreement and to thereby fund the Developer Contribution and the Metro
18 Contribution. Developer may also use proceeds from the PDC Loan Agreement outside the
19 Project Funding Agreement.

20 **14.3 Responsibility for Cost Overruns**

21 Developer shall be responsible to pay any Cost Overruns. A “Cost Overrun” exists if,
22 upon Final Completion of the Project, the actual cost of the Project exceeds the Closing Project
23 Budget amount.

1 **SECTION 15 DISPUTE RESOLUTION**

2 **15.1 Good Faith Negotiations**

3 The Parties shall attempt to consensually resolve any and all claims, disputes or
4 controversies between the Parties, arising out of or relating in any manner or way to the Project,
5 this Agreement or the breach thereof (“Dispute”). In the event either Party believes a Dispute
6 exists, it shall give notice to the other specifying in reasonable detail the nature of such Dispute.
7 The Parties shall seek in good faith to negotiate a settlement of the Dispute, including, without
8 limitation, by agreeing to reasonable requests of the other to hold one or more meetings to
9 discuss such Dispute during a period of at least thirty (30) days.

10 **15.2 Arbitration or Litigation if Mediation Fails**

11 If any Dispute remains between the Parties after the Parties have pursued resolution
12 pursuant to Section 15.1 above, then either Party may commence legal proceedings to resolve
13 such Dispute or may both consent to resolve such Dispute by consenting to have the Dispute
14 submitted to final and binding arbitration (without appeal or review) in Multnomah County,
15 Oregon (“Dispute Resolution”).

16 **15.2.1** If the Parties agree to arbitration, each Party shall select an individual to
17 act as its arbitrator and shall deliver a notice with the identity and address of such arbitrator to
18 the other Party within twenty (20) days of the Parties’ agreement to arbitrate. If a Party does not
19 designate its arbitrator, the arbitrator identified by the other Party shall be the sole and exclusive
20 arbitrator for resolution of the Dispute identified in the Parties’ consent to arbitrate. Each Party
21 will send a copy of the notice of its arbitrator to the selected arbitrator.

22 **15.2.2** Within fourteen (14) days of their receipt of the response, the Parties’
23 arbitrators shall select a third arbitrator, and if they are unable to agree on such third arbitrator,

1 then (i) either of them, on five (5) days' notice to the other, or (ii) both of them, shall apply to the
2 ADR Provider to designate and appoint a third arbitrator. The two (2) arbitrators selected by the
3 parties shall notify the Project Managers promptly upon the selection of the third arbitrator.

4 **15.2.3** Except as otherwise set forth herein, any arbitration pursuant to this
5 Section 15.2 shall be conducted pursuant to the procedures of the Arbitration Service of Portland
6 ("ASP") or any other similar arbitration/mediation service mutually acceptable to the Parties. If,
7 at the time the Parties agree to arbitration, ASP does not exist or is unable to administer the
8 arbitration of the Dispute in accordance with the terms of this Section and the Parties are unable
9 to mutually agree upon another arbitration/mediation service within five (5) Business Days
10 thereafter, then either Party may apply to the Multnomah County Circuit Court to appoint one.
11 The service provider identified in accordance with the provisions of this Section 15.2 shall be
12 referred to as the "ADR Provider."

13 **15.2.4** If the Parties agree to arbitration, they may also agree to utilize an
14 arbitration process different than that set forth in this Section 15.2.

15 **15.3 Period within which Arbitration or Litigation Must Be**
16 **Commenced.**

17 Any litigation or arbitration of a Dispute must be initiated within six months from the
18 date on which either Party first gave written notice to the other of the existence of the Dispute,
19 and any Party who fails to commence litigation or arbitration within such six month period shall
20 be deemed to have waived any of its affirmative rights and claims in connection with the Dispute
21 and shall be barred from asserting such rights and claims at any time thereafter. An arbitration
22 shall be deemed commenced with respect to any Dispute upon the written consent of both Parties

1 to commence arbitration with respect to such Dispute. Litigation shall be deemed commenced
2 by a Party when the Party serves a complaint on the other Party with respect to the Dispute.

3 **15.4 Compensation of Mediator or Arbitrator**

4 The Parties agree to share equally the costs, including fees, of the ADR Provider selected
5 or appointed under this Section 15. As soon as practicable after selection of the ADR Provider,
6 the ADR Provider or its designated representative shall determine a reasonable estimate of the
7 ADR Provider's anticipated fees and costs and send a statement to each Party setting forth that
8 Party's equal share of the fees and costs. Each Party shall, within 10 days after receipt of the
9 statement, deposit the required sum with the ADR Provider.

10 **15.5 Venue and Jurisdiction**

11 The location of any arbitration, and the venue for any judicial proceedings shall be in
12 Multnomah County, Oregon, unless otherwise mutually agreed in writing by the Parties. Each
13 Party irrevocably submits to the jurisdiction of the federal and state courts located in Multnomah
14 County, unless otherwise mutually agreed in writing by the Parties.

15 **15.6 Survival and Severance**

16 The provisions of this Section 15 are intended to be severable from the other provisions
17 of this Agreement and to survive and not be merged into any termination of this Agreement or
18 any judgment entered in connection with any Dispute, regardless of whether such Dispute arises
19 before or after termination of this Agreement, and regardless of whether the related arbitration or
20 litigation proceedings occur before or after termination of this Agreement. If any part of this
21 Section 15 is held to be unenforceable, it shall be severed and shall not affect either the duties to
22 litigate or arbitrate or any other part of this Section.

1 **SECTION 16 REPRESENTATIONS AND WARRANTIES**

2 **16.1 Metro Representations and Warranties**

3 As of the Effective Date, and as of Closing, but subject to any contrary final judgment by
4 a court having jurisdiction over Metro, Metro represents and warrants to Developer the
5 following:

6 **16.1.1** Metro is a municipal corporation duly organized and validly existing
7 under the laws of the State of Oregon and the Metro Charter, and has full requisite municipal
8 power and authority to execute, enter into and deliver this Agreement and each of the Related
9 Agreements to which it is a party, and to perform its obligations under this Agreement, subject to
10 any disclaimers or qualifications set forth in this Agreement and each of the Related Agreements
11 to which it is a party.

12 **16.1.2** The execution, delivery and performance of this Agreement by Metro and
13 each of the Related Agreements to which it is a party and the consummation of the transactions
14 contemplated in this Agreement have been, or will be by the Closing Date, duly authorized by all
15 necessary municipal action on the part of Metro. The Chief Operating Officer of Metro is the
16 person duly authorized to execute this Agreement on behalf of Metro and has so executed this
17 Agreement. No further consent, approval or other authorization of or by any court,
18 administrative agency or other governmental authority is required in connection with the
19 execution, delivery and performance of this Agreement by Metro and the consummation of the
20 transactions contemplated in this Agreement.

21 **16.1.3** This Agreement is, when duly executed and delivered by Metro and by
22 Developer, the legal, valid and binding obligation of Metro, fully enforceable in accordance with
23 its respective terms, subject to any disclaimers or qualifications in this Agreement. The validity

1 and enforceability of this Agreement may be limited by bankruptcy, insolvency, reorganization,
2 moratorium, or other similar laws affecting creditors' rights generally, and by equitable
3 principles governing specific performance, injunctive relief, and other applicable remedies.

4 **16.1.4** Neither the execution, delivery nor performance of this Agreement by
5 Metro violates or will violate, is prohibited by, conflicts with, or would constitute a default under
6 or with respect to, Metro Charter or any other organizational or organic documents of Metro, any
7 applicable law, regulation, rule, code, ordinance, policy or resolution of Metro or of any other
8 jurisdiction which is binding on Metro; or any judgment, order, writ, injunction or decree of any
9 court, administrative agency, or other governmental authority to which it is party or otherwise
10 subject which is in any respect material to the transactions contemplated in this Agreement,
11 subject to any disclaimers or qualifications in this Agreement.

12 **16.1.5** Neither the execution, delivery nor performance of this Agreement or any
13 of the Related Agreements by Metro violates or will violate, is prohibited by, conflicts with, will
14 constitute a default under or with respect to, any other agreements, instruments, judgments or
15 decrees to which Metro is a party or is otherwise subject.

16 **16.1.6** Except as disclosed in Attachment 16.1.6, to Metro's actual knowledge,
17 based on the actual knowledge of the Metro General Counsel, no suit, litigation, arbitration or
18 other proceeding before or by any court, administrative agency or other governmental authority
19 or to which Metro is or may become a party, is pending or threatened against Metro, seeking to
20 restrain or prohibit, the execution and delivery of this Agreement or the consummation of the
21 transactions contemplated in this Agreement, or seeking damages or other relief in connection,
22 herewith, which might materially adversely affect: (i) the Metro Revenue Bonds or the Metro
23 Contribution, (ii) the use and operation of the Project as contemplated by this Agreement and the

1 Related Agreements, or (iii) in any way the validity, execution, delivery or performance of any
2 of this Agreement or the Related Agreements by Metro.

3 **16.1.7** As of Closing, Metro has the ability to provide the Metro Contribution in
4 the manner required by and subject to the conditions of this Agreement.

5 **16.2 Developer Representations and Warranties**

6 As of the Effective Date of this Agreement, and as of Closing, Developer represents and
7 warrants to Metro the following:

8 **16.2.1** Developer is a corporation duly organized and validly existing under the
9 laws of the State of Minnesota (and qualified to conduct business in the State of Oregon), and
10 has full requisite power and authority to execute, enter into and deliver this Agreement and each
11 of the Related Agreements to which it is a party, and to perform its obligations under this
12 Agreement and each of the Related Agreements to which it is a party.

13 **16.2.2** The execution, delivery and performance of this Agreement by Developer
14 and the Related Agreements to which it is a party and the consummation of the transactions
15 contemplated in this Agreement have been duly authorized by all necessary action on the part of
16 Developer. The officer of Developer signing on behalf of Developer is duly authorized to
17 execute this Agreement on behalf of Developer, and no further consent, approval or other
18 authorization is required in connection with the execution, delivery and performance of this
19 Agreement, and, as of the Closing, the Related Agreements, by Developer and the consummation
20 of the transactions contemplated in this Agreement by Developer.

21 **16.2.3** This Agreement and each of the Related Agreements to which Developer
22 is a party is when duly executed and delivered by Developer and Metro, the legal, valid and
23 binding obligation of Developer, fully enforceable in accordance with their respective terms.

1 The validity and enforceability of this Agreement and each of the Related Agreements to which
2 Developer is a party may be limited by bankruptcy, insolvency, reorganization, moratorium, or
3 other similar laws affecting creditors' rights generally, and equitable principles governing
4 specific performance, injunctive relief, and other applicable remedies.

5 **16.2.4** Neither the execution, delivery nor performance of this Agreement or any
6 of the Related Agreements by Developer violates or will violate, is prohibited by, conflicts with,
7 or would constitute a default under or with respect to, (a) Developer's organizational documents,
8 or (b) any judgment, order, writ, injunction or decree of any court, administrative agency, or
9 other governmental authority to which it is party or otherwise subject which is in any respect
10 material to the transactions contemplated in this Agreement.

11 **16.2.5** Developer is in compliance in all material respects with all Laws with
12 respect to the transactions contemplated in and by this Agreement and the Related Agreements.

13 **16.2.6** Neither the execution, delivery nor performance of this Agreement or any
14 of the Related Agreements by Developer violates or will violate, is prohibited by, conflicts with,
15 will constitute a default under or with respect to, any other agreements, instruments, judgments
16 or decrees to which Developer is a party or is otherwise subject.

17 **16.2.7** Except as disclosed in Attachment 16.1.6, to the best of Developer's actual
18 knowledge, based on the actual knowledge of Tom Lander, its Vice President and General
19 Manager, and Charles Ferrell, Faegre Baker Daniels LLP, outside counsel to Developer, no suit,
20 litigation, arbitration or other proceeding is pending before or by any court, administrative
21 agency or other governmental authority, or threatened against Developer or to which Developer
22 is or would become a party, seeking to restrain or prohibit, or seeking damages or other relief in
23 connection with, the execution and delivery of this Agreement or any of the Related Agreements,

1 or the consummation of the transactions contemplated thereby, which might materially and
2 adversely affect the use and operation of the Project as contemplated by this Agreement and the
3 Related Agreements, or which might adversely affect in any way the validity, execution, delivery
4 or performance of any of the Agreement or Related Agreements by Developer.

5 **16.2.8** As of Closing, Developer has the ability to pay the Developer
6 Contribution and to make any other payments required of Developer at the times and in the
7 manner required by and subject to the conditions of this Agreement.

8 **16.3 Survival of Representation and Warranties**

9 The representations and warranties set forth in this Section 16 shall survive the Closing.

10 **SECTION 17 COVENANTS AND CONDITIONS PRECEDENT TO CLOSING**

11 Developer and Metro shall use their respective reasonable efforts to cause each of the
12 conditions precedent set forth in Section 17.1 to be satisfied prior to Closing, subject to the terms
13 of this Agreement with respect to those matters that are within the discretion of each of the
14 Developer and Metro. Developer, Metro and Hyatt shall use their respective reasonable efforts to
15 cause each of the conditions precedent set forth in Section 17.2 to be satisfied prior to Closing,
16 subject to the terms of this Agreement with respect to those matters that are within the discretion
17 of each of Hyatt, the Developer and Metro. Each Party, and Hyatt as to its conditions, shall
18 determine in good faith whether all conditions precedent have or have not been satisfied. Such
19 determinations shall be subject to judicial resolution, but not Dispute Resolution.

20 **17.1 Conditions Precedent to Metro's and Developer's Obligations**

21 The following conditions precedent to Closing shall be satisfied to the satisfaction of the
22 Party or Parties identified in this Section 17.1 (each using its reasonable discretion unless a
23 decision is reserved to a Party's sole discretion) unless expressly waived in writing by Metro and

1 Developer as to a Joint Condition, or Metro or the Developer if a condition is stated to be for the
2 benefit of a particular Party, in which case only such Party may waive such condition; *provided,*
3 *however,* that no waiver by Metro or Developer of a condition to Closing shall be deemed to
4 constitute a waiver by Metro or Developer of any performance obligation of the other Party in
5 connection therewith unless Metro or Developer shall have in writing expressly excused the
6 other Party's performance obligation.

7 **17.1.1** To the satisfaction of Metro and the Developer (each a "Joint Condition"):

8 **17.1.1.1** Developer shall have prepared Drawings of at least the level of
9 detail and specificity required pursuant to the City Design Review process, the Hotel Sale
10 Agreement and Developer Contribution Mortgage;

11 **17.1.1.2** Metro shall have approved the Drawings to the extent that Metro
12 approval is required pursuant to Section 6.5;

13 **17.1.1.3** Developer shall have obtained all land use entitlements required
14 to construct the Project;

15 **17.1.1.4** Developer shall have obtained building permit(s) sufficient to
16 commence construction of the Hotel;

17 **17.1.1.5** Metro and Developer shall have agreed upon the Closing Project
18 Budget, and the Project Schedule, each in their sole discretion;

19 **17.1.1.6** Developer, Metro and other necessary parties, as applicable, shall
20 have approved and executed the Related Agreements described in Section 2, including their
21 respective exhibits, and performed all acts necessary for all such Related Agreements to be
22 effective and binding;

1 **17.1.1.7** Developer shall have or shall be prepared to, contemporaneous
2 with Closing, close acquisition of the Project Site (except the Block 47 Property), for a purchase
3 price equal to or less than the Appraised Value;

4 **17.1.1.8** Developer shall have or shall be prepared to contemporaneous
5 with Closing, close acquisition of the Block 47 Property.

6 **17.1.1.9** All insurance required under Section 19 of this Agreement is in
7 place as evidenced by certificates of insurance;

8 **17.1.1.10** No Laws or regulations shall have been enacted by an authority
9 with jurisdiction over the Project that materially and adversely affect the Parties' ability to
10 perform, or otherwise prevent the construction and operation of the Project, pursuant to this
11 Agreement;

12 **17.1.1.11** A Party shall be satisfied that no other circumstance exists that
13 will prevent a Party's performance under this Agreement, or the satisfaction of the conditions to
14 Closing;

15 **17.1.1.12** The Disbursing Agent and Lender shall have been identified,
16 and Metro, Developer and all other applicable parties shall have agreed upon, completed and
17 executed the final form of the Project Funding Agreement;

18 **17.1.1.13** Subject to Sections 17.1.2 and 17.2 below, all other conditions
19 precedent to Closing as expressly set forth in this Agreement shall have been satisfied.

20 **17.1.2 To the satisfaction of Metro:**

21 **17.1.2.1** Metro shall have issued the Metro Revenue Bonds on such terms
22 as are acceptable to Metro in its sole discretion;

1 **17.1.2.2** Developer shall have secured the performance and payment bond
2 required under Section 2.22.

3 **17.1.2.3** Developer shall have provided Metro with the Guaranty of
4 Completion required under Section 2.17;

5 **17.1.2.4** Developer shall have funded the portion of the Developer
6 Contribution into the Project Payment Account as required by the Project Funding Agreement to
7 be funded at Closing.

8 **17.1.2.5** Neither Developer, nor any affiliate shall be in material default
9 under this Agreement, and all warranties and representations of Developer in this Agreement
10 shall remain accurate, unchanged and in effect, as if made on the date of Closing.

11 **17.1.2.6** Hyatt shall have agreed upon and provided Metro with an
12 SSTLTR Guaranty, if any;

13 **17.1.2.7** Metro and Hyatt shall have agreed upon and entered into the
14 Room Block Agreement;

15 **17.1.2.8** Developer shall have provided to Metro, and Metro shall be
16 satisfied, with Developer financial statements dated effective not more than sixty (60) days prior
17 to the Scheduled Closing date.

18 **17.1.2.9** The Restrictive Covenant in the form of Attachment 2.18 shall be
19 recorded and shall not be subordinate to the Developer Contribution Mortgage.

20 **17.1.2.10** Developer shall have delivered to Metro a certificate signed by
21 an authorized officer of Developer, dated as of the Closing, certifying in its sole discretion the
22 fulfillment or the waiver of the conditions specified in this Section 17.1. Any conditions that are
23 waived shall be specifically set forth in the certificate.

1 **17.1.3 To the satisfaction of the Developer:**

2 **17.1.3.1** Metro shall have funded that portion of the proceeds of the Metro
3 Revenue Bond that are required by the Project Funding Agreement to be funded at Closing.

4 **17.1.3.2** Metro shall have funded the proceeds of the Metro Grant
5 agreement that are required by the Project Funding Agreement to be funded at Closing.

6 **17.1.3.3** The PDC Loan Agreement, a commitment for the Lottery Funds
7 (“Lottery Funds Commitment”), and Developer Contribution Mortgage will each be acceptable
8 to Developer in its sole discretion.

9 **17.1.3.4** The Parking Structure Development Agreement and the Parking
10 Management Agreement will each be acceptable to Developer, Hotel Owner and the holder of
11 the Developer Contribution Mortgage.

12 **17.1.3.5** Metro shall not be in material default under this Agreement, and
13 all warranties and representations of Metro in this Agreement shall remain accurate, unchanged
14 and in effect, as if made on the date of Closing.

15 **17.1.3.6** Metro shall have delivered to the Developer a certificate signed
16 by its Chief Operating Officer, dated as of the Closing, certifying in its sole discretion the
17 fulfillment or the waiver of the conditions specified in Section 17.1. Any conditions that are
18 waived shall be specifically set forth in the certificate.

19 **17.2 To the satisfaction of Hyatt:**

20 The following conditions precedent to Closing shall be satisfied to the satisfaction of the
21 Hyatt (using its reasonable discretion unless a decision is reserved to Hyatt’s sole discretion)
22 unless expressly waived in writing by Hyatt; *provided, however*, that no waiver by Hyatt of a
23 condition to Closing in this Section 17.2 shall be deemed to constitute a waiver by Metro or

1 Developer of any performance obligation of any other party in connection therewith unless
2 Metro or Developer shall have in writing expressly excused the other party's performance
3 obligation.

4 **17.2.1** Metro and Hyatt shall have agreed upon and entered into the Room
5 Block Agreement for issuance of the Metro Revenue Bonds.

6 **17.2.2** The Deed Restriction referenced in Section 2.19 shall have been
7 recorded.

8 **17.2.3** The Parking Structure Development Agreement and the Parking
9 Management Agreement will each be acceptable to Developer, Hyatt and the holder of the
10 Developer Contribution Mortgage.

11 **17.2.4** Hyatt's "Development Committee" and/or "Board of Directors"
12 acting within its sole discretion, shall have approved of those matters to which Hyatt may be
13 bound by this Agreement. Hyatt will notify Metro of such decision(s) of the Development
14 Committee and/or Board of Directors within one (1) Business Day after the decision(s).

15 **17.3 Effect of Failure to Achieve Conditions to Closing**

16 **17.3.1** If a Joint Condition set forth in Section 17.1 requires the mutual
17 agreement of Developer and Metro, and such mutual agreement is not achieved and Closing does
18 not occur, then either Developer or Metro may terminate this Agreement by written notice to the
19 other and no Party shall have a claim against the other for breach of this Agreement, *provided*
20 *however*, that Sections 6.6 and 22.3 will apply. If a condition set forth in Section 17.1 or 17.2
21 requires the satisfaction of a Party, and such satisfaction is not achieved, then such Party may
22 terminate this Agreement by written notice to the other Party and neither party shall have a claim
23 against the other for breach of this Agreement, provided, however, that Sections 6.6 and 22.3

1 will apply. If a condition set forth in Section 17.2 requires the satisfaction of Hyatt, and such
2 satisfaction is not achieved, then Hyatt may terminate this Agreement as applicable to Hyatt, but
3 not as applicable to Metro and Developer.

4 **17.3.2** If a Joint Condition set forth in Section 17.1 requires the approval or act of
5 a third party and such approval or act does not occur and Closing does not occur, then either
6 Developer or Metro may terminate this Agreement by written notice to the other, and neither
7 Party shall have a claim against the other for breach of this Agreement, so long as the Party that
8 was responsible for satisfying that condition has used reasonable efforts to satisfy that condition,
9 and if not, a claim for breach may be asserted.

10 **17.3.3** If prior to Closing any Party determines that it is not realistic that a
11 condition in its favor will be satisfied by Closing, such Party may give written notice to the other
12 Parties, and if within 20 days thereafter such condition is not satisfied or such Party does not
13 withdraw its notice, then such Party may terminate this Agreement by a further written notice of
14 termination, *provided however*, that Sections 6.6 as to Predevelopment Costs incurred prior to
15 the final written notice of termination, and 22.3 will apply.

16 **SECTION 18 CLOSING; POST CLOSING/POST CONSTRUCTION OBLIGATIONS**

17 **18.1 Closing Date**

18 The Closing shall occur upon satisfaction or waiver of all conditions precedent to Closing
19 set forth in Section 17.1 and 17.2, but not later than June 30, 2015 (the “Closing Date”), unless
20 extended by mutual agreement of Developer and Metro. Developer shall be entitled to extension
21 so long as it has and continues to make reasonable efforts to satisfy all conditions. If all
22 conditions precedent to Closing are not satisfied or waived by the Closing (or such earlier date as
23 may be specified for such satisfaction), as extended under the foregoing sentence,

1 **18.1.1** In the case of a failure of a condition to Closing because of a Party's Event
2 of Default, the provisions of Section 22.2 shall apply; or

3 **18.1.2** In the case of a failure of a condition to Closing without a Party's Event of
4 Default, 22.3 of this Agreement shall apply.

5 **18.2 Events of Closing**

6 The Closing shall occur at a location to be agreed-upon or by written closing instructions.
7 At Closing, the following events shall occur in the following order:

8 **18.2.1** Metro and Developer shall execute and deliver counterparts of all Related
9 Agreements to which Metro and Developer are the only parties;

10 **18.2.2** Metro shall deliver to Developer its certificate confirming Metro's
11 representations and warranties set forth in Section 16.1;

12 **18.2.3** Developer shall deliver to Metro its certificate confirming Developer's
13 representations and warranties set forth in Section 16.2;

14 **18.2.4** Metro shall deliver to Developer its certificate confirming that all
15 conditions to Closing set forth in Section 17, except those which may only be waived by
16 Developer, have been satisfied;

17 **18.2.5** Developer shall deliver to Metro its certificate confirming that all
18 conditions to Closing set forth in Section 17, except those which may only be waived by Metro,
19 have been satisfied;

20 **18.2.6** Hyatt shall deliver to Developer and Metro its certificate confirming that
21 all conditions to Closing set forth in Section 17.2, except those which may only be waived by
22 Developer or Metro, have been satisfied

1 **18.2.7** Each Party shall deposit their respective amounts required to be deposited
2 into the Project Payment Account as of Closing under the terms of the Project Funding
3 Agreement;

4 **18.2.8** Developer shall close the purchase of the Project Site.

5 **18.3 Metro and Developer Post Closing Obligations**

6 Unless otherwise stated in this Section 18.3, the following post-Closing obligations shall
7 be satisfied to the mutual satisfaction of Metro and Developer, unless expressly waived in
8 writing by Metro and Developer (unless such post-Closing obligation is stated to be for the
9 benefit of a particular Party, in which case only such Party may waive such obligation). Each
10 post-Closing obligation shall be fulfilled or waived within the time period set forth below. Some
11 post-Closing obligations will survive Final Completion.

12 **18.3.1** Within one hundred twenty (120) days after Final Completion, Developer
13 shall have completed the application for, paid all application fees, and obtained LEED
14 certification for the Project as and to the extent required pursuant to Section 4.2.

15 **18.3.2** Developer (jointly and severally Mortenson Development, Inc. and SPE)
16 shall perform all obligations under a customary construction warranty to be included in the
17 Closing documents, and subject to Section 21.3.3 to indemnify Metro from any claims or
18 liability to the extent that such liability arises out of Project construction defects. This covenant
19 is personal to Mortenson Development, Inc. and assignment or transfer to the SPE shall not
20 affect the warranty or the indemnity.

1 **18.4 Effect of Failure to Complete Post-Closing Obligations**

2 If a post-Closing obligation is not satisfied due to action or non-action of a party, the
3 failure of such post-Closing obligation after applicable notice and cure shall be deemed an Event
4 of Default as to that Party.

5 **SECTION 19 INSURANCE**

6 **19.1** Developer agrees to cause the insurance as required in Attachment
7 19 to be procured and maintained as required therein, and each Party agrees to the
8 covenants and agreements applicable to it pursuant to Attachment 19.

9 **19.2 Insurance Proceeds Disposition**

10 Unless otherwise agreed by Developer and Metro in writing, and subject to the terms of
11 the Developer Contribution Mortgage, insurance proceeds with respect to loss or damage to the
12 Project, prior to sale to Hyatt, under the provisions of a policy of insurance, shall be used for the
13 repair and restoration of the Project improvements in accordance with the 100% Construction
14 Documents. Refusal by the holder of the Developer Contribution Mortgage to make casualty
15 insurance proceeds available to Developer for restoration and construction shall not limit
16 Developer's obligation to complete the Project, but in such case the period of Force Majeure
17 shall include the time needed to renegotiate or refinance the Developer Contribution Mortgage
18 and related re-mobilization matters and Metro agrees to reasonably cooperate with Developer in
19 connection with any such re-mobilization matters. Developer will complete the Project after
20 restoration in accordance with the 100% Construction Documents and in compliance with then
21 applicable governmental requirements, provided that if the Metro Revenue bonds are outstanding
22 at the time of the loss, then subject to the terms of the Developer Contribution Mortgage and to
23 the extent available therefor under the terms of the applicable policy, insurance proceeds

1 (“Insurance Proceeds”) shall be used to pay debt service on the Metro Revenue Bonds due
2 during any interruption in construction.

3 **19.3 Waiver of Claims and Subrogation**

4 Each Party waives all claims against another Party for loss or damage, however caused
5 and even if caused by negligence, to the extent that such loss or damage is covered by property
6 insurance (including Builder’s Risk insurance), provided that each Party reserves such rights as it
7 may have to claim under such property insurance.

8 **19.4 Insufficient Insurance Proceeds to Complete Project**

9 If the Project is damaged or otherwise destroyed by a casualty not covered under the
10 insurance required by Section 19 and, accordingly, there are no or insufficient insurance
11 proceeds to pay for damage and project completion as described in Section 19.2, Developer will
12 complete the Project, and any costs in excess of the Closing Budget shall be considered a Cost
13 Overrun.

14 **SECTION 20 ASSIGNMENT OF AGREEMENT**

15 **20.1 No Assignment**

16 Unless approved by the express written consent of Metro, no assignments of interest in
17 this Agreement shall be permitted, until after Substantial Completion. Metro may condition its
18 approval of a transfer or assignment as Metro finds necessary in its sole discretion.

19 **20.2 Permitted Assignment or Transfer**

20 Notwithstanding Section 20.1, “assignment or transfer” shall not include:

21 **20.2.1** Transfer to the SPE, provided that the Developer will act as managing
22 member or managing partner of the SPE and that the SPE has assumed the Developer’s
23 outstanding rights and responsibilities of the Agreement. Metro shall have the right to review and

1 approve the document(s) that will implement a transfer under this subsection, which approval
2 will not be unreasonably withheld or delayed; or

3 **20.2.2** Transfer to Hotel Owner pursuant to the Hotel Sale Agreement;

4 **20.2.3** Any Developer Contribution Mortgage(s) which Developer may cause to
5 attach to the Property for purposes of securing the Developer Contribution.

6 **20.2.4** Any assignment or transfer permitted by this Section 20.2 shall not operate
7 to relieve the Developer of the Developer obligations under this Agreement including but not
8 limited to the obligations of the Guaranty of Completion.

9 **SECTION 21 DEFAULT; REMEDIES**

10 **21.1 Default**

11 The default or failure of a Party (not otherwise excused) to perform a material obligation
12 imposed on that Party under this Agreement shall be an “Event of Default” on the part of such
13 Party if the following conditions are met: (a) the non-defaulting Party has served a written notice
14 of default or demand for performance on the defaulting Party specifying the nature of the alleged
15 default and the actions required to cure the alleged default; and (b) (i) if the matter is subject to
16 Dispute Resolution, the Dispute Resolution has been concluded and has determined that a default
17 does exist on the part of the defaulting Party, and the defaulting Party has not cured or diligently
18 commenced the curing of the default within a reasonable time following the determination of
19 Dispute Resolution, or (ii) if the matter has not been referred for resolution under the Dispute
20 Resolution, the defaulting Party has not cured or diligently commenced the curing of the default
21 within a reasonable time following the receipt of notice of default or demand for performance
22 under (a) above, and the defaulting Party has not diligently prosecuted such cure to completion.
23 For purposes of this Section 21, a reasonable time shall be: (w) five (5) Business Days in the

1 case of a failure to pay a sum of money; (x) ten (10) Business Days in the case of a failure to
2 give an approval or execute a document; (y) thirty (30) Business Days in the case of obligations
3 that can be performed within such time; and (z) such time as is reasonably appropriate under the
4 circumstances in the case of obligations that cannot be performed within thirty (30) Business
5 Days, provided that the defaulting Party has commenced to cure said default as early as
6 reasonably possible within such thirty (30) Business-Day period and has diligently prosecuted
7 such cure to completion.

8 **21.2 Remedies**

9 Subject to the limitations on Metro's liability set forth in Section 21.3, and the limitations
10 on termination as provided in Section 22.2, Metro and Developer shall have all rights available
11 to them at law or in equity arising out of a breach or default of the other Party under this
12 Agreement (including the breach of any representation or warranty by the other Party), including
13 but not limited to the right to specific performance, the right to enforce a Dispute Resolution
14 determination under Section 15, and the rights to pursue payment of any amounts owed or
15 claimed to be owed by a Party under this Agreement and the right to seek such recovery,
16 damages or other relief, as may be available at law or in equity, except as may be explicitly
17 limited by this Agreement, suffered by a Party and caused by a material breach or default by the
18 other Party or by the failure of the other Party to follow a determination rendered pursuant to
19 Dispute Resolution.

20 **21.3 Limitations on Liability of the Parties**

21 **21.3.1** The provisions of this Section 21.3 shall not limit actions by either Party
22 to: (a) enforce payments of money owed by the other Party or otherwise required to be expended
23 by the other under the provisions of this Agreement; (b) to enforce express indemnification

1 provisions in this Agreement; or (c) to enforce other monetary or non-monetary obligations of
2 the other.

3 **21.3.2** No member, officer, agent, consultant or employee of Metro shall be
4 personally liable to Developer, its members or Affiliates, in the event of any default or breach by
5 Metro or for any amounts owed to Developer, its members or Affiliates, or on any obligation
6 under the terms of this Agreement. Other than the obligations of Developer under the Guaranty
7 of Completion, no member, manager, officer, agent, consultant or employee of Developer shall
8 be personally liable to Metro in the event of any default or breach by Developer or for any
9 amounts owed to Metro or on any obligation under the terms of this Agreement.

10 **21.3.3** Notwithstanding anything in this Agreement or any Related Agreement to
11 the contrary, Metro and Developer waive any and all claims against the other Party for
12 consequential damages arising out of or relating to this Agreement or the Party's default,
13 performance or nonperformance hereof, including without limitation damages for indirect
14 expenses, losses of use, income, profit, financing, business reputation, or loss of services of
15 persons.

16 **21.4 Indemnification**

17 **21.4.1** By Developer to Metro. Subject to any applicable limitations on liability
18 stated elsewhere in the Agreement or at Law, Developer shall hold harmless, indemnify and
19 defend Metro and its officers, employees and agents (collectively, the "Metro Indemnitees")
20 from and against all claims, demands, penalties, and causes of action of any kind or character
21 relating to or arising from this Agreement and/or the development of the Project (including the
22 cost of defense thereof, including attorney fees) in favor of any person on account of personal
23 injury, death, damage to property, or violation of law, which arises out of, or results from, the

1 negligent acts or omissions, or willful misconduct, of Developer, its officers, employees, agents,
2 affiliates, consultants, contractors or subcontractors in the performance or failure to perform this
3 Agreement.

4 **21.4.2** By Metro to Developer. Subject to any applicable limitations on liability
5 stated elsewhere in the Agreement or at Law, including the Oregon Constitution and the Oregon
6 Tort Claims Act, Metro shall hold harmless, indemnify and defend Developer and its officers,
7 employees and agents from and against all claims, demands, penalties, and causes of action of
8 any kind or character relating to or arising from this Agreement (including the cost of defense
9 thereof, including attorney fees) in favor of any person on account of personal injury, death,
10 damage to property, or violation of law, which arises out of, or results from, the negligent acts or
11 omissions or willful misconduct of Metro, its officers, employees, or agents in the performance
12 or failure to perform this Agreement.

13 **SECTION 22 TERM AND TERMINATION**

14 **22.1 Term**

15 **22.1.1** The term of this Agreement shall commence as of the Effective Date and
16 shall terminate pursuant to the provisions of Section 22.2 (the “Term”).

17 **22.1.2** The Parties acknowledge that, prior to the Effective Date, the Parties have
18 performed certain of their obligations contemplated by this Agreement. Each Party
19 acknowledges that to its knowledge, there are no existing defaults by the other Party with respect
20 to those obligations performed by the Parties prior to the Effective Date.

1 **22.2 Termination**

2 **22.2.1** This Agreement shall terminate upon Final Completion of the Project
3 (except as to the provisions in Section 18.3 which expressly survive Final Completion) or upon
4 the occurrence of any of the following circumstances:

5 **22.2.1.1** Upon written agreement of both Parties;

6 **22.2.1.2** If the conditions precedent to Closing are not satisfied or waived
7 by the Closing Date;

8 **22.2.1.3** At the election of the non-defaulting Party, upon occurrence of
9 an Event of Default and the defaulting Party's failure to cure the Event of Default as required by
10 Section 21.1;

11 **22.2.1.4** In the event Developer files a voluntary petition for bankruptcy,
12 Developer is the subject of an involuntary petition for bankruptcy which is not dismissed within
13 sixty (60) days of when filed, or Developer makes a general assignment for the benefit of its
14 creditors; or

15 **22.2.1.5** In the event the Metro files a voluntary petition for bankruptcy,
16 Metro is the subject of an involuntary petition for bankruptcy which is not dismissed within sixty
17 (60) days of when filed, or Metro makes a general assignment for the benefit of its creditors.

18 **22.2.2** Notwithstanding the termination of this Agreement pursuant to Section
19 22.3, the Parties' rights and obligations arising prior to termination and reimbursements or
20 payments (including payments of Insurance Proceeds) from the other Party shall survive and
21 remain in full force and effect to the extent necessary to enforce the terms thereof. Except as
22 provided for in this Section 22.2, there is no other right to terminate this Agreement.

1 **22.3 Termination Prior to Closing**

2 In the event this Agreement is terminated prior to the Closing, pursuant to any provision
3 of this Agreement authorizing a Party to terminate prior to Closing (except for a termination on
4 account of a breach), then, except as provided herein, Metro and Developer shall owe no further
5 obligations to each other under the terms of this Agreement, and Metro and Developer shall have
6 no liability to each other under the terms of this Agreement, except for claims already asserted in
7 writing in this Agreement, which claims shall survive such a termination.

8 Notwithstanding the immediately preceding paragraph, if the Agreement is terminated
9 prior to Closing, upon Metro’s request, and within thirty (30) days after the request, Developer
10 shall deliver such documents as have been produced by Developer or the Retained Parties
11 relating to the Project, subject to concurrent customary waiver and indemnity by Metro, in favor
12 of Developer and the party who produced each such document, for Metro’s use of such
13 documents.

14 **SECTION 23 GENERAL PROVISIONS**

15 **23.1 Standard of Consent or Approval; Authority to Approve**

16 Wherever this Agreement provides that a Party’s consent, approval, or concurrence is
17 required, or where a document or action must be acceptable to a Party, or words of similar
18 import, the standard against which the Party exercises its judgment shall be the good faith sole
19 discretion of that Party unless this Agreement specifies a different standard (e.g., reasonable) and
20 in that circumstance the specified standard will control. If the same act of consent, approval,
21 acceptance or concurrence is referred to multiple times, then the specified standard contained in
22 any such reference to the same act of consent, approval, acceptance or concurrence shall pertain

1 to all such references. If a Party has the right to approve a matter, then that Party also has the
2 right to disapprove that matter.

3 “Consent,” “approval,” “acceptance” or “concurrence” of Metro required or allowed by
4 this Agreement may be given by Metro’s Chief Operating Officer, or her designee, unless
5 authority to consent, approve, accept or concur is specifically reserved to the Metro Council.
6 “Consent, approval, acceptance or concurrence” of Developer required or allowed by this
7 Agreement may be given by any officer of Developer.

8 **23.1.1** Where this Agreement requires the approval(s) of Metro, Metro will
9 approve or disapprove within ten (10) Business Days after receipt of the material to be approved,
10 except where a longer or shorter time period is specifically provided in this Agreement, and
11 except where the approval requires action by the Metro Council, and in that case, the approval
12 period shall be sixty (60) days. Failure by Metro to approve or disapprove within the applicable
13 period of time shall be deemed approval. Any disapproval shall state in writing the reasons for
14 such disapproval.

15 **23.1.2** Where this Agreement requires the consent or approval of Developer,
16 Developer shall approve or disapprove within ten (10) Business Days after receipt of the material
17 to be approved, except when a longer period of time is specifically provided in this Agreement.
18 Failure by Developer to approve or disapprove within such period of time shall be deemed
19 approval. Any disapproval shall state the reasons for such disapproval.

20 **23.2 Action of Developer**

21 When Developer is required or allowed to take action under this Agreement, Developer
22 may take action through its Retained Parties unless this Agreement specifically provides that
23 Developer may not delegate the required or allowed action to a Retained Party.

1 **23.3 Good Faith and Fair Dealing**

2 The Parties shall have imputed to all of their duties, obligations, and acts performed
3 under this Agreement, a standard of conduct of good faith and fair dealing.

4 **23.4 Inspection of Records; Confidentiality**

5 **23.4.1 Inspection of Records**

6 Each of Developer and Metro agrees that, upon the reasonable prior notice from the other
7 Party, it will make available to the requesting Party its records, reports and information
8 pertaining to the Project for review, but not copying (unless agreed upon by the non-requesting
9 Party), so as to inform the requesting Party and to enable the requesting Party to determine the
10 other Party’s compliance with the terms of this Agreement. The Developer agrees to make
11 available such records, reports and information relating to the Project as Metro reasonably
12 requests for the purpose of compliance with any Laws, and with government financial
13 procedures, including but not limited to, Metro auditing.

14 **23.4.2 Confidentiality**

15 Each Party agrees to keep as confidential any document or information identified by the
16 originating Party as being confidential, by means of marking the document or information as
17 being confidential. In the event that Metro is served with a request for the production of
18 confidential information provided to Metro by Developer, pursuant to ORS 192.410, *et. seq.*,
19 then Metro shall, at least seven (7) days before Metro would, if the request were granted, make
20 the confidential information available to the requesting party, provide Developer with a copy of
21 the request, so that Developer may take steps at its sole costs and expense to prevent the
22 disclosure of the confidential information. However, the Parties acknowledge that, as a public
23 entity, Metro must comply with and will comply with ORS 192.410, *et. seq.* If Developer

1 requests Metro to object to such public record request, Developer shall provide all responses and
2 arguments at its sole cost and expense.

3 **23.5 Discrimination**

4 Developer, for itself and its successor and assigns, agrees that in performing its
5 obligations under this Agreement, it will not discriminate against any employee or applicant for
6 employment because of race, color, religion, age, gender, sexual orientation or national origin.

7 **23.6 Equal Employment Opportunity.**

8 Developer must comply with all applicable provisions of Federal or state statutes and
9 regulations and Metro ordinances concerning equal employment opportunities for persons
10 engaged in the Project.

11 **23.7 Governing Law; Venue; Jurisdiction**

12 This Agreement shall be governed and construed according to the laws of the State of
13 Oregon, without regard to its choice of law provisions. Any action or suit to enforce or construe
14 any provision of this Agreement by either party shall be brought in the Circuit Court of the State
15 of Oregon for Multnomah County or the Federal District Court located in Multnomah County,
16 Oregon. The Circuit Court of the State of Oregon for Multnomah County or the Federal District
17 Court located in Multnomah County shall have exclusive jurisdiction over all lawsuits brought
18 by any Party against any other Party with respect to the subject matter of this Agreement, and
19 each Party hereby irrevocably consents to such exclusive jurisdiction and waives any and all
20 objections it might otherwise have with respect thereto.

1 **23.8 Notices**

2 All notices given under this Agreement shall be in writing and may be delivered by
3 personal delivery, by overnight courier service, or by deposit in the United States Mail, postage
4 prepaid, as certified mail, return receipt requested, or by e-mail, and addressed as follows:

5 To MDI: Mortenson Development, Inc.
6 700 Meadow Lane North
7 Golden Valley, Minnesota 55422-4899
8 Attention: Thomas Lander

9
10 With a copy to: Faegre Baker Daniels LLP
11 2200 Wells Fargo Center
12 90 South Seventh Street
13 Minneapolis, Minnesota 55402-3901
14 Attention: Charles S. Ferrell, Esq.

15
16 To Metro: Martha Bennett, Chief Operating Officer
17 Metro
18 600 NE Grand Avenue
19 Portland, Oregon 97232

20
21 With a copy to: Office of the Metro Attorney
22 Alison Kean, Metro Attorney
23 600 NE Grand Avenue
24 Portland, Oregon 97232

25
26 To Hyatt: Hyatt Hotels Corporation
27 Hyatt Center
28 71 South Wacker Drive, 12th Floor
29 Chicago, Illinois 60606
30 Attention: General Counsel

31
32
33
34 Notices shall be deemed received by the addressee upon the earlier of actual delivery or
35 refusal of a party to accept delivery thereof. The addresses to which notices are to be delivered
36 may be changed by giving notice of such change in address in accordance with this notice
37 provision.

1 **23.9 Time is of the Essence**

2 Time is of the essence in the performance of and adherence to each and every provision
3 of this Agreement.

4 **23.10 Non-waiver**

5 Waiver by any Party of strict performance of any provision of this Agreement shall not
6 be deemed a waiver of or prejudice a Party's right to require strict performance of the same or
7 any other provision in the future. A claimed waiver must be in writing and signed by the Party
8 granting a waiver. A waiver of one provision of this Agreement shall be a waiver of only that
9 provision. A waiver of a provision in one instance shall be a waiver only for that instance, unless
10 the waiver explicitly waives that provision for all instances.

11 **23.11 Non-waiver of Government Rights**

12 Subject to the terms and conditions of this Agreement, by making this Agreement, Metro
13 is specifically not obligating itself, or any other agency with respect to any police power or
14 regulatory actions relating to development or operation of the Projects, including, but not limited
15 to, rezoning, variances, environmental clearances or any other governmental approvals which are
16 or may be required.

17 **23.12 Survival**

18 Any covenant or condition set forth in this Agreement, the full performance of which is
19 not specifically required prior to the expiration or earlier termination but which by its terms is to
20 survive the termination of this Agreement, shall survive the expiration or earlier termination of
21 this Agreement and shall remain fully enforceable thereafter.

1 **23.13 Partial Invalidity**

2 If any provision of this Agreement is held to be invalid or unenforceable, the remainder
3 of this Agreement, and the application of such provision to persons or circumstances other than
4 those to which it is held invalid or unenforceable, shall not be affected thereby, and each
5 provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6 **23.14 Calculation of Time**

7 Unless referred to as Business Days, all periods of time shall include Saturdays, Sundays,
8 and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or Legal
9 Holiday, then the period shall be extended to include the next day which is not a Saturday,
10 Sunday, or Legal Holiday. "Business Day" shall mean any day that banks are open for business
11 in Portland, Oregon, and "Legal Holiday" shall mean any holiday observed by the State of
12 Oregon.

13 **23.15 Headings, Table of Contents**

14 The section headings and Table of Contents are for convenience in reference and are not
15 intended to define or limit the scope of any provision of this Agreement.

16 **23.16 Counterparts**

17 This Agreement may be executed in counterparts, each of which shall be deemed to be an
18 original, and such counterparts shall constitute one and the same instrument.

19 **23.17 Amendments**

20 This Agreement may be modified only by a writing signed by the Parties.

21 **23.18 Attorneys' Fees**

22 If a suit, action, or other proceeding of any nature whatsoever (including any
23 proceeding under the U. S. Bankruptcy Code) is instituted in connection with any controversy

1 arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the
2 prevailing party shall be entitled to recover its attorney, paralegal, accountant, and other expert
3 fees and all other fees, costs, and expenses actually incurred and reasonably necessary, as
4 determined by the court at trial or on any appeal or review, in addition to all other amounts
5 provided by law.

6 **23.19 Successors and Assigns**

7 Subject to Section 20, the rights, obligations, liabilities, and remedies provided in
8 this Agreement shall extend to the successors-in-interest of the Parties and to the transferees and
9 assignees of the Parties; however, a grantee, vendee, transferee, or assignee of a specific parcel
10 or portion of a parcel shall only be responsible for obligations which encumber that property or
11 which are assumed in writing.

12 **23.20 Interpretation of Agreement; Status of Parties**

13 This Agreement is the result of arm's-length negotiations between the Parties and
14 shall not be construed against any Party by reason of its preparation of this Agreement. Nothing
15 contained in this Agreement shall be construed as creating the relationship of principal and
16 agent, partners, joint venturers, or any other similar relationship between the Parties.

17 **23.21 Future Assurances**

18 Each of the Parties shall promptly execute and deliver such additional documents
19 and shall do such acts that are reasonably necessary, in connection with the performance of their
20 respective obligations under this Agreement so as to carry out the intent of this Agreement.

21 **23.22 Attachments**

22 The Attachments to this Agreement are an integral part of this Agreement and are
23 fully incorporated into this Agreement where they are referenced in the text of this Agreement.

1

Signature pages follow

2

DRAFT

1
2
3
4
5
6
7
8
9
10
11

SIGNATURE PAGE TO DEVELOPMENT AND FINANCING AGREEMENT

Developer: MORTENSON DEVELOPMENT INC.

By: _____

Name: _____

Its: _____

Date: _____

DRAFT

1

2

SIGNATURE PAGE TO DEVELOPMENT AND FINANCING AGREEMENT

3

4

METRO:

METRO

5

By: _____

6

Name: _____

7

Its: _____

8

Date: _____

Approved As To Form:

Metro General Counsel

9

10

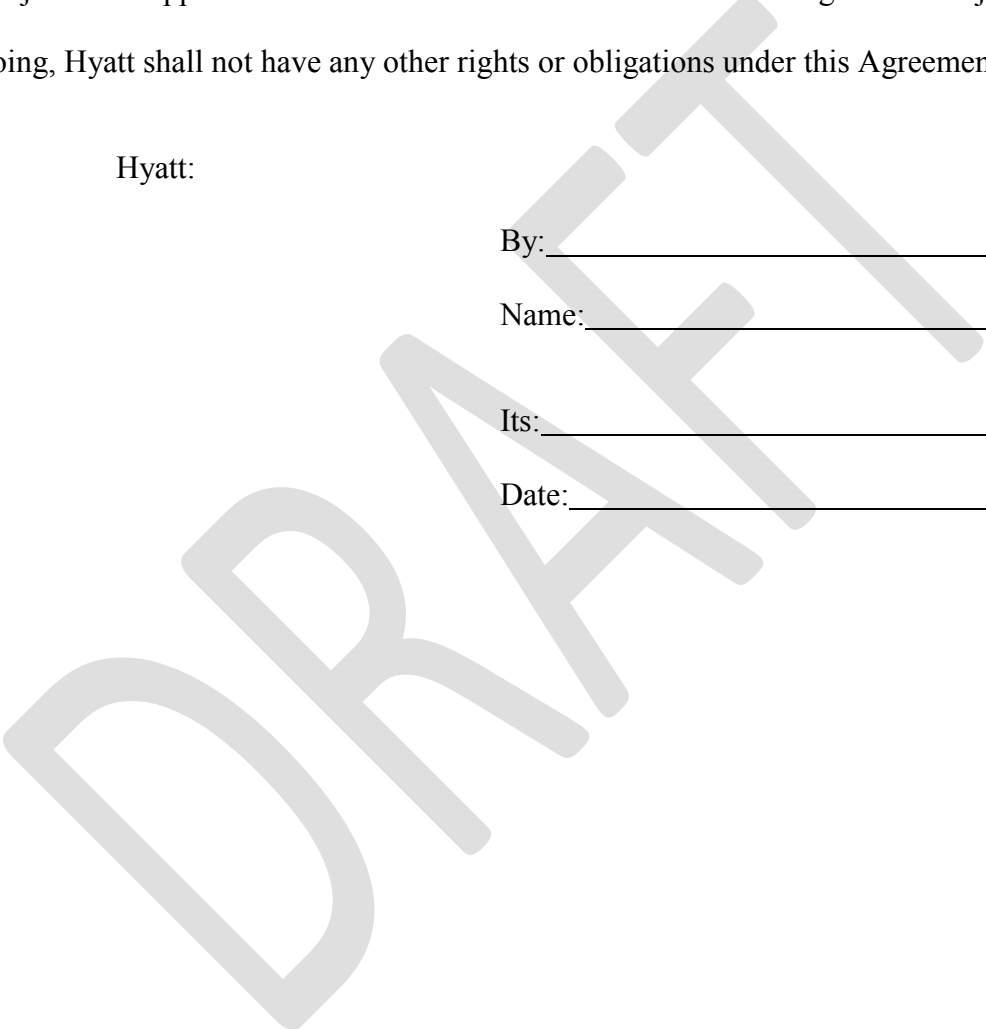
1
2
3
4
5
6
7
8
9
10
11

SIGNATURE PAGE TO DEVELOPMENT AND FINANCING AGREEMENT

Hyatt joins in this Agreement for the limited purpose of agreeing to the rights and obligations of “Hyatt” as set forth in Sections 2.1, 2.5, 2.18, 2.19 and 17.2 of this Agreement, and subject to all applicable conditions to and limitations on such obligations. Subject to the foregoing, Hyatt shall not have any other rights or obligations under this Agreement.

Hyatt:

By: _____
Name: _____
Its: _____
Date: _____



1 **ATTACHMENTS:**

- 2 I Term Sheet
- 3 1 Definitions
- 4 2.1 Room Block Agreement
- 5 2.6 Metro/Developer Grant Agreement
- 6 2.7 Metro Grant of Revenue Bond Proceeds
- 7 2.11 Project Site Description and Depiction
- 8 2.13 Project Funding Agreement
- 9 2.17 Guaranty of Completion
- 10 2.20 Hyatt Project Proforma
- 11 3.1 Scope Documents
- 12 4.5 Labor Peace Agreement
- 13 6.4.3 Budget and Construction Management Process
- 14 8.1 Initial Project Budget
- 15 11.1 Project Schedule
- 16 16.1.6 Pending Litigation
- 17 19 Developer's Insurance

OREGON CONVENTION CENTER HOTEL
DEVELOPMENT AND FINANCING AGREEMENT LETTER OF INTENT

_____, 2013

(the "Effective Date")

BETWEEN: Metro ("Metro")
600 NE Grand Avenue
Portland, Oregon 97232

AND: Mortenson Development, Inc. ("Developer")
M. A. Mortenson Company
700 Meadow Lane North
Minneapolis, MN 55422-4899

In May 2012, Metro issued a Request for Proposals for a development team to build, own and operate a private convention center hotel (the "Hotel"). The Parties understand that the primary purpose for Metro engaging in the Hotel project is to generate additional economic benefit to the region and the State by enhancing the marketability of the Oregon Convention Center.

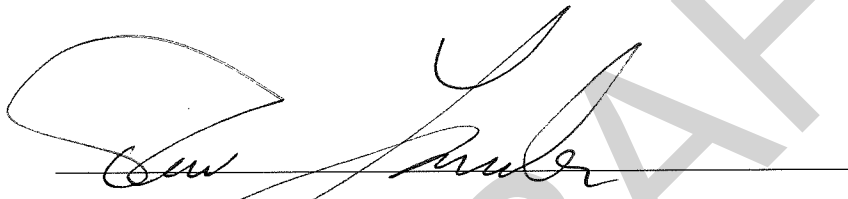
In September 2012, the Metro Council selected the Mortenson Development, Inc. team to develop the Hotel adjacent to the Oregon Convention Center in Portland, Oregon. In late October 2012, Metro and the Developer (together, the "Parties") completed predevelopment activities resulting in the Development and Financing Agreement Term Sheet attached as Exhibit A ("Term Sheet") for review and approval by the Metro Council and Mortenson Development, Inc.

Metro and Developer intend to enter into a Development and Financing Agreement for the development of a privately-owned convention center Hotel, upon terms and conditions satisfactory to the Parties. The intent of the Term Sheet is to set forth the mutual understandings, intentions and approach of the Parties to plan, finance and develop the proposed Hotel to support the economic development mission of the Oregon Convention Center. The Parties anticipate negotiating and executing a formal, binding Development and Financing Agreement incorporating the general terms set forth in the Term Sheet on a date as soon as feasible within the term of the Term Sheet. Once a formal, binding Development and Financing Agreement has been executed, the Parties will have obligations with respect to the development and financing of the Hotel. The Parties desire to complete predevelopment and due diligence activities with the goal of constructing and opening the Hotel in 2016.

The term of the Term Sheet is 6 months from the Effective Date of this Letter of Intent. The Parties may extend the term upon mutual agreement, which shall not be unreasonably withheld provided the Parties are working in good faith and will be able to perform their expected duties and responsibilities under the Development and Financing Agreement, and will notify each other of substantive changes. If at any time either Party determines that it is unable to proceed, such party shall promptly notify the other, who may then elect to discontinue negotiations or proceed under revised terms.

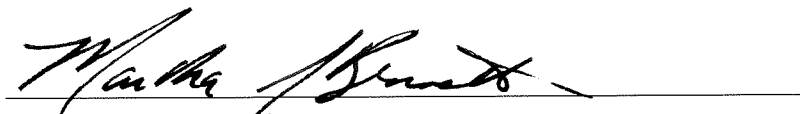
Both Parties understand that this Term Sheet is non-binding and is intended to define the project approach and general business terms for the Development and Financing Agreement negotiation process. Both Parties commit to work in good-faith.

M.A. Mortenson Company



Tom Lander, Vice President and General Manager

Metro



Martha Bennett, Metro Chief Operating Officer

EXHIBIT A**OREGON CONVENTION CENTER HOTEL****DEVELOPMENT AND FINANCING AGREEMENT TERM SHEET**

This Development and Financing Agreement Term Sheet summarizes the proposed terms under which Mortenson Development, Inc. (“Developer”) and Metro (“Metro”) intend to plan, finance and develop a privately owned Convention Center Hotel (the “Hotel”) to be owned and operated by Hyatt Hotel Corporation (“Manager”).

DESCRIPTION OF DEVELOPMENT TEAM	
Developer	Mortenson Development, Inc. will serve as the project developer, assuming all responsibility for the design, entitlement, financing and construction of the Hotel. The Developer is expected to enter into a Development and Financing Agreement with Metro.
Owner	<p>The initial project owner is expected to be a special purpose entity (SPE) to be created for purposes of this project. The Developer will act as managing member or managing partner of the SPE. The SPE will assume the Developer’s outstanding rights and responsibilities of the Development and Financing Agreement with Metro.</p> <p>Upon completion of construction, the SPE will be sold to Hyatt Hotels Corporation which shall cause the Hotel to be operated under the Hyatt Regency brand. A subsequent sale of the Hotel by Hyatt Hotels Corporation shall be encumbered with a Hyatt Regency franchise agreement or management contract, or shall be caused to be re-flagged an upper-upscale hotel brand of similar quality to Hyatt Regency. Owner shall notify Metro of a proposed sale and/or change in the Hotel flag. Metro will approve any change in Hotel flag as a condition to the change, with such approval not unreasonably withheld.</p>
Manager	Hyatt Hotels Corporation will manage and operate the Hotel.
Contractor	Mortenson Construction will serve as the general contractor for the project.
Design/Build	The Hotel will be built under a design/build approach, with Mortenson Construction providing cost and completion guarantees.
Architect	Elness Swenson Graham Architects will serve as the lead design firm, with Ankrom Moisan Associated Architects as the local design partner.

Other Consultants	Piper Jaffray & Co. –finance investment banking Jones Lang LaSalle Hotels – market and feasibility studies
Public Partners	Metro, as owner of the Oregon Convention Center, is the lead public participant in the project. Three other public organizations will be required to take actions to facilitate the Hotel: (a) Portland Development Commission (PDC) (b) City of Portland (c) Multnomah County
PROJECT DESCRIPTION	
Hotel Location	<p>The Developer prefers the Hotel be developed on portions of Block 47 and 48, Holladay’s Addition, Portland, as depicted in <u>Attachment A</u>. The property is currently owned by (or under the control of) StarTerra, LLC and is expected to be sold to the SPE at closing. The site is 1.85 acres and provides excellent proximity to the Oregon Convention Center and Light Rail along NE Holladay Street.</p> <p>PDC owns a 15,000 square foot parcel on Block 47, Holladay’s Addition, Portland, as depicted in Attachment C. This parcel is adjacent to the StarTerra site and will be considered as part of the Hotel design phase.</p> <p>An alternative site available for Hotel development is PDC’s property known as Block 43 and 26, Holladay’s Addition, Portland, as depicted in Attachment B.</p> <p>Mortenson shall coordinate with PDC on planning efforts for the adjacent, 15,000 square foot parcel on Block 47 currently owned by PDC.</p>
Hotel Description	<p>The Hotel will serve as the flagship convention hotel serving the Oregon Convention Center due to its size and proximity. The Hotel is currently expected to consist of the following facilities and amenities: (1) 600 rentable guest rooms; (2) 35,000 square feet of meeting and ballroom space; (3) a three meal upscale restaurant; (4) a lobby bar; (5) a coffee bar; (6) an indoor pool and whirlpool; (7) an exercise room; (8) a business center; (9) a gift shop; (10) or other elements required by Portland City Codes and guidelines; and (11) other additional facilities and amenities agreed upon by the parties, consistent with the high</p>

	quality Hyatt Regency brand.
Hotel Name	For purposes of this Term Sheet and subsequent negotiations, the Hotel will be referred to as the "Convention Center Hotel."
Parking Management	Structured parking shall be provided for the Hotel either under the Hotel or on Block 49, if an agreement with PDC is reached, and shall be managed by the Schlesinger Companies. Metro's public funding provided will not be used to finance the cost of constructing a parking structure that (a) is separate from the Hotel or (b) services the needs beyond what is necessary for Hotel operations.
Operating Standards	The Hotel will be built and operated in conformance with the design, construction and operating standards for the Hyatt Regency brand, in place as of the effective date of the Development and Financing Agreement, and as approved by Hyatt Hotels Corporation.
LEED [Silver] Standards	The parties desire the Hotel to be certified LEED Silver or higher for New Construction by U.S. Green Building Council. Developer intends to construct the Hotel in a manner that would qualify it as LEED Silver or higher.
Operating Agreement with Manager	The Owner will enter into an Operating Agreement with Hyatt Hotels Corporation, with the expectation that Hyatt will operate and manage the Hotel.
UNION LABOR	
Construction	As a union signatory contractor, Mortenson routinely builds its projects utilizing union subcontractors and with union labor. Mortenson fully intends to do so for the Hotel project.
Operations	Hyatt Hotels Corporation, has entered into a labor peace agreement with Unite Here, Local 9, dated October 31, 2012.
NON-BINDING COMMITMENTS AND ROLES OF THE PARTIES	
Development	Developer will serve as project developer and Mortenson Construction will be the construction contractor. Developer will: (a) Manage the predevelopment and construction process, including design/build, financing, and permitting and construction management of the Hotel. (b) Provide a guarantee for construction costs and completion to

	<p>facilitate project financing.</p> <p>(c) Serve as the lead entity in negotiations with the public participants, participating in joint team meetings, negotiating meetings and public meetings upon request.</p> <p>(d) Ensure that the project complies with terms and provisions conditions of the Development and Financing Agreements.</p> <p>(e) Provide Metro with copies of design product, budgets, statement of sources and uses of funds, financing commitments, operating pro formas, and other relevant information as mutually agreed upon throughout the Hotel project process.</p>
<p>Hotel Ownership and Operations</p>	<p>Hyatt Hotels Corporation expects to:</p> <p>(a) Participate in the predevelopment process and provide project management oversight to ensure that the project is designed, constructed and equipped to meet the Hyatt Regency brand;</p> <p>(b) Negotiate and enter into a Room Block Agreement with Metro;</p> <p>(c) Acquire the Hotel from SPE upon completion of construction and issuance of a Certificate of Completion by the City;</p> <p>(d) Manage and operate the Hotel to the standards of a Hyatt Regency product upon completion of construction under contract with the ownership entity.</p>
<p>Public Parties</p>	<p>Metro expects to:</p> <p>(a) Serve as the lead public participant and public oversight agent through completion of the Hotel with any ongoing involvement to be addressed in the Room Block Agreement;</p> <p>(b) Coordinate necessary approvals for funding from PDC, City and Council. Negotiate and enter into development and financing agreements, including intergovernmental agreements, Visitor Development Initiative amendments, etc.</p> <p>(c) Negotiate and enter into a Room Block Agreement with Hyatt Hotels Corporation to address required convention room block needs and concerns regarding potential room rate impacts on the market.</p> <p>(d) Negotiate and prepare appropriate intergovernmental agreements to implement the project, including transient lodging tax (TLT)</p>

	<p>related agreements.</p> <p>PDC's expected participation includes:</p> <ul style="list-style-type: none"> (a) Involvement in the project pre-development process, providing technical assistance as requested. (b) Providing direct financing as described below and potentially selling property for the project, either Blocks 43/26 as indicated in <u>Attachment B</u> or a portion of Block 47, shown in <u>Attachment C</u>.
<p>CAPITAL STRUCTURE</p>	
<p>Private Financing</p>	<p>Construction Period:</p> <p>Mortenson Development, Inc. will structure approximately \$119.5 million in private investment through a combination of private equity and private debt accessed through institutional financing sources such as money center banks or life insurance companies.</p> <p>Post Construction:</p> <p>Hyatt Hotels Corporation will deliver a forward take-out commitment to purchase the Hotel upon completion.</p>
<p>Public Financing</p>	<p>Metro will:</p> <ul style="list-style-type: none"> (a) Provide direct financing available for use in the construction of the Hotel in the form of a performance grant for an amount up to \$4 million, contingent upon negotiation of the Development and Financing Agreement. (b) Amend the Visitor Facilities Trust Account (VFTA) Intergovernmental Agreement, upon approval from the City of Portland and Multnomah County and Metro Council, to create a funding mechanism within the VFTA to support the issuance of revenue bonds for the Hotel, based on the equivalent of 11.5% of the site-specific transient lodging tax (TLT) expected to be generated by the operations of the Hyatt Regency Hotel. (c) Issue, or cause to be issued, a revenue bond in the approximate amount of \$60 million ("Metro Revenue Bond") supported by the revenue stream generated from TLT through the Visitor Facilities Trust Account, with proceeds utilized for the

	<p>construction of the Hotel.</p> <p>Metro expects that PDC’s participation includes:</p> <p>(a) Direct financing in the form of a loan in an amount up to \$4 million, contingent upon budget authority and Board approval of appropriate financing agreements.</p> <p>Metro has received confirmation that the State’s participation will be:</p> <p>(a) Direct financing in the form of a grant in an amount of \$10 million, contingent upon Board approval of appropriate financing agreements.</p> <p><i>Note: Public and private financing terms are subject to further negotiation consistent with the intent of this Term Sheet based on the details of the overall financing plan for the Hotel and PDC’s terms for its financial participation, and are subject to review and approval by the appropriate public bodies. Metro’s public funding provided will not be used to finance the cost of developing or constructing projects unrelated to the Hotel.</i></p>															
Project Budget	The project is anticipated to have a total budget, inclusive of all hard and soft costs of \$197.5 million. See <u>Attachment D</u> for a detailed, preliminary project budget.															
Financing Sources Summary	See <u>Attachment E</u> .															
SCHEDULE																
<p>Project Schedule</p> <p><i>The Project Schedule is based on the assumption that Metro, City and County shall have approved amendments to the Visitor Facilities Intergovernmental Agreement (VFIGA) by September 30, 2013</i></p>	<table border="0"> <thead> <tr> <th>Pre-Development Phase:</th> <th>Start</th> <th>Finish</th> </tr> </thead> <tbody> <tr> <td>(a) Financing Plan</td> <td>June 1, 2013</td> <td>July 30, 2013</td> </tr> <tr> <td>(b) Amendments to VFIGA Approved</td> <td>August 15, 2013</td> <td>September 30, 2013</td> </tr> <tr> <td>(c) Development Agreements and Iterative Design</td> <td>October 1, 2013</td> <td>July 1, 2014</td> </tr> <tr> <td>(d) Entitlements and Permitting</td> <td></td> <td></td> </tr> </tbody> </table>	Pre-Development Phase:	Start	Finish	(a) Financing Plan	June 1, 2013	July 30, 2013	(b) Amendments to VFIGA Approved	August 15, 2013	September 30, 2013	(c) Development Agreements and Iterative Design	October 1, 2013	July 1, 2014	(d) Entitlements and Permitting		
Pre-Development Phase:	Start	Finish														
(a) Financing Plan	June 1, 2013	July 30, 2013														
(b) Amendments to VFIGA Approved	August 15, 2013	September 30, 2013														
(c) Development Agreements and Iterative Design	October 1, 2013	July 1, 2014														
(d) Entitlements and Permitting																

Project Schedule (cont.)	<p style="text-align: right;">October 1, 2013 July 1, 2014</p> <p>(e) Closing September 1, 2014</p> <p>Construction Phase: September 1, 2014 September 1, 2016</p> <p>Hotel Opening: September 1, 2016</p>
Performance Goal	<p>The Parties commit to work diligently to achieve the project schedule, with a goal of Hotel Opening in 2016.</p>
MISCELLANEOUS	
Room Block Agreement	<p>As a condition to Metro issuance of the Metro Revenue Bond, Metro and Owner/Hyatt Hotel Corporation shall have executed a Room Block Agreement to be negotiated among such parties which addresses and defines the terms required by Metro and Owner relating to city-wide events, event room blocks of 500 rooms and a mutually agreed upon timeframe, and event block rates, as applicable.</p>
Marketing Strategy	<p>Owner/Hyatt Hotel Corporation will work with Travel Portland and Metro to coordinate marketing plans and rate promotions on a regular, on-going basis to ensure the Hotel does not precipitate room rate decline in the Central City hotel market.</p>
Business and Work Force Equity - ESB/MBE/WBE Programs	<p>Developer will ensure that the development, design, and construction of the Hotel comply with PDC's priorities for Emerging, Minority, and Women-Owned Businesses as set forth in RFP 13-2115 and as available at www.pdc.us.</p>
Prevailing Wages and other Labor Requirements	<p>Developer will ensure that all contractors, subcontractors and consultants fully comply with the State of Oregon's BOLI statues and regulations and any other applicable regulations.</p>
First Opportunity Target Area Hiring	<p>Owner will use its best efforts to comply with Metro's First Opportunity Target Area Hiring policy and as available at www.oregonmetro.gov.</p>
Public Records	<p>As allowed under Oregon law, Metro intends to use best efforts to maintain confidential documents related to the Hotel development proposal throughout the negotiation process. Upon completion of negotiations and during the final public approval process (at which time the Metro Council would approve issuing an intent to award a contract to Developer), Metro expects to make general project documents, not otherwise exempt from disclosure under Oregon law, available for public review.</p>

Exclusivity	Metro and Mortenson anticipate to negotiate exclusively throughout the term of this Term Sheet.
Contacts	<p>The appropriate representatives and addresses may be used throughout the negotiation process:</p> <p>M.A. Mortenson Company Tom Lander, Vice President and General Manager Nate Gundrum, Senior Development Manager 700 Meadow Lane North Minneapolis, MN 55422-4899</p> <p>Metro Attention: Teri Dresler, Visitor Venue General Manager Attention: Cheryl Twete, Senior Development Advisor 600 NE Grand Avenue Portland, Oregon 97232</p>
List of Attachments	<p>A – Developer’s Preferred Hotel Site Location</p> <p>B – PDC-owned Site Available for Hotel</p> <p>C – PDC-owned Site Adjacent to StarTerra Property</p> <p>D – Preliminary Total Project Budget</p> <p>E – Financing Sources</p>

* * * * *

ATTACHMENT A

DEVELOPER'S PREFERRED HOTEL SITE LOCATION



ATTACHMENT B

PDC-OWNED SITE AVAILABLE FOR HOTEL



ATTACHMENT C

PDC-OWNED SITE ADJACENT TO STARTERRA PROPERTY



ATTACHMENT D
PRELIMINARY TOTAL PROJECT BUDGET

Uses of Funds		
Land	\$ 7,300,000	Land acquisition, etc.
Construction	\$ 125,000,000	Foundations, structure, enclosure, building systems, finishes, site work, utilities, etc.
FF&E/OS&E	\$ 25,200,000	Furniture, fixtures, operating supplies, food service equipment, technology, etc.
Development	\$ 30,600,000	Environmental site assessment, geotechnical investigation, consulting, survey, legal, sanitary sewer impact fee, storm sewer impact fee, transportation impact fee, park and recreation impact fee, water bureau impact fee, school impact fee, development fee, building permit/plan review fee, project contingency, pre-opening expenses, etc.
Financing	\$ 9,400,000	Construction period interest, loan origination, closing costs, title, disbursement, inspection, etc.
Total	\$ 197,500,000	

ATTACHMENT E

FINANCING SOURCES

Sources of Funds		
Private Investment	\$	119,500,000
Metro Revenue Bond	\$	60,000,000
State Grant	\$	10,000,000
Metro Grant	\$	4,000,000
PDC Loan	\$	4,000,000
Total	\$	197,500,000

DRAFT

DRAFT

1 “ADR Provider” as defined in Section 15.2.3.

2 “Affiliate” means an entity that controls, is controlled by, or is in common control with
3 the Buyer.

4 “Appraisal” as defined in Section 5.

5 “Appraised Value” as defined in Section 5.

6 “Appraiser” as defined in Section 5.

7 “Architect” or “Architects” as defined in Section 7.2

8 “Architect Agreement” as defined in Section 2.16.

9 “ASP” as defined in Section 15.2.3.

10 “Block 47 Property” as defined in Section 2.10.

11 “Business Day” shall mean any day that banks are open for business in Portland, Oregon.

12 “City” as defined in Recital E.

13 “City Design Drawings” as defined in Section 6.5.3.

14 “City Design Review Process” means the land use process necessary for the City to
15 approve the design of the Project pursuant to Portland City Code Chapter 33, specifically
16 Chapter 33.825 and related Chapters.

17 “Close” or “Closing” means concurrently, the performance by each Party of the
18 obligations on its part then to be performed, all in accordance with Section 18.

19 “Closing Date” as defined in Section 18.1.

20 “Closing Project Budget” as defined in Section 8.2.

21 “Construction Period” means the period after closing until Substantial Completion.

22 “Cost Overrun” as defined in Section 14.3.

23 “County” as defined in Recital H.

- 1 “County Code Amendments” as defined in Recital M.
- 2 “DAS” as defined in Section 2.8.
- 3 “Deed Restriction” as defined in Section 2.19.
- 4 “Design-Builder” means M.A. Mortenson Company.
- 5 “Design-Build Contract” as defined in Section 2.20.
- 6 “Developer Contribution” as defined in Section 14.1.1.
- 7 “Developer Contribution Mortgage” means the mortgage and related documents to be
8 obtained by Developer in accordance with Section 6.4.6.
- 9 “Developer Fee” as defined in Section 8.3.
- 10 “Developer’s Project Manager” means Nate Gundrum, or such other person identified by
11 Developer’s notice to Metro.
- 12 “Dispute” as defined in Section 15.1.
- 13 “Dispute Resolution” as defined in Section 15.2.
- 14 “Drawings” as defined in Section 6.4.1.
- 15 “Effective Date” means the date of the final signature by all the Parties and Hyatt.
- 16 “Event of Default” as defined in Section 21.1.
- 17 “Excused Delay(s)” means delays for Force Majeure, or changes in Laws that Developer
18 could not reasonably anticipate.
- 19 “FF&E” as defined in Section 9.3.
- 20 “Final Completion” means final completion of the Hotel as defined in the Developer
21 Contribution Mortgage.
- 22 “Force Majeure” means wars, terrorism, explosion, floods, labor disputes, unusual delay
23 in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated,

1 governmental action or inaction not reasonably anticipated, other acts of god, and other events
2 beyond Developer's reasonable control. "Force Majeure" specifically includes the refusal by the
3 holder of the Developer Contribution Mortgage to make casualty insurance proceeds available
4 to Developer for restoration and construction, and in such case the period of Force Majeure shall
5 include the time needed to renegotiate or refinance the Developer Contribution Mortgage and
6 related re-mobilization matters.

7 "FOTA" as defined in Section 2.18.2.4

8 "General Conditions" has the meaning set out in the Design-Build Contract.

9 "Guaranty of Completion" as defined in Section 2.17.

10 "Hotel" as defined in Recital E.

11 "Hotel Operation" refers to the period commencing upon the opening of the Hotel to the
12 public

13 "Hotel Operator" as defined in Section 2.18.2.

14 "Hotel Owner" as defined in Recital G.

15 "Hyatt" as defined in Recital G.

16 "Initial Hotel Sale Agreement" as defined in Section 2.18.

17 "Inspections" as defined in Section 6.2.3.

18 "Joint Condition" as defined in Section 17.1.1.

19 "Insurance Proceeds" as defined in Section 19.2.

20 "Laws" means all laws, ordinances, orders, rules and regulations of any governmental
21 body having jurisdiction related to the use, condition or occupancy of the Project.

22 "Legal Holiday" as defined in 23.14.

23 "Lottery Funds" as defined in Recital J.

1 “Lottery Funds Commitment” as defined in Section 17.1.3.3.

2 “Management /Disposition Agreement” as defined in Section 2.12.

3 “MERC” as defined in Recital A.

4 “Metro Contribution” as defined in Section 14.1.3.

5 “Metro Grant” as defined in Recital I [*or Section 2.7*].

6 “Metro Grant of Revenue Bond Proceeds” as defined in Section 2.7.

7 “Metro Indemnites” as defined in Section 21.4.1.

8 “Metro Revenue Bond” or “Revenue Bond” means revenue bond(s) issued by Metro
9 expected to provide approximately \$60 million in net proceeds, and secured by the Visitor
10 Facilities Trust Account Transient Lodging Tax Revenues defined in that certain Visitor
11 Facilities Trust Account Intergovernmental Agreement, as amended through October 25, 2013.

12 “Metro Revenue Bond Proceeds” or “Revenue Bond Proceeds” means the net proceeds
13 of the Metro Revenue Bonds, not to exceed \$60 million.

14 “Mortgages” means any mortgage, deed of trust, sale and leaseback arrangement,
15 assignment of rents, security agreement, or other voluntary assignment or pledge of the Project
16 Site and/or the Project or any part thereof or any rents and profits therefrom made by Developer
17 for the purpose of securing the payment of debt.

18 “MOU” as defined in Recital L.

19 “OCC” as defined in Recital A.

20 “Parking Management Agreement” as defined in Section 2.15.

21 “Parking Structure Development Agreement” as defined in Section 2.14.

22 “PDC” as defined in Recital K.

23 “PDC/Developer Block 47 Acquisition Agreement” as defined in Section 2.10.

- 1 “PDC Loan Agreement” as defined in Section 2.9.
- 2 “Predevelopment Costs” as defined in Section 6.2.2.
- 3 “Predevelopment Period” means the period from the Effective Date until Closing.
- 4 “Project” as defined in Recital G.
- 5 “Project Costs” means all expenditures incurred or to be incurred for work, labor or
- 6 materials furnished in connection with the design, development and construction of the Project,
- 7 the cost categories of which are set forth in the Project Budget and all other costs and
- 8 expenditures incurred or to be incurred for the Project, the Cost Categories of which are
- 9 enumerated in the Budget.
- 10 “Project Managers” means the Metro’s Project Manager and the Developer’s Project
- 11 Manager.
- 12 “Project Payment Account” as defined in Section 14.1.2.
- 13 “Project Schedule” or “Schedule” as defined in Section 11.1.
- 14 “Project Site” as defined in Section 2.11.
- 15 “Public Objectives” as defined in Section 4.
- 16 “Public Parking Structure” as defined in Section 2.14.
- 17 “Related Agreements” as defined in Section 2.
- 18 “Retained Party” or “Retained Parties” as defined in Section 3.2.
- 19 “Scope Documents” as defined in Section 6.5.2.
- 20 “SPE” as defined in Section 2.12.
- 21 “Substantial Completion” means substantial completion of the Hotel as defined in the
- 22 Developer Contribution Mortgage.
- 23 “Substantial Completion Deadline” as defined in Section 11.1.

- 1 “SSTLTR” as defined in Recital H.
- 2 “SSTLTR Guaranty” as defined in Section 2.5.
- 3 “Term” as defined in Section 22.1.1.
- 4 “Term Sheet” as defined in Recital I.
- 5 “VF IGA” as defined in Recital H.
- 6

DRAFT

ROOM BLOCK AGREEMENT

For the
Oregon Convention Center
Hotel

Between

METRO

And

Hyatt Corporation

Table of Contents

Page Number

ARTICLE I DEFINED TERMS 1

 1.01 “Active Negotiations” 1

 1.02 “Available Guest Rooms” 2

 1.03 “Business Day” 2

 1.04 “City” 2

 1.05 “City-Wide Event” 2

 1.06 “Convention Center” 2

 1.07 “Development and Funding Agreement” 2

 1.08 “Event Block Projected Rate” 2

 1.09 “Event Night” 2

 1.10 “Event Room Block” 3

 1.11 “Force Majeure” 3

 1.12 “Hotel” 3

 1.13 “Hotel Site” 3

 1.14 “Management Agreement” 3

 1.15 “Maximum Event Night Ceiling” 3

 1.16 “Maximum Event Room Block” 3

 1.17 “Midweek” 3

 1.18 “Notice” or “notice” 3

 1.19 “Opening” 4

 1.20 “Operator” 4

 1.21 “Owner” 4

 1.22 “Potential Convention Center Customer” 4

 1.23 “Operator’s Initial Projected Event Block Schedule” 4

 1.24 “Operator’s Subsequent Projected Event Block Schedule” 4

 1.25 “Revised Rate Quote” 4

 1.26 “Weekend” 4

ARTICLE II TERM OF THIS AGREEMENT 4

 2.01 Commencement of the Term. 4

 2.02 Expiration of Term..... 4

 2.03 Nothing in this Agreement limits or prohibits Metro from entering into room block agreements with other hotels 6

ARTICLE III ROOM BLOCK COMMITMENT; RELEASE OF BLOCK..... 6

 3.01 Room Block. 6

ARTICLE IV ROOM BLOCK PRICING 10

 4.01 Event Block Projected Rate; Owner’s Projected Event Block Rate Schedule. 10

 4.02 Confidentiality. 11

ARTICLE V STANDARDS OF HOTEL OPERATION 12

 5.01 Standards..... 12

ARTICLE VI STANDARDS OF CENTER OPERATION 12

 6.01 Standards 12

ARTICLE VII NO LIABILITY FOR PROPOSED CONVENTION CENTER CUSTOMER;
OWNER RESPONSIBILITY TO CAUSE OPERATOR TO PERFORM 14

7.01 No Liability to Metro..... 14

7.02 Owner and Operator Responsibility; Authority to Grant Consents and Make
Decisions..... 14

ARTICLE VIII EVENTS OF DEFAULT 14

8.01 Default..... 14

8.02 Remedies..... 15

8.03 Owner’s Reservation of Rights 15

ARTICLE IX ADDITIONAL PROVISIONS 15

9.01 Course of Dealing 15

9.02 Exculpation 16

9.03 Miscellaneous. 16

9.04 Estoppel Certificate..... 16

9.05 Notices. 16

9.06 Transfer of Owner’s or Operator’s Interest. 17

9.07 Superiority of Agreement; Restrictive Covenant; Subordination..... 18

9.08 Gender; Singular and Plural..... 18

9.09 Nature and Extent of Agreement 19

9.10 Binding Effect..... 19

DRAFT

ROOM BLOCK AGREEMENT

by and between

METRO

and

OREGON CONVENTION CENTER HOTEL, LLC

NOTE: This instrument constitutes a covenant and restriction running with title to the Hotel Site.

ROOM BLOCK AGREEMENT

THIS ROOM BLOCK AGREEMENT (“Agreement”) made and entered into as of the ____ day of _____, 201__ (the “Effective Date”) by and between **METRO** (“Metro”), an Oregon municipal corporation, and **OREGON CONVENTION CENTER HOTEL, LLC** (“Owner”), a _____ limited liability company, recites and provides as follows.

RECITALS

Metro has a material interest in maximizing the performance of, and the quality of convention business attracted to, the Oregon Convention Center and encouraging convention and tourism business in the Portland metropolitan region and the State of Oregon.

In furtherance of those goals, and to facilitate the development of a full service convention center hotel connected to the Convention Center, Metro has entered into a Development and Funding Agreement with Owner, under which the parties have agreed, among other things, to enter into a room block agreement pursuant to which specific percentages of the Hotel’s guest rooms will be reserved for specific periods of time for attendees, participants and planners of high-impact events at the Convention Center. Metro and Owner intend that this Agreement satisfy such room block agreement requirement.

Owner has executed and entered into a Management Agreement with the Initial Hotel Operator pursuant to which, among other things, Owner has required, and the Initial Hotel Operator has agreed, to perform the obligations assigned to Operator herein during the term of such Management Agreement and to otherwise operate the Hotel in a manner which complies with this Agreement.

AGREEMENTS

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged and confessed by the parties hereto, Metro and Owner hereby covenant and agree with each other as follows:

ARTICLE I DEFINED TERMS

In this Agreement, these terms shall have the following meanings:

1.01 “Active Negotiations” means that Owner or Operator, on the one hand, and a bona fide potential Hotel guest, on the other hand, have exchanged written correspondence between them that reflects an indication of mutual interest for consummating a transaction whereby such Hotel contracts to block or books guest rooms at the Hotel, and neither Owner or Operator, nor such bona fide potential Hotel guest, has indicated that it no longer has any interest in pursuing such negotiations.

1.02 “Available Guest Rooms” means, as of any date in question, all of the Hotel’s existing guest rooms (including suites), excluding any guest rooms that are reasonably projected to be unavailable on the dates in question due to scheduled renovations, repairs (including, without limitation, repairs due to events of casualty that have occurred), or maintenance. For the avoidance of doubt, Available Guest Rooms does not include meeting space; provided that Operator shall make reasonable efforts to provide meeting space to meet the needs of the Potential Convention Center Customer, subject to space availability.

1.03 “Business Day” means a day other than a Saturday, a Sunday or a day on which national banks in Portland, Oregon are closed for business. If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is not a Business Day, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first Business Day following such non-Business Day. Unless otherwise specified herein, all references herein to a “day” or “days” shall refer to calendar days and not Business Days.

1.04 “City” means the City of Portland, Oregon.

1.05 “City-Wide Event” means a convention, trade show or other event during which a Potential Convention Center Customer in connection with such event, requests 600 or more guest rooms made available in hotels in the City (including the Hotel) and surrounding metropolitan areas, in the aggregate, for one or more days while some or all of the event is held at the Convention Center (and, potentially, the day preceding the commencement of such event and the day following the conclusion of such event).

1.06 “Convention Center” means the Oregon Convention Center located at 777 NE Martin Luther King Boulevard, Portland Oregon, 97232.

1.07 “Development and Funding Agreement” means that certain Development and Funding Agreement between Owner and Metro dated _____, 2014, as heretofore and hereafter amended and modified from time to time.

1.08 “Event Block Projected Rate” means 110% of the average group rate for bookings made 36 months or more prior to the event date and 115% of the average group rate for bookings made 24 through 35 months prior to the event date.

1.09 “Event Night” means any night during a City-Wide Event (including the day preceding the commencement of and the day following the conclusion of such event, as contemplated in the definition thereof) for which (i) Metro has exercised its rights under Section 3.01(a) by giving a Room Block Request Notice to the Operator and (ii) in response to such Room Block Request Notice, 200 or more rooms have been booked, blocked or reserved by the Operator either (i) pursuant to a contract with the Potential Convention Center Customer or (ii) pursuant to Initial Offers or Amended Offers that have been accepted or are still outstanding. If such contracts are terminated or any of such offers are subsequently terminated or rejected, then any of the blocked rooms that were subject thereto shall no longer be considered blocked for purposes of this definition. If rooms are blocked under this Agreement for multiple City-Wide Events on the same night, that night (subject to the limitations set forth in Section 1.15) will be

considered to be a single Event Night for purposes of calculating the Maximum Event Night Ceiling; but in no event shall any night during a City-Wide Event be considered an Event Night for purposes of the Maximum Event Night Ceiling if Metro has not given a Room Block Request Notice for that night in accordance with Section 3.01.

1.10 “Event Room Block” means a block of Available Guest Rooms (including select suites) at the Hotel offered to or reserved for the attendees of a City-Wide Event in response to a Room Block Request Notice.

1.11 “Force Majeure” means and includes causes without fault and beyond the control of a party, whether or not foreseeable, including, without limitation, fire, explosion, accident, flood, windstorm, earthquake, or other disaster or calamity, disruption of utility service; restrictive new governmental laws or regulations; acts of war (whether declared or undeclared), invasion, blockade, or sabotage; terrorism or threat thereof; riot, civil disturbance, insurrection or acts of public enemies; and strike, lockout or other labor action and inability to procure materials; provided that neither a material disruption of or material adverse change in financial, banking or capital market conditions or a material adverse change in the business, financial condition, operations, assets, liabilities or prospects of either party shall excuse any failure or delay in performance under this Agreement.

1.12 “Hotel” means the hotel to be constructed by Owner on the Hotel Site pursuant to the Development and Funding Agreement, including any expansion thereof, together with all supporting hotel facilities and amenities.

1.13 “Hotel Site” means the tract or parcel of real property described on Exhibit A attached hereto and made part hereof.

1.14 “Management Agreement” means the hotel operating or management agreement between Owner and the Operator that exists from time to time, as it may be extended, supplemented, amended or replaced from time to time.

1.15 “Maximum Event Night Ceiling” means the maximum number of Event Nights in any calendar month during which Owner or Operator shall be obligated to provide Event Room Blocks pursuant to this Agreement. The Maximum Event Night Ceiling is fifteen (15) Event Nights per calendar month.

1.16 “Maximum Event Room Block” means (a) for a City Wide Event scheduled to occur thirty-six (36) calendar months or more from the Initial Offer, 83.4% of all of the Hotel’s Available Guest Rooms and (b) for a City Wide Event scheduled to occur between twenty-four (24) and the end of the thirty-fifth (35) calendar months from the Initial Offer, 50% of all of the Hotel’s Available Guest Rooms.

1.17 “Midweek” means Sunday through Thursday, inclusive.

1.18 “Notice” or “notice” means each and every communication, request, reply, or advice required or permitted to be given, made or accepted by any party to this Agreement to any other party to this Agreement, each of which shall be given in writing, and deemed received by the intended recipient, in accordance with Section 9.05.

1.19 “Opening” means the opening of the Hotel to the public for business.

1.20 “Operator” means the entity responsible for overseeing the day to day management of the Hotel. The initial Operator (sometimes herein called the “Initial Hotel Operator”) of the Hotel is Hyatt Hotels, Inc., a Delaware corporation.

1.21 “Owner” means the entity defined as “Owner” in this Agreement’s preamble and each subsequent owner of all or any part of the Hotel Site.

1.22 “Potential Convention Center Customer” means a person, entity, group or association (or any combination thereof) that is planning a City-Wide Event.

1.23 “Operator’s Initial Projected Event Block Schedule” shall have the meaning set forth in Section 4.01(b).

1.24 “Operator’s Subsequent Projected Event Block Schedule” shall have the meaning set forth in Section 4.01(c).

1.25 “Revised Rate Quote” shall have the meaning set forth in Section 3.01(d).

1.26 “Weekend” means Friday and Saturday.

ARTICLE II TERM OF THIS AGREEMENT

2.01 Commencement of the Term. The term of this Agreement (the “Term”) shall commence on the Effective Date.

2.02 Expiration of Term. The Term shall continue until the earlier to occur of:

(a) the date upon which the Convention Center is no longer designated by Metro as the region’s principal convention center;

(b) the date upon which the Convention Center is no longer operated and maintained consistent in all material respects with the Convention Center Standard of Operation; provided, that, no expiration of the Term pursuant to this Section 2.02(b) shall be deemed to have occurred unless and until (1) Owner has provided to Metro written notice (the “CC Standard of Operation Failure Notice”) of any alleged failure by Metro to operate and maintain the Convention Center in a manner consistent in all material respects with the Convention Center Standard of Operation (“Convention Center Operating Default”), which notice (to be effective as such) must state with reasonable specificity the reasons why Owner believes that the Convention Center is no longer being operated or maintained in accordance with the Convention Center Standard of Operation (*e.g.*, if Owner believes the Convention Center is not being maintained in accordance the Convention Center Standard of Operation, Owner’s notice shall describe the deficiencies in maintenance with reasonable specificity), and (2) Metro has failed to remedy such Convention Center Operating Default within one hundred eighty (180) days (the “Initial Cure Period”) (such initial 180-day cure period to be extended for delays resulting from Force Majeure and, if the nature of the failure is such that the same

cannot reasonably be expected to be cured within said 180-day period, such 180-day period shall be extended such period of time as is reasonably necessary to effect such cure so long as Metro commences the cure promptly and uses commercially reasonable, diligent efforts to complete such cure as soon as reasonably practicable).

- (i) Notwithstanding the foregoing, if the Convention Center Operating Default is one that can only be cured by the expenditure of material capital resources and Metro does not have sufficient capital reserves allocated for such capital work, such Initial Cure Period shall be extended for an additional one hundred eighty (180) days (the “Cure Extension Period”), provided that, at the expiration of the Initial Cure Period: (1) Metro has developed a capital plan and project timeline (the “Capital Plan”) for cure of the Convention Center Operating Default, (2) Metro shall have met and conferred with Owner and Operator and take Owner and Operator’s comments and opinions into consideration in good faith in an effort to ensure that the Capital Plan is sufficient to cure the Convention Center Operating Default; provided that the final decisions with respect to the Capital Plan shall rest with Metro; and (3) Metro is making good faith, commercially reasonable best efforts to obtain the funding required to carry out such Capital Plan. If Metro meets the requirements set forth above in (1), (2) and (3) above, the Cure Extension Period shall continue to be extended for the time necessary to complete the work in the timeline set forth in the Capital Plan, provided that the funding required to complete such work is in place and the work has commenced no later than three hundred sixty (360) days following receipt by Metro of the Convention Center Standard of Operation Failure Notice.
 - (ii) To the extent Owner determines that Metro’s Capital Plan will not cure the Convention Center Operational Default, Owner shall provide Metro with written notice of such determination within sixty (60) days following receipt of the Capital Plan at the expiration of the Initial Cure Period. Any such dispute over the Capital Plan shall be resolved in accordance with the procedures described in Exhibit B.
 - (iii) Notwithstanding the foregoing, Metro shall have the right to contest Owner’s determination that the Convention Center is not being operated or maintained in accordance with the Convention Center Standard of Operation by giving Owner notice of such contest within sixty (60) days following receipt of the CC Standard of Operation Failure Notice, in which event such dispute shall be resolved in accordance with the procedures described in Exhibit B. If Metro elects to contest Owner’s determination, then the commencement of the Cure Period shall be delayed until the date of determination by arbitration that the Convention Center was not being operated and maintained consistent in all material respects with the Convention Center Standard of Operation.
- (c) the termination of this Agreement pursuant to Section _____ of the Development and Funding Agreement.

2.03 Nothing in this Agreement limits or prohibits Metro from entering into room block agreements with other hotels to support and service the needs of the Oregon Convention Center. Any such additional or future agreement(s) entered into by Metro shall not effect this Agreement nor shall such agreements be deemed subordinate to this Agreement in any respect.

ARTICLE III
ROOM BLOCK COMMITMENT; RELEASE OF BLOCK

3.01 Room Block. In accordance with (and subject to the limitations applicable to Maximum Event Room Block requests) this Agreement, during the Term Metro may from time to time require the Operator to offer an Event Room Block to Potential Convention Center Customers in connection with a City-Wide Event. Notwithstanding anything herein to the contrary, Metro shall not have the right to require the Operator to offer an Event Room Block to Potential Convention Center Customers if (a) the number of Event Nights requested in the Room Block Request Notice for such Event Room Block would cause the Maximum Event Night Ceiling to be exceeded, or (b) the total number of rooms requested to be blocked in such Room Block Request Notice on any Event Night that exceeds the number of rooms Operator is required to offer to block pursuant to Section 3.01(b). Subject to the limitations set forth in the preceding sentence and elsewhere in this ARTICLE III, the right to require that the Operator so offer the Event Room Block will be exercised in accordance with the following procedures:

(a) A management, sales or booking representative of Metro (“Sales Representative”) will notify the Operator that a Potential Convention Center Customer is seeking offers from local hotels to accommodate, among other needs, the guest room needs of the Potential Convention Center Customer for a City-Wide Event (the “Room Block Request Notice”). The Room Block Request Notice will (i) identify the Potential Convention Center Hotel Customer, (ii) set forth a documented history of the group’s room block events for the most recent three year period including a comparison of the number of rooms blocked and the actual number of rooms actually used, provided such information is readily available to Metro, (iii) list the specific dates for which the Potential Convention Center Customer will require blocks of guest rooms (including those dates commonly known as “move in” and “move out” dates), and (iv) specify the number of guest rooms in the Hotel the Potential Convention Center Customer is seeking to block on each of the specific dates. Notwithstanding the provisions of Section 9.05 or the definition of “Notice” set forth above, the Room Block Request Notice will be communicated to the Operator in the same manner as such notifications are customarily communicated by the Sales Representative to other hotels in the City.

(b) Unless such deadline is extended in writing by the Sales Representative, within five (5) Business Days after Operator’s receipt of a Room Block Request Notice for a City-Wide Event, Operator will deliver to the Potential Convention Center Customer, with a copy sent to the Sales Representative, an initial written offer in response to the Room Block Request Notice (the “Initial Offer”). In the Initial Offer, the Operator will (i) offer to the Potential Convention Center Customer to block, on each specific date that the Potential Convention Center Customer requires a block of guest rooms as specified in the Room Block Request Notice, the lesser of (A) the actual number of the guest rooms in the Room Block Request Notice for each specific date, or (B) the applicable Maximum Event Room Block after deducting from the applicable Maximum Event Room Block the following:

- (1) any previously offered Event Room Blocks under this Agreement for other City-Wide Events covering such dates, which offers have either been accepted or are still outstanding,
- (2) any guest rooms released by Metro pursuant to Section 3.01(i), and
- (3) in the case where the Maximum Event Night Ceiling for such month to which such block relates had previously been reached but, due to subsequent cancelations of bookings there remain, as of the date of request for the Initial Offer, available Event Nights for such month, then less the number of rooms booked, blocked or reserved by Operator (i.e., rooms that were booked or reserved, or were offered by Operator to be booked, blocked or reserved under offers that have either been accepted or are still outstanding) following the date such Maximum Event Night Ceiling had been reached and prior to such cancelations,

and (ii) quote a specific room rate for a standard single and double room and suites (the "Rate Quote"). The amount of the Rate Quote in the Initial Offer will be at the sole, but good faith, discretion of the Operator.

(c) The Rate Quote included by Operator in the Initial Offer shall be determined in Operator's sole, but good faith, discretion, and in determining such rate, Operator shall be entitled to take into account, among other considerations, the level of food and beverage services that the Operator anticipates the Potential Convention Center Customer will purchase in the Hotel. In making the Rate Quote, the Operator also will take into account seasonality (i.e., using group event guest room rates received in a calendar month as the basis for quotes for the same month in subsequent calendar years), Midweek versus Weekend rates, and special events that occur regularly during the applicable period). In addition, rates for groups whose stay consists of both Midweek and Weekend days shall be determined in accordance with Operator's booking policies described in Section 3.01(f).

(d) After reviewing the Initial Offer, the Sales Representative may consult with the Operator regarding the Rate Quote contained in the Initial Offer. If prior to acceptance of the Initial Offer (or any amendment thereto voluntarily offered by the Operator to the Potential Convention Center Customer), Metro reasonably and in good faith believes that it might be in Metro's best interest to compel the Owner to offer the Potential Convention Center Customer an alternative rate structure, Metro may, after good faith consultation with the Operator and within thirty (30) days following receipt of the Initial Offer, elect to require (which election shall be communicated by Notice from Metro to the Operator) the Operator to offer to the Potential Convention Center Customer a rate lower than the rate in the Initial Offer, but in no event lower than Event Block Projected Rate (such written election being the "Block Notice"). Upon receipt of the Block Notice, Operator shall, within two (2) Business Days thereafter, amend the Initial Offer by substituting the Revised Rate Quote (the "Amended Offer").

(e) The Initial Offer or the Amended Offer (if applicable) shall remain open for acceptance by the Potential Convention Customer until the sixtieth (60th) day following the

date of the Initial Offer or Amended Offer. The date of expiration of the Initial Offer or Amended Offer, as the case may be, is herein referred to as the “Offer Expiration Date”.

(f) If either the Initial Offer or the Amended Offer is accepted by the Potential Convention Center Customer prior to the Offer Expiration Date, Operator shall negotiate in good faith a binding contract with the Potential Convention Center Customer applying Operator’s customary booking policies to the Event Room Block (the “Room Block Contract”), including policies relating to contracts, advance deposits and cancellation, provided that these policies shall adhere to the general customs employed by the Operator and as is customary in the industry. If a Potential Convention Center Customer has not for any reason (other than Operator’s breach of its obligations set forth in the preceding sentence) signed a contract with the Operator with respect to such Initial Offer or Amended Offer, as the case may be, on or before the Offer Expiration Date, then such offer will expire, whereupon the Owner shall have no further obligation to Metro or the Potential Convention Center Customer in regard to such City-Wide Event under the Initial Offer or the Amended Offer, as the case may be. However, if such offer expires at a time when there are more than twenty-four (24) months prior to the first Event Night of the Potential Convention Center Customer’s City-Wide Event, nothing in this Agreement shall prohibit Metro from issuing a new Room Block Request Notice for such City-Wide Event in accordance with, and subject to the provisions of, this Section 3.01.

(g) If a Potential Convention Center Customer signs a Room Block Contract with the Operator but later provides notice to the Operator that it is terminating such contract, the Operator, after Notice to Metro, will have no further obligation to Metro in regard to the Event Nights covered by the Room Block Request Notice (which shall be deemed released from the obligations hereunder), but only if such termination notice is given by the Potential Convention Center Customer on a date less than twenty four (24) months before the first Event Night. If such notice of termination is given on a date more than twenty four (24) months before the first Event Night, then, unless rooms are blocked under this Agreement for such Event Nights for another City-Wide Event, the Event Nights covered by the Room Block Request Notice for such City-Wide Event will not be included in calculating the Maximum Event Night Ceiling, and Metro may again deliver a Room Block Request Notice in accordance with, and subject to the limitations set forth in, this Section 3.01; provided, however, Operator will have no obligation to cancel any bookings to accommodate such subsequent request (for example, as provided in Section 3.01(j), once the Maximum Event Night Ceiling has been reached the Operator is free to book rooms hereunder for such month and Operator shall not be obligated to cancel any rooms reservations for such month to accommodate a replacement block). Metro recognizes that the Owner or Operator may be entitled to collect cancellation fees from such Potential Convention Center Customer and Metro hereby consents thereto and agrees that Metro shall have no right or claim to all or any portion of such fees. Similarly, the Owner recognizes that Metro may be entitled to collect cancellation fees from such Potential Convention Center Customer pursuant to the contract between Metro and the Potential Convention Center Customer and the Owner hereby consents thereto and agrees that Owner shall have no right or claim to all or any portion of such fees.

(h) If a Potential Convention Center Customer signs a Room Block Contract with the Operator, then Operator will reserve rooms included in an Event Room Block for such

customer for purchase by the persons attending the applicable event until the later of (x) the date required under the Room Block Contract executed with such Potential Convention Center Customer and (y) the thirtieth (30th) day preceding the first scheduled day of the applicable event, after which time any unbooked rooms shall be released from such Event Room Block and may be rented for the dates covered by such Event Room Block at any rate to any person Operator selects without restrictions imposed by this Agreement. If within sixty (60) days prior to the applicable event, the number of rooms actually booked is less than the number of rooms blocked, then Operator may request Metro to release some or all unbooked rooms and Metro agrees not to unreasonably withhold such consent.

(i) If Operator has a potential booking that would not be permitted under the terms of this Agreement because it conflicts with Owner's requirements to provide Available Guest Rooms to a Maximum Event Room Block pursuant to Section 3.01 of this Agreement, Operator may by notice to Metro (with a copy to Owner) request that it be entitled to make such booking. Operator's notice shall be sent to at least two addressees of Metro, to be designated by Metro. Operator's notice shall specify the dates as to which such request applies and the number of event night rooms to which such request applies. Metro shall make best efforts to promptly acknowledge receipt of the request. If Metro does not provide its acknowledgement of receipt within forty-eight (48) hours of delivery of the request by Hyatt, Hyatt shall send another notice (the "Second Notification") and attempt to reach the appropriate designee by telephone to notify Metro of Hyatt's request. Owner shall make best efforts to promptly acknowledge receipt of the Second Notification. Upon Operator's receipt of the Acknowledgement from Metro, Metro shall have five (5) Business Days in which to respond to Operator's request by notice to the Operator; provided, that a failure to respond within such five (5) Business Day period shall be deemed an approval of such request. Notwithstanding the forgoing, for the avoidance of doubt Metro shall be entitled to deny Operator's request in its sole but good faith discretion.

(j) Once the Maximum Event Night Ceiling is reached for a month, the Operator shall have the right to freely book the available rooms at the Hotel for that month, regardless of when the booking is made.

(k) Notwithstanding anything else contained in this Agreement to the contrary, if a Potential Convention Center Customer has (i) a documented history of causing material property damage or unusually heavy wear and tear in connection with group events or (ii) poor credit or a questionable payment history, then Operator shall have the right, at its option, to include in its Initial Offer to such Potential Convention Center Customer security, damage or other deposit requirements that, in Hotel Owner's judgment exercised in good faith, would compensate Operator and Owner for the damage, wear and tear or failure to pay (and, notwithstanding anything in Section 3.01(c) to the contrary, but subject to resolution of any dispute described below, Metro shall not have the right to require Operator to deliver an Amended Offer to such Potential Convention Center Customer that does not include such security, damage or other deposit requirements);

ARTICLE IV
ROOM BLOCK PRICING

4.01 Event Block Projected Rate; Owner's Projected Event Block Rate Schedule.

(a) As defined in Section 1.08, the Event Block Projected Rate shall be an amount equal to either 110% or 115% of the average group rate for the applicable period reflected in the Operator's Initial Projected Event Block Rate Schedule or Operator's Subsequent Projected Event Block Rate Schedule (each as defined below), as applicable.

(b) No later than sixty (60) days after the Closing Date (as defined in the Development and Financing Agreement), Owner shall cause Operator to provide to Metro a schedule of the projected Event Block Projected Rate for the first five (5) calendar years after the Opening (the "Operator's Initial Projected Event Block Rate Schedule"). The rates for each year included in Operator's Initial Projected Event Block Rate Schedule represent Operator's good faith forecast of the rates that will be included in the pro forma budget for the operation of the Hotel for such year and are the projections and forecasts being used by Operator in making its decisions, and planning for, bookings in the operation of the Hotel and the conduct of Operator's business generally.

(c) By no later than December 1 prior to each year commencing after the date hereof, Owner shall cause Operator to provide Metro a schedule of the projected Event Block Projected Rate for the ensuing five (5) calendar year period (each such schedule, an "Operator's Subsequent Projected Event Block Rate Schedule"). In addition, Operator shall have the right to amend the Operator's Subsequent Projected Event Block Rate Schedule on a quarterly basis by providing Metro an updated Projected Event Block Rate Schedule no later than five (5) business days prior to the close of fiscal quarter (March 31, June 30, September 30, December 31). The rates (x) for the first twelve (12) months covered by the Operator's Subsequent Projected Event Block Rate Schedule shall be those set forth in the pro forma operating budget for the Hotel for such 12-month period that has been approved by Operator, and (y) for each other year covered thereby shall represent Operator's then-current good faith forecast of the rates that Operator project will be included in the actual pro forma budget adopted for the operation of the Hotel for such years and are the forecasts and projections being used by Operator in making its decisions, and planning for, bookings in the operation of the Hotel and the conduct of Operator's business generally.

(d) Each of the Operator's Subsequent Projected Rate Schedule shall, when delivered to Metro, be accompanied by (i) copies of the previous year's actual monthly occupancy and average daily rates, (ii) reasonable evidence that the schedule has been approved by both Owner and Operator, and (iii) a certification from Owner to Metro indicating that the Event Block Projected Rate for each year set forth therein represents (x) for the first twelve (12) months covered thereby those set forth in the Owner's pro forma operating budget for such 12-month period that has been approved by Owner and Operator, and (y) for each other year covered thereby, Owner's and Operator's good faith forecast of the rates that Owner and Operator project will be included in the actual pro forma budget adopted for the operation of the Hotel for such year and are the forecasts and projections actually being used by Owner in making its decisions,

and planning for, bookings in the operation of the Hotel and the conduct of Owner's business generally.

(e) Subject to the provisions set forth in subsection (f) below, the rates reflected in the Operator's Initial Projected Event Block Rate Schedule and each of the Operator's Subsequent Projected Event Block Rate Schedules shall be the "Event Block Projected Rate" for each of the five (5) years covered by, as applicable, the Operator's Initial Projected Event Block Rate Schedule or the then current Operator's Subsequent Projected Event Block Rate Schedule. The parties recognize that the Event Block Projected Rate may change each year (but only once per year and then only with the issuance of the Operator's Subsequent Projected Event Block Rate Schedule), it being understood that each Operator's Subsequent Projected Event Block Rate Schedule and the Event Block Projected Rate reflected therein shall supersede all previously issued Operator's Subsequent Projected Event Block Rate Schedules even though the same relate to the same years¹.

(f) Within five (5) business days of its submission to Metro, Owner and Metro shall meet to review and discuss the Operator's Subsequent Projected Event Block Rate Schedule (the "Annual Rate Pricing Meeting"). If, following the Annual Rate Pricing Meeting, Metro objects to the reasonableness of the rates set forth in the Operator's Subsequent Projected Event Block Rate Schedule, Metro shall provide Owner and Operator with Notice of such objection within three (3) business days following the Annual Rate Pricing Meeting. Such Notice shall include the reasoning behind Metro's objection, as well as supporting documentation. Operator shall take such objection into consideration in good faith and, to the extent they agree with Metro, shall make Metro's recommended changes; provided that the final decision with respect to the information set forth in the Operator's Subsequent Projected Event Block Rate Schedule shall be made by Operator in its sole discretion.

4.02 Confidentiality.

(a) Subject to its obligations under the Oregon Public Records Law (the "Public Records Law") in force in the State of Oregon, as may be amended from time to time, Metro will not disclose any Initial Offer or Amended Offer, any information provided by Operator under Section 3.01(k) or any information obtained pursuant to Section 4.01 to any person or entity other than (i) its employees, accountants, counsel and other consultants who have a need to know such information, (ii) the Owner and its officers, directors, employees, accountants, counsel and other consultants, (iii) the Owner's existing and proposed lenders, (iv) Operator and its officers, directors, employees, accountants, counsel and other consultants, or (v) in

¹ The following is an example of the "rolling" nature of the determination of the Event Block Rate: assume that the Owner issues, on December 1, 2020, an Operator's Subsequent Projected Event Block Rate Schedule. That schedule will cover the period commencing January 1, 2021 and ending December 31, 2025 [the "2021 Schedule"]. Then assume that on December 1, 2021, Owner issues an Operator's Subsequent Projected Event Block Rate Schedule. That schedule will cover the period commencing January 1, 2022 and ending on December 31, 2026 [the "2022 Schedule"]. The 2022 Schedule will, as to any Block Notice issued on or after January 1, 2022, supersede the 2021 Schedule and all prior schedules covering the years 2022, 2023, 2024 and 2025 and shall govern the determination of the Event Block Rate with respect to such Block Notice).

connection with any legal proceeding (or alternative dispute resolution procedure) between Metro and Owner and/or Operator, provided that Metro shall use reasonable efforts to obtain confidential treatment of same. Neither Owner nor Operator will disclose any information provided by Metro to Owner or Operator hereunder to any person or entity other than (1) their respective affiliates, and the employees, accountants, counsel and other consultants of Owner, Operator and their respective affiliates who have a need to know such information and their respective partners, members, shareholders, and other holders of direct or indirect beneficial interests in Owner or Operator, (2) the Owner's existing and proposed lenders and investors and any proposed replacement Operator, (3) prospective purchasers of the Hotel or (4) in connection with any legal proceeding (or alternative dispute resolution procedure) between Metro and Owner and/or Operator, provided that Owner and Operator shall use reasonable efforts to obtain confidential treatment of same.

(b) Metro shall provide timely written notice to Owner and Operator of any request received by Metro pursuant to the Public Records Law requesting information held by Metro to which Owner or Operator may assert "confidential information" or "trade secret" status under the Public Records Law, all for the purpose of providing Owner and Operator an opportunity to seek to protect such information from disclosure. Metro makes no representation as to how the Multnomah County District Attorney will rule on any open records request, but subject to Owner or Operator timely filing a request with the Multnomah County District Attorney seeking non-disclosure of the requested information, Metro agrees to withhold disclosure of information covered by this Section until required to release it by the Multnomah County District Attorney or a court of competent jurisdiction, and to cooperate with Owner and Operator in asserting its exemption claims under the Public Records Law.

ARTICLE V STANDARDS OF HOTEL OPERATION

5.01 Standards. At all times during the term of this Agreement, the Owner shall, to the extent the Hotel is being operated (or, pursuant to the Development and Funding Agreement, required to be operated), cause the Operator to operate and manage the Hotel in accordance with the Management Agreement and any applicable provisions of the Development and Funding Agreement. At all times, Owner shall operate, or cause an Operator to operate, the Hotel in a manner generally consistent with the general physical and service standards applicable to other upper, upscale full service hotels, as such designation is determined by Smith Travel Research, or, if Smith Travel is no longer available to provide such classification, another classification source recognized in the hospitality industry acceptable to Metro and Owner (the "Hotel Standard of Operation").

ARTICLE VI STANDARDS OF CENTER OPERATION

6.01 Standards. During the Term, Metro shall operate and maintain the Convention Center to at least the standard of quality consistent with the principal convention centers located in the following markets: Denver, Vancouver, Austin and Seattle (the standard herein referred to as the "Convention Center Standard of Operation," and the list of convention centers to be

included as a reference point in the Convention Center Standard of Operation to be referred to collectively as the “Convention Center Competitive Set”).

(a) If any convention center within the Convention Center Competitive Set shall cease to operate, or shall be deemed to no longer meet the standards appropriate for a convention center operated in a market comparable to Portland, then either Party may propose a replacement, and if agreed upon by the Parties, the Convention Center Competitive Set shall be amended accordingly as of the next succeeding Fiscal Year. In all cases, the Parties agree that the Convention Center Competitive Set shall be comprised of convention centers which are substantially comparable in terms of product quality, facilities, and size to the Convention Center. If the Parties are unable to agree on any replacements to the Convention Center Competitive Set proposed by either Party, either Party may submit the matter to Expert resolution pursuant to Section 6.01(b) below, and pending such resolution, no change shall be made to the Convention Center Competitive Set.

(b) For the purposes of this Section 6.01, the term “Expert” shall mean an individual or internationally recognized consulting firm mutually acceptable to Metro, Owner and Operator, each acting reasonably in respect of granting or withholding their approval, and who shall have at least ten (10) years of international hospitality consulting experience with regional knowledge of the hospitality industry, particularly in convention center operations. Each Party agrees that it shall not appoint an individual or consulting firm as an Expert hereunder if the individual or consulting firm is, as of the date of appointment or within six (6) months prior to such date, employed by such Party, either directly or as a consultant, in connection with any other matter. The Expert shall be jointly appointed by the Parties. If the Parties cannot agree on the Expert, then he or she shall be appointed by the American Arbitration Association. The Expert shall: (i) give Metro and Owner notice in writing of his or her appointment and invite Metro and Operator, on Owner’s behalf, to submit to the Expert within thirty (30) days of his or her appointment (the “Submission Period”) their respective proposals and representations; (ii) be instructed to resolve any dispute with strict reference to all applicable provisions of this Agreement and (iii) issue a written opinion with respect to his or her determination within eight (8) weeks after the end of the Submission Period or otherwise within such period as the Parties may agree, which determination shall be final and binding on Metro and Owner (unless the decision of the Expert shall be manifestly contrary to the express provisions of this Agreement, in which event either Party may submit the dispute to arbitration subject to and in accordance with the provisions of this Agreement). Each Party shall share equally the fees and costs of the Expert.

(c) If for any reason the provisions of Section 6.01(b) for the determination of Convention Center Competitive Set by an Expert shall completely fail, the issue shall then be referred to arbitration in accordance with Exhibit B.

ARTICLE VII
NO LIABILITY FOR PROPOSED CONVENTION CENTER CUSTOMER;
OWNER RESPONSIBILITY TO CAUSE OPERATOR TO PERFORM

7.01 No Liability to Metro. In no event shall Metro be in any way responsible or liable for the performance by any Potential Convention Center Customer of its obligations under its contract with the Owner or Operator or for any charges, liabilities or other sums owed by, or liabilities of, such Potential Convention Center Customer (or for those for whom it blocks rooms) to either Owner or Operator.

7.02 Owner and Operator Responsibility; Authority to Grant Consents and Make Decisions. Owner shall cause Operator to perform all of the covenants and agreements of the Operator under this Agreement, and to cause the Operator to observe all of the covenants and agreements of Operator hereunder. As of the Effective Date, Owner has delegated the performance of the obligations and rights assigned to the Operator hereunder to the Initial Hotel Operator under a Management Agreement (for so long as the same remains in effect) and, upon its termination, shall delegate any or all of such responsibilities hereunder to any subsequent Operator pursuant to a subsequent Management Agreement, but no such delegation shall release or relieve Owner from its obligation to perform, or cause to be performed, all of its covenants and agreements set forth herein.

All consents, decisions, waivers, and determinations to be made or given hereunder by Metro may be made and given by the CC Executive Director (or any person designated from time to time by the CC Executive Director to Owner and Operator) and no inference to the contrary shall be made because the defined term “Metro” is used in some places in this Agreement and the word “CC Executive Director” is used in others.

ARTICLE VIII
EVENTS OF DEFAULT

8.01 Default. A default under the terms of this Agreement shall occur if any party hereto shall default in the performance of any of the terms, conditions or covenants contained in this Agreement to be performed or observed by it, and such party does not remedy such default within thirty (30) days after Notice or, if the default is of such character as to require more than thirty (30) days to remedy, then if such party fails to commence to cure and correct the default within said thirty (30) day period and thereafter prosecute such corrective action diligently and without interruption and complete the cure thereof within ninety (90) days following the original Notice of such default (an “Event of Default”). Notwithstanding the foregoing, the failure of Owner or Operator to comply with the provisions of ARTICLE III hereof within the time frames set forth therein shall, if not cured within three (3) Business Days following written notice from Metro to Owner and Operator, constitute an Event of Default by Owner hereunder without the need of any additional Notice and without any further opportunity to cure such Event of Default. All Notices of default shall be provided to Owner and to Operator and shall also be given to Owner’s mortgagee (provided such mortgagee has provided Notice to Metro of its name and address where Notices to it hereunder are to be sent).

8.02 Remedies. If an Event of Default shall have occurred because of a breach of any provision hereof by Metro, on the one hand, or Owner on the other hand then the non-defaulting party shall have the right, at any time after the occurrence of said Event of Default to (i) initiate and thereafter prosecute an action in equity for the specific performance of any covenants or obligations to be performed by the defaulting party hereunder (Metro shall also have the right to seek and obtain an order of specific performance against the Operator so as to compel Operator, in its capacity as such under the Management Agreement, to comply herewith) or (ii) exercise such other rights as shall be available at law or in equity. In no event, however, shall this Agreement be terminated due to an Event of Default (provided that the foregoing shall not limit the provisions of Section 2.01).

Each party acknowledges and agrees that its covenants, obligations and agreements set forth in this Agreement are a material and fundamental inducement for the agreements of each party set forth in the Development and Funding Agreement, such that actual damages may not be an adequate remedy at law for the breach hereof by Metro or the Owner. Accordingly, any party shall be entitled to seek relief mandating action by Metro and/or the Owner hereunder in accordance with this Agreement. In addition, each party recognizes and agrees that monetary damages could not be calculated to compensate the other party for any breach by the defaulting party of the covenants and agreements contained in this Agreement. Each party may restrain and enjoin any breach or threatened breach of any covenant, duty or obligation of the other party contained in this Agreement without the necessity of (i) posting a bond or other security, (ii) any showing of irreparable harm, balance of harms, consideration of public interest or the inadequacy of monetary damages as a remedy, or (iii) that the administration of an order for injunctive relief would be impracticable. In the event of any breach or threatened breach of any covenant, duty or obligation contained in this Agreement, the party breaching (or threatening breach) stipulates and agrees that the balance of hardships which weigh in favor of injunctive relief and that non-breaching party may seek and obtain injunctive or other form of ancillary relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of this Agreement on an interim basis pending the outcome of the dispute or controversy hereunder.

Owner agrees to include in each Management Agreement a provision similar to the foregoing whereby the Operator makes such agreements to Owner with respect hereto.

8.03 Owner's Reservation of Rights. Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall in no way limit Owner's or Operator's rights and remedies against a Potential Convention Center Customer resulting from such Potential Convention Center Customer's default under a contract with Owner or Operator.

ARTICLE IX ADDITIONAL PROVISIONS

9.01 Course of Dealing. The parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions, and certifications as may be necessary or appropriate, from time to time, to carry out the terms, provisions, and intent of this Agreement and to aid and assist in each other carrying out said terms, provisions, and intent. In addition, the parties acknowledge and agree that the successful operation of the Convention Center and the Hotel will be greatly affected by the future cooperation between Metro and Owner. The parties

agree to maintain a course of dealing with one another based on a high level of cooperation, integration, and harmony between the Convention Center and the Hotel. In that regard, the parties agree that representatives of the Hotel and Metro will meet on a not-less-than monthly basis to share information with respect to the ongoing and future operations of the Convention Center and the Hotel in an effort to provide the level of cooperation that will lead to the success of both the Convention Center and the Hotel. In addition, the parties acknowledge that the rights and obligation of the parties under this Agreement may need to be modified from time to time to conform to the then-current industry standards. Each party agrees to be reasonable in connection with any request by the other to revisit provisions of this Agreement which may no longer comport with the then-current industry standards. Metro and Owner agree to deliver to each other on at least an annual basis their capital improvement plans for the Convention Center and Hotel, respectively, and allow the other party to review and comment on the same.

9.02 Exculpation. The liability of Owner (and of any successor “Owner” hereunder during its period of ownership of the Hotel Site) under this Agreement shall be limited to its interest in the Hotel. Metro agrees that none of the Owner’s or Operator’s direct or indirect partners, members, managers, joint venturers, shareholders, directors, officers, agents and employees shall have any personal liability with respect to, or arising out of, this Agreement. In no event shall any employee, public official agent, or consultant of Metro ever have any personal liability with respect to or arising out of this Agreement.

Nothing within this Section 9.01 shall limit the right of any party to seek specific performance of the terms and provisions of this Agreement as provided in ARTICLE VIII.

9.03 Miscellaneous. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby. This Agreement may be changed, waived, modified or supplemented only by an instrument in writing signed by Owner and Metro. The headings in this Agreement are for purposes of reference only and shall not limit or define the meaning hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

9.04 Estoppel Certificate. Within thirty (30) Business Days after request therefor by any party hereto or by Operator or by the holder of any loan made to Owner or Operator, the other party(ies) and Operator shall execute and deliver to the requesting party a statement in writing and reasonably satisfactory to the requesting party and directed to the requesting party (and, if requested, to the holder of any loan made to Owner or Operator) certifying that (a) this Agreement is unmodified and in full force and effect, (b) to the certifying party’s knowledge the requesting party is not in default hereunder or, if in default, the nature thereof in reasonable detail, and (c) there are no defenses or offsets to the Agreement claimed by the other party.

9.05 Notices. Each Notice to be provided or given hereunder must be in writing (in some instances in this Agreement the words “written Notice” or “notice in writing” may be used and in others simply the word “Notice” or “notice” may be used; no inference is to be drawn therefrom as all Notices must be in writing) and must be delivered or provided in one of the following methods: (a) certified mail, return receipt requested, postage pre-paid and addressed to the party to whom such Notice is intended to be delivered; or (b) personal delivery to the

addressee by courier or other means of hand delivery. Notice delivered by certified mail pursuant hereto shall be effectively given and received on the third (3rd) business day following deposit of the same in the United States Mail, postage pre-paid, addressed properly to the party to whom such notice intended. Notice by personal delivery shall be effectively given and received upon acceptance thereof by the addressee as confirmed in writing by a receipt executed by and retained by the party delivering such Notice.

to Metro: Metro

with copy to: Office of the Metro Attorney

to the Owner: Oregon Convention Center Hotel, LLC

with copy to: _____

to the Operator: _____

with a copy to: _____

Any mortgagee, trustee or beneficiary under any mortgage or deed of trust on the Hotel may by Notice to the parties set forth hereinabove designate an address to which Notices to it hereunder shall be sent. Any such party may from time to time by Notice as herein provided, designate a different address to which Notices to it shall be sent.

9.06 Transfer of Owner's or Operator's Interest.

(a) In the event of the sale, assignment or transfer by Owner of its fee interest in the Hotel Site (other than a collateral assignment to secure a debt of Owner) to a successor in

interest (who shall, upon acceptance of title to or an interest in the Hotel Site or any part thereof, be deemed to have assumed the obligations of Owner hereunder arising from and after the date of such acceptance), the transferring Owner shall be released or discharged from all of its covenants and obligations hereunder; and Metro agrees to look solely to such successor in interest of Owner for performance of such subsequently occurring obligations. Notwithstanding the provisions of the preceding sentence, any successor Owner hereunder shall in all respects be obligated to honor any contract or agreement previously executed with a Potential Convention Center Customer in accordance with its terms and shall be bound by any outstanding Initial Offers or Amended Offers, each Room Block Request Notice and the Event Rate then in effect subject to and in accordance with the provisions of ARTICLE III. Owner shall give Metro no less than thirty (30) days written notice of its intent to sell, assign or transfer its fee interest in the Hotel Site to a successor in interest.

(b) In the event that the Management Agreement with any Operator shall expire or terminate for any reason then the Operator under such Management Agreement shall be relieved from any obligations arising hereunder. Owner shall be obligated to secure the written consent and agreement of any replacement third-party Operator to comply with all of the terms, provisions and conditions set forth herein; provided, that, a failure by the Owner to do so shall in no way release or relieve Owner from performing the obligations of the Owner and Operator hereunder. Owner shall give Metro no less than thirty (30) days written notice of any change in Operator.

9.07 Superiority of Agreement; Restrictive Covenant; Subordination.

(a) During the Term, the provisions of this Agreement shall constitute a restrictive covenant running with the Hotel Site, binding upon each owner thereof, and any and all operators or managers of the improvements thereon, and each and every other person or entity claiming or holding any interest in the Hotel Site, shall inure to the benefit of Metro (as owner of the Convention Center), and shall apply to any hotel now or hereafter located on the Hotel Site, or any portion thereof. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall be subject to and is hereby subordinated in all respects to all present and future first mortgages or first deeds of trust encumbering the Hotel Site. On the Effective Date the parties shall execute a memorandum of this Agreement (the "Memorandum") in a form to be reasonably agreed upon by Metro and Owner, which Metro shall cause to be recorded against the Hotel Site property in the real property records of Multnomah County, Oregon.

(b) The parties recognize that the deed to the Hotel Site property is or will be encumbered by a separate restrictive covenant (the "Deed Restriction") that limits use of the Project Site to an upper, upscale hotel as an upper, upscale hotel consistent with the Hotel Standards of Operations. For the avoidance of doubt, nothing within this Section 9.07 is intended to effect that the Deed Restriction be subordinate to mortgages or deeds of trust encumbering the Hotel Site.

9.08 Gender; Singular and Plural. As used herein, the neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes a corporation, partnership or other legal

entity when the context so requires. The singular number includes the plural, and vice versa, whenever the context so requires.

9.09 Nature and Extent of Agreement. This Agreement contains the complete agreement of the parties regarding the terms and conditions of the Agreement. There are no oral or written conditions, terms, understandings or other agreements pertaining to the room block arrangements which have not been incorporated herein. The laws of the State of Oregon shall govern the validity, interpretation, performance and enforcement of this Agreement, without regard to conflicts of law principles. Multnomah County, Oregon shall be the exclusive venue for all suits or other legal actions arising out of this Agreement.

9.10 Binding Effect. Subject to express provisions hereof to the contrary, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns during the Term hereof. Furthermore, this Agreement shall automatically be deemed assigned and transferred to any future owner of the Convention Center (but only if such owner expressly assumes all of the obligations of Metro arising hereunder from and after the date of such assignment and agrees to be bound by the terms and provisions of this Agreement). In addition, the Operator shall be an express third party beneficiary of the obligations, duties and covenants of Metro hereunder.

[End of Page]

Each of the parties hereto have caused this Agreement to be duly executed by their lawfully authorized representatives effective as of the Effective Date.

Owner:

OREGON CONVENTION CENTER
HOTEL, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Metro:

METRO,
an Oregon municipal corporation

By: _____
Name: _____
Title: _____

Approved as to Form:

Counsel to Metro

EXHIBIT A

HOTEL SITE

DRAFT

EXHIBIT B

BINDING ARBITRATION PROCESS

Arbitration Process. Binding arbitration of any dispute between the parties in regard to whether the Convention Center is being operated and maintained in a manner consistent in all material respects with the Standard of Operation shall be conducted in accordance with the following procedures ("Arbitration"):

Metro shall request such Arbitration in writing, which writing shall be delivered to Owner. Arbitration shall be conducted in accordance with the American Arbitration Association ("AAA") by a single arbitrator to be appointed according to the rule of the AAA within thirty (30) days of the date the notice was delivered. The award may include the costs of arbitration, but shall not include attorneys fees. The award may be entered in any Court, state or federal, having jurisdiction thereof. Any action to commence, conduct, or enforce such Arbitration proceeding, or for any other purpose, shall be brought in Portland, Oregon.

THE ARBITRATOR SHALL HAVE NO AUTHORITY TO AWARD ANY PUNITIVE OR EXEMPLARY DAMAGES OR TO VARY OR IGNORE THE TERMS OF THIS AGREEMENT, AND SHALL BE BOUND BY CONTROLLING LAW. THE ARBITRATOR'S FAILURE TO APPLY CONTROLLING LAW OR ENTRY OF A DECISION THAT IS NOT BASED ON SUBSTANTIAL EVIDENCE IN THE RECORD SHALL BE GROUNDS FOR MODIFYING OR VACATING AN ARBITRATION DECISION.

GRANT AGREEMENT

Between: Metro, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter (“Grantor”)
[insert address]

And: Mortenson Development, Inc., a Minnesota corporation (“Grantee”)
[insert address]

1. BASIS OF GRANT AWARD

WHEREAS, this Grant Agreement is made as of this ____ day of _____, ____ (the last date of signature below) (“Effective Date”), between Grantor and Grantee (either of them individually, a “Party,” or collectively, the “Parties”).

WHEREAS, Grantor and its subsidiary the Metropolitan Exposition and Recreation Commission are responsible for ownership and/or management of several facilities and a number of programs to support regional tourism and spectator facilities, the visitor and hospitality industry and to maximize the economic development benefits associated with the visitor industry, including the Oregon Convention Center (the “OCC”).

Whereas, Grantor believes that a successful, first-class, premium-branded and adjacently located convention center hotel (the “Hotel” or the “Project”) is critical to the success and marketability of the OCC and to meet the goals of the region for bringing national conventions to the OCC and thereby increasing tourism and economic development to the City of Portland, the metropolitan region, and the State of Oregon.

Whereas, Grantor has entered into the Development and Financing Agreement, dated _____, ____ (the “Development and Financing Agreement”) with Grantee pursuant to which Grantee has agreed to construct a hotel as more particularly described in the Development and Financing Agreement.

Whereas, Grantor has agreed within the Development and Financing Agreement to grant certain funds from Oregon Convention Center Reserves (the “Grant Funds”) to Grantee to fund a portion of the development and construction of the hotel.

Whereas, the Parties hereby enter into this Grant Agreement to provide for the grant of the Grant Funds under the terms set forth in this Grant Agreement.

Grantor is willing to make a grant to Grantee for such purposes on the terms and conditions of Grant Agreement. Accordingly, the Parties agree as follows:

2. DATE AND TERM OF AGREEMENT

This Grant Agreement shall become effective on the date that it is fully executed and approved as required by applicable law and shall expire upon the date of the last expenditure of Grant funds by Grantee.

3. GRANT AWARD AND DISBURSEMENT

a. Grant. Grantor shall provide \$4,000,000 (the “Grant”) to Grantee solely for the purposes described herein.

b. Timing of Disbursements. All granted proceeds of the Grant Funds shall be held and invested by _____ (the “Disbursing Agent”), as disbursing agent, as described in the Project Funding Agreement, dated ____, ____, among Grantor, Grantee, [Lender], and [Disbursing Agent] (the “Project Funding Agreement”), until transferred to Grantee to pay eligible Project Costs, as defined in the Project Funding Agreement, under the terms and conditions set forth therein.

c. Earnings on Net Proceeds. As provided for in the Project Funding Agreement, the Grant Funds shall be invested by the Disbursing Agent prior to disbursement of funds to Grantee. Subject to the limitations provided in Section 3.c. and Section 4.a. through 4.d., below, any investment proceeds shall be available for those purposes specified in the Project Funding Agreement.

d. Conditions to Disbursements. Any disbursement of amounts granted under this Grant Agreement is expressly conditioned upon compliance with the terms and conditions set forth in this Grant Agreement, the Development and Financing Agreement, and the Project Funding Agreement.

4. USES OF GRANT

a. Eligible Uses of Grant. Grantee agrees to expend the Grant, and any investment earnings disbursed to Grantee pursuant to the Project Funding Agreement, only for Project Costs, as further restricted by Sections 4.b. through 4.d. below. Grantee shall not use the Grant for any purpose not permitted by this Section 4.

b. Ineligible Project Costs. Grantee shall not expend Grant monies for any of the following Project Costs: [insert list of known ineligible costs listed in the budget at the time this agreement is signed, if any].

c. Uses of Grant Limited to Capital Expenditures. Grantee agrees to expend any amounts disbursed to it pursuant to this Grant Agreement only for Project Costs that are of a type that are properly chargeable to a capital account or would be so chargeable with a proper election, under general Federal income tax principles.

d. Limitation on Use of Grant Proceeds for Payments to Hotel Owner or Related Parties. Grantee agrees not to use Grant Funds to pay Project Costs that represent payments to Oregon Convention Center Hotel, LLC (“Hotel Owner”) or any related party, within the meaning of Treasury Regulation §1.150-1(e), unless Grantee can track the ultimate use of such Grant moneys for Project Costs that are paid to unrelated parties. Examples of Project Costs for which Grantee is specifically prohibited from using amounts granted under this Grant Agreement pursuant to this limitation, include the following Project Costs included in the current budget: [list any known payments to Hotel Owner or related parties, if any].

5. REPAYMENT OBLIGATIONS

a. Expectation as to Timing of Disbursement Grant Funds. Grantee expects that it will complete the Project and request all funds available pursuant to this Grant on or before _____, which is a date not more than three (3) years after the effective date of this Grant Agreement.

b. Requirements to Repay Grant. Grantee shall immediately repay to Grantor amounts disbursed under this Grant Agreement, upon Grantor’s written demand, in the event of occurrence of one of

the following events indicating a failure to expend Grant Funds in accordance with the governmental purpose of the Grant:

- Use of Grant Funds for costs other than Project Costs, as limited by Section 4 of this Grant Agreement and the Project Funding Agreement;
- Failure to comply with the agreements between the Parties relating to the development of the Hotel as described in the Development and Financing Agreement.

6. GRANTEE'S CERTIFICATIONS

Grantee certifies to Grantor as follows:

- Existence and Power. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute this Grant Agreement and perform its obligations hereunder.
- Authority, No Contravention. The making and performance by Grantee of this Grant Agreement: (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Grantee's charter or other organizational document, and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected.
- Binding Obligation. This Grant Agreement has been duly executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.
- Approvals. No authorization, consent, license, approval of or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Grant Agreement.
- Sufficient Funds. The maximum amount of the Grant under this Grant Agreement when added to other funds available to Grantee will be sufficient to pay the approximately \$_____ million estimated cost of the Project.

7. GRANTEE'S AGREEMENTS

- a. Records and Inspection. Grantee will retain proper books of account and records on all activities associated with the Grant and the Project. Grantee will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records at least until the later of six (6) years from the expiration date of this Grant Agreement or the date that any dispute or controversy arising from this Grant Agreement is resolved. Grantee will permit Grantor, or its duly authorized representatives, to inspect its properties, all work done, labor performed and materials furnished in and about the Project, and to review and make excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of Grant Funds received from Grantor. Access to these books of account and records is not limited to the required retention period. The authorized representatives shall have access to records at any reasonable time for as long as the records are maintained. The requirements of this Section 7.a. are in addition to any document retention or other requirements imposed on Grantee pursuant to separate agreements with Grantor.
- b. Reports. Grantee shall provide Grantor with all reports required by the Project Funding Agreement or other agreement entered into by the Parties in connection with the Project.
- c. Operation of Project Consistent with Governmental Purposes of the Grant. Grantee acknowledges that Grantor is providing this Grant to fulfill established governmental purposes and goals of the region of bringing national conventions to the City of Portland and thereby increasing tourism and economic development to the City of Portland, the metropolitan region, and the State of Oregon, and that Grantor views the development and operation of the Hotel as being vital to achieving these purposes and goals. Accordingly, Grantee agrees to develop the Hotel in accordance with all agreements entered into with respect to the Project which agreements would include the Development and Financing Agreement and the Project Funding Agreement.
- d. Compliance with Laws. Grantee shall comply with all laws, rules, and regulations of any governmental authority applicable to the Project, this Grant Agreement, or Grantee's performance under this Grant Agreement.

8. TERMINATION AND DEFAULT

- a. Mutual Termination. This Grant Agreement may be terminated by mutual consent of both parties.
- b. Default. Grantee shall be in default under this Grant Agreement upon the occurrence of any of the following events:
- (a) Grantee falls to perform or observe any of its covenants or agreements contained herein;
or
 - (b) Any certification, representation or statement made by Grantee herein, or in any documents or reports submitted to Grantor related to the Project or this Grant Agreement, are untrue in any material respect; or
 - (c) Grantee: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing; or
 - (d) A proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or

decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

c. Remedies Upon Default. If Grantee's default is not cured within 15 days of written notice thereof to Grantee from Grantor or such longer period as Grantor may authorize in its sole discretion, Grantor may take any or all of the following actions: (a) suspend all future Grant disbursements to Grantee under this Grant Agreement and the Project Funding Agreement, (b) terminate this Grant Agreement upon written notice to Grantee, (c) demand repayment of all or any portion of the Grant, but only to the extent that such default indicates a failure to expend Grant proceeds in accordance with the governmental purpose of the Grant as described in Section 5.b. above, or (d) pursue or exercise any other remedy available at law or in equity. If, as a result of Grantee's default, Grantor demands return of all or any portion of the Grant, Grantee shall pay the amount to Grantor upon Grantor's demand.

9. MISCELLANEOUS

a. No Implied Waiver, Cumulative Remedies. The failure of Grantor to exercise, and any delay in exercising, any right, power, or privilege under this Grant Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise or any right power, or privilege under this Grant Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

b. Governing Law; Venue; Consent to Jurisdiction. This Grant Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Grantor (or any related party) and Grantee (or any related party) that arises from or relates to this Grant Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. GRANTEE, BY EXECUTION OF THIS

GRANT AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

c. Notices. Except as otherwise expressly provided in this Grant Agreement, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Grantee or Grantor at the address or number set forth on page 1 of this Grant Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

d. Amendments. This Grant Agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by both Parties.

e. Severability. If any provision of this Grant Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

f. Successors and Assigns. This Grant Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, except that Grantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Grantor.

g. Attorney's Fees. The prevailing party in any dispute arising from this Grant Agreement shall be entitled to recover from the other its reasonable attorney's fees at trial and on appeal and all costs and disbursements incurred therein.

h. Indemnity. To the extent permitted by law Grantee shall defend, save, hold harmless, and indemnify Grantor and its officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from or arising out of, or relating to the activities of Grantee or its officers, employees, contractors, or agents in connection with this Grant Agreement or the Project.

i. Entire Agreement. This Grant Agreement constitutes the entire agreement between the parties.

j. Counterparts. This Grant Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Grant Agreement so executed shall constitute an original.

k. Survival. All provisions of this Grant Agreement set forth under the following headings shall survive expiration or termination of the Agreement: USES OF GRANT, UNEXPENDED GRANT FUNDS AND REPAYMENT, GRANTEE’S CERTIFICATIONS, GRANTEE’S AGREEMENTS, TERMINATION AND DEFAULT, MISCELLANEOUS and any other provision that by its terms is intended to survive.

l. No Third Party Beneficiaries. Grantor and Grantee are the only parties to this Grant Agreement and are the only parties entitled to enforce its terms. Nothing in this Grant Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Grant Agreement.

m. Construction. The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Grant Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be duly executed as of the dates set forth below their respective signatures.

METRO

MORTENSON DEVELOPMENT, INC.

By: _____

By: _____

Date: _____

Date: _____

AGREEMENT FOR GRANT OF REVENUE BOND PROCEEDS

Between: Metro, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter (“Grantor”) [insert address]

And: Mortenson Development, Inc., a Minnesota corporation (“Grantee”) [insert address]

1. BASIS OF GRANT AWARD

WHEREAS, this Grant Agreement for Grant of Revenue Bond Proceeds (the “Grant Agreement”), is made as of this ____ day of _____, ____ (the last date of signature below) (“Effective Date”), between Grantor and Grantee (either of them individually, a “Party,” or collectively, the “Parties”).

WHEREAS, Grantor and its subsidiary the Metropolitan Exposition and Recreation Commission are responsible for ownership and/or management of several facilities and a number of programs to support regional tourism and spectator facilities, the visitor and hospitality industry and to maximize the economic development benefits associated with the visitor industry, including the Oregon Convention Center (the “OCC”).

Whereas, Grantor believes that a successful, first-class, premium-branded and adjacently located convention center hotel (the “Hotel” or the “Project”) is critical to the success and marketability of the OCC and to meet the goals of the region for bringing national conventions to the OCC and thereby increasing tourism and economic development to the City of Portland, the metropolitan region, and the State of Oregon.

Whereas, Grantor has entered into the Development and Financing Agreement, dated _____, ____ (the “Development and Financing Agreement”) with Grantee pursuant to which Grantee has agreed to construct a hotel as more particularly described in the Development and Financing Agreement.

Whereas, Grantor has agreed within the Development and Financing Agreement to issue revenue bonds (“Metro Revenue Bonds”), and grant certain proceeds of such Metro Revenue Bonds to Grantee to fund a portion of the construction of the hotel.

Whereas, the Parties hereby enter into this Grant Agreement to provide for the grant of certain Metro Revenue Bond proceeds under the terms set forth in this Grant Agreement.

Grantor is willing to make a grant to Grantee for such purposes on the terms and conditions of Grant Agreement. Accordingly, the Parties agree as follows:

2. DATE AND TERM OF AGREEMENT

This Grant Agreement shall become effective on the date that it is fully executed and approved as required by applicable law and shall expire upon the date of the last expenditure of Grant funds by Grantee.

3. GRANT AWARD

a. Grant. Grantor shall provide up to a maximum of \$_____ of proceeds from the sale of Metro Revenue Bonds (the “Grant”), expected to be issued on or before _____, to Grantee solely for the purposes described herein. The Grant shall be no more than forty percent (40%) of the total [eligible] Project Costs, as such term is defined in the Project Funding Agreement.

b. Availability of Funds. This Grant is subject to Grantor’s receipt of sufficient net proceeds from the sale of Metro Revenue Bonds to make the payment(s) to Grantee contemplated in this Grant Agreement. Grantor’s obligation to disburse the Grant to Grantee under this Grant Agreement is expressly conditioned on Grantor’s receipt of net proceeds from the sale of Metro Revenue Bonds sufficient to make the disbursements. Nothing in this Grant Agreement is intended to obligate Grantor to issue the Metro Revenue Bonds.

4. DISBURSEMENT OF GRANT

a. Timing of Disbursements. All granted proceeds of the Metro Revenue Bonds shall be held and invested by _____ (the “Disbursing Agent”), as disbursing agent, as described in the Project Funding Agreement, dated ____, ____, among Grantor, Grantee, [Lender], and

[Disbursing Agent] (the “Project Funding Agreement”), until transferred to Grantee to pay eligible Project Costs, as defined in the Project Funding Agreement, under the terms and conditions set forth therein.

b. Earnings on Net Proceeds. As provided for in the Project Funding Agreement, the granted proceeds of the Metro Revenue Bonds shall be invested by the Disbursing Agent prior to disbursement of funds to Grantee. Subject to the limitations provided in Section 4.c. and Section 5.a. through 5.d., below, any investment proceeds shall be available for those purposes specified in the Project Funding Agreement.

c. Conditions to Disbursements. Any disbursement of amounts granted under this Grant Agreement is expressly conditioned upon compliance with the terms and conditions set forth in this Grant Agreement, the Development and Financing Agreement, and the Project Funding Agreement.

5. USES OF GRANT

a. Eligible Uses of Grant. Grantee agrees to expend the Grant, and any investment earnings disbursed to Grantee pursuant to the Project Funding Agreement, only for Project Costs, as further restricted by Sections 5.b. through 5.d. below. Grantee shall not use the Grant for any purpose not permitted by this Section 5.

b. Ineligible Project Costs. Grantee shall not expend Grant monies for any of the following Project Costs: [insert list of known ineligible costs listed in the budget at the time this agreement is signed, if any].

c. Uses of Grant Limited to Capital Expenditures. In order to maintain the excludability of interest on the Metro Revenue Bonds from gross income for Federal income tax purposes, Grantee agrees to expend any amounts disbursed to it pursuant to this Grant Agreement only for Project Costs that are of a type that are properly chargeable to a capital account or would be so chargeable with a proper election, under general Federal income tax principles.

d. Limitation on Use of Grant Proceeds for Payments to Hotel Owner or Related Parties. In order to maintain the excludability of interest on the Metro Revenue Bonds from gross income for

Federal income tax purposes, Grantee agrees not to use Grant moneys to pay Project Costs that represent payments to Oregon Convention Center Hotel, LLC (“Hotel Owner”) or any related party, within the meaning of Treasury Regulation §1.150-1(e), unless Grantee can track the ultimate use of such Grant moneys for Project Costs that are paid to unrelated parties. Examples of Project Costs for which Grantee is specifically prohibited from using amounts granted under this Grant Agreement pursuant to this limitation, include the following Project Costs included in the current budget: [list any known payments to Hotel Owner or related parties, if any].

6. REPAYMENT OBLIGATIONS

a. Expectation as to Timing of Disbursement Grant Proceeds. Grantee expects that it will complete the Project and request all funds available pursuant to this Grant on or before _____, which is a date not more than three (3) years after the effective date of this Grant Agreement.

b. Requirements to Repay Grant. It is the express intention of the Parties that Grantee shall be under no obligation to directly or indirectly repay Grantor, or any party related to Grantor, any amounts granted pursuant to this Grant Agreement, provided that Grantee shall immediately repay to Grantor amounts disbursed under this Grant Agreement, upon Grantor’s written demand, in the event of occurrence of one of the following events indicating a failure to expend Grant proceeds in accordance with the governmental purpose of the Grant:

- Use of Grant funds for costs other than Project Costs, as limited by Section 5 of this Grant Agreement and the Project Funding Agreement;
- Failure to comply with the agreements between the Parties relating to the development of the Hotel as described in the Development and Financing Agreement.

7. GRANTEE’S CERTIFICATIONS

Grantee certifies to Grantor as follows:

a. Existence and Power. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute this Grant Agreement and perform its obligations hereunder.

b. Authority, No Contravention. The making and performance by Grantee of this Grant Agreement: (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Grantee's charter or other organizational document, and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected.

c. Binding Obligation. This Grant Agreement has been duly executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.

d. Approvals. No authorization, consent, license, approval of or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Grant Agreement.

e. Sufficient Funds. The maximum amount of the Grant under this Grant Agreement when added to other funds available to Grantee will be sufficient to pay the approximately \$_____ million estimated cost of the Project.

8. GRANTEE'S AGREEMENTS

a. Records and Inspection. Grantee will retain proper books of account and records on all activities associated with the Grant and the Project. Grantee will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records at least until the later of six (6) years from the expiration date of this Grant Agreement or the date that any dispute or controversy arising from this Grant Agreement is resolved. Grantee will permit Grantor, or its duly authorized representatives, to inspect its properties, all work done, labor performed and materials furnished in and about the Project, and to review and make excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of Grant funds received from Grantor. Access to these books of account and records is not limited to the required retention period. The authorized representatives shall have access to records at any reasonable time for as long as the records are

maintained. The requirements of this Section 8.a. are in addition to any document retention or other requirements imposed on Grantee pursuant to separate agreements with Grantor.

b. Reports. Grantee shall provide Grantor with all reports required by the Project Funding Agreement or other agreement entered into by the Parties in connection with the Project.

c. Operation of Project Consistent with Governmental Purposes of the Grant. Grantee acknowledges that Grantor is providing this Grant to fulfill established governmental purposes and goals of the region of bringing national conventions to the City of Portland and thereby increasing tourism and economic development to the City of Portland, the metropolitan region, and the State of Oregon, and that Grantor views the development and operation of the Hotel as being vital to achieving these purposes and goals. Accordingly, Grantee agrees to develop the Hotel in accordance with all agreements entered into with respect to the Project which agreements would include the Development and Financing Agreement and the Project Funding Agreement.

d. Compliance with Grantor Request Regarding Tax-Exemption of Metro Revenue Bonds. Grantee shall take any action reasonably requested by Grantor that Grantor deems necessary to maintain the excludability of interest on the Metro Revenue Bonds from gross income under the Internal Revenue Code of 1986. Examples of such actions could include, but would not be limited to: participation in discussions with officials of Grantor, Grantor's bond counsel, or the Internal Revenue Service, and production of records and documentation related to expenditure of Grant proceeds.

e. Compliance with Laws. Grantee shall comply with all laws, rules, and regulations of any governmental authority applicable to the Project, this Grant Agreement, or Grantee's performance under this Grant Agreement.

9. TERMINATION AND DEFAULT

a. Mutual Termination. This Grant Agreement may be terminated by mutual consent of both parties.

b. Default. Grantee shall be in default under this Grant Agreement upon the occurrence of any of the following events:

- (a) Grantee falls to perform or observe any of its covenants or agreements contained herein;
or
 - (b) Any certification, representation or statement made by Grantee herein, or in any documents or reports submitted to Grantor related to the Project or this Grant Agreement, are untrue in any material respect; or
 - (c) Grantee: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing; or
 - (d) A proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).
- c. Remedies Upon Default. If Grantee's default is not cured within 15 days of written notice thereof to Grantee from Grantor or such longer period as Grantor may authorize in its sole

discretion, Grantor may take any or all of the following actions: (a) suspend all future Grant disbursements to Grantee under this Grant Agreement and the Project Funding Agreement, (b) terminate this Grant Agreement upon written notice to Grantee, (c) demand repayment of all or any portion of the Grant, but only to the extent that such default indicates a failure to expend Grant proceeds in accordance with the governmental purpose of the Grant as described in Section 6.b. above, or (d) pursue or exercise any other remedy available at law or in equity. If, as a result of Grantee's default, Grantor demands return of all or any portion of the Grant, Grantee shall pay the amount to Grantor upon Grantor's demand.

10. MISCELLANEOUS

a. No Implied Waiver, Cumulative Remedies. The failure of Grantor to exercise, and any delay in exercising, any right, power, or privilege under this Grant Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise or any right power, or privilege under this Grant Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

b. Governing Law; Venue; Consent to Jurisdiction. This Grant Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Grantor (or any related party) and Grantee (or any related party) that arises from or relates to this Grant Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. GRANTEE, BY EXECUTION OF THIS GRANT AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

c. Notices. Except as otherwise expressly provided in this Grant Agreement, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Grantee or Grantor at the address or number set forth on page 1 of this Grant Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any

communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

d. Amendments. This Grant Agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by both Parties.

e. Severability. If any provision of this Grant Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

f. Successors and Assigns. This Grant Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, except that Grantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Grantor.

g. Attorney's Fees. The prevailing party in any dispute arising from this Grant Agreement shall be entitled to recover from the other its reasonable attorney's fees at trial and on appeal and all costs and disbursements incurred therein.

h. Indemnity. To the extent permitted by law Grantee shall defend, save, hold harmless, and indemnify Grantor and its officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from or arising out of, or relating to the activities of Grantee or its officers, employees, contractors, or agents in connection with this Grant Agreement or the Project.

i. Entire Agreement. This Grant Agreement constitutes the entire agreement between the parties.

j. Counterparts. This Grant Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Grant Agreement so executed shall constitute an original.

k. Survival. All provisions of this Grant Agreement set forth under the following headings shall survive expiration or termination of the Agreement: USES OF GRANT, UNEXPENDED GRANT FUNDS AND REPAYMENT, GRANTEE'S CERTIFICATIONS, GRANTEE'S AGREEMENTS, TERMINATION AND DEFAULT, MISCELLANEOUS and any other provision that by its terms is intended to survive.

l. No Third Party Beneficiaries. Grantor and Grantee are the only parties to this Grant Agreement and are the only parties entitled to enforce its terms. Nothing in this Grant Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Grant Agreement.

m. Construction. The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Grant Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be duly executed as of the dates set forth below their respective signatures.

METRO

MORTENSON DEVELOPMENT, INC.

By: _____

By: _____

Date: _____

Date: _____

ATTACHMENT A

DEVELOPER'S PREFERRED HOTEL SITE LOCATION



ATTACHMENT C

PDC-OWNED SITE ADJACENT TO STARTERRA PROPERTY



ATTACHMENT 2.13

PROJECT FUNDING AGREEMENT

between

Metro

And

Mortenson Development, Inc.

And

[Lender]

And

[Disbursing Agent]

Dated as of _____, 201_

PROJECT FUNDING AGREEMENT

This Project Funding Agreement, dated as of _____, 201__ (the “Project Funding Agreement”), is made and entered into between Mortenson Development, Inc., a Minnesota corporation (“MDI”), Metro, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter (“Metro”), _____ (“Lender”), and _____ as disbursing agent as provided herein (“Disbursing Agent”).

RECITALS

[Conform Recitals to final transaction structure]

Pursuant to the terms of that certain Development and Financing Agreement, dated as of _____, 2014 (as amended from time to time, the “DFA”), by and among Oregon Convention Center Hotel, LLC, a _____ limited liability company (“Hotel Owner”), MDI and Metro, the parties thereto intend to provide for the funding and development of an approximately 600 room hotel including functionally related facilities (the “Hotel”) located adjacent to the Oregon Convention Center (“OCC”) on a portion of the real property located in Portland, Oregon legally described on Exhibit F attached hereto (the “Land”).

Pursuant to the terms of the DFA, Metro has agreed to assist in the development of the Hotel by financing certain grants and other funds all as more fully described in the DFA.

Pursuant to the terms of a Hotel Purchase Agreement dated as of _____, 2014 (the “Hotel Purchase Agreement”), the Hotel Owner has agreed to purchase the Hotel from MDI upon completion of the construction of the Hotel.

Under the terms of a *[Construction Loan Agreement]*, made and entered into as of even date herewith (the “Construction Loan Agreement”), by and between MDI and the Lender, MDI has executed and delivered that certain Promissory Note payable to the order of Lender, dated the date hereof, to evidence a loan (the “Loan”) to MDI in the original stated principal amount of _____ (with all extensions, renewals, modifications, substitutions and replacements, the “Note”). The proceeds derived from the Loan (the “Loan Proceeds”) will be applied by MDI to pay the following: (i) a portion of the costs of the acquisition, construction, financing and equipping of the Hotel; (ii) a portion of the interest due on the Note; and (iii) the funding of one or more reserve funds pursuant to the Construction Loan Agreement. Under the terms of the Construction Loan Agreement, the Lender will disburse the Loan Proceeds to MDI to finance the Hotel, to enforce certain obligations of MDI under the terms of the Construction Loan Agreement, and to pursue remedies in the event of a default by MDI under the terms of the Construction Loan Agreement following the expiration of any applicable notice, grace or cure periods (an “Event of Default”).

MDI has agreed with the Lender and MDI to provide equity in the form of cash (the “MDI Equity”) to finance a portion of the costs of the acquisition, construction and equipping of the Hotel, as provided herein. The MDI Equity will be held by [_____], in its capacity as depository bank, in a restricted account that only the Disbursing Agent is authorized to draw upon (the “MDI Equity Account”) and will be disbursed to pay the following: (i) a portion of the costs of the acquisition, construction, financing and equipping of the Hotel; and (ii) a portion of the interest due on the Note. The MDI Equity Account and the funds on deposit therein shall be pledged to Lender pursuant to a pledge and

security agreement in form and substance acceptable to Lender as security for MDI's obligations under the Construction Loan Agreement, the Note, the Mortgage and the other Loan Documents.

The Loan Proceeds and the MDI Equity are collectively referred to herein as the "Developer Contribution".

MDI has caused a payment and performance bond in the amount of \$_____ to be issued for the benefit of Metro and the Construction Lender.

The Metro Funds, consisting of (i) the Metro Grant; (ii) the Metro Revenue Bond Proceeds; and (iii) the Lottery Funds will be held by _____, in its capacity as depository bank, in a restricted account that only the Disbursing Agent is authorized to draw upon (the "Metro Account") and will be disbursed to pay a portion of the costs of the acquisition, construction, financing and equipping of the Hotel.

MDI has secured a loan from the Portland Development Commission (PDC) in the amount of \$4,000,000.00, the proceeds of which will be available to pay costs of the Project according to the terms of the PDC loan documents. The proceeds of the PDC Loan will not be disbursed pursuant to this Project Funding Agreement, but are an independent source of funding for the Project.

The Hotel Owner, MDI, Metro, and the Lender have requested that the Disbursing Agent supervise the disbursement of: (i) the Metro Grant; (ii) the Metro Revenue Bond Proceeds; (iii) the Lottery Funds; (iv) the Loan Proceeds; and (v) the MDI Equity (collectively, the "Project Funds").

Unless otherwise provided herein, capitalized terms not defined in this Project Funding Agreement shall have the meanings assigned to such terms on Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, it is agreed by and between the parties hereto as follows:

Section 1. Conditions to Disbursements of Project Funds. In addition to any documents required to be provided as a condition to any disbursement of Project Funds under any provision of the DFA, or the Construction Loan Agreement, prior to the initial disbursement of any Project Funds, the Disbursing Agent shall have received the fully executed originals, or copies of fully executed originals if referenced herein, of the following:

a. The Construction Loan Agreement and a copy of the Note verifying the unconditional availability of the Loan Funds, provided that MDI is not in default.

b. A project budget for the Hotel, consistent with the Closing Budget approved by Metro, MDI and the Hotel Owner as a condition to the Closing pursuant to the Development and Financing Agreement, certified by MDI as true, correct and complete, and setting forth in form and substance satisfactory to the Disbursing Agent all Project Costs related to the Hotel.

c. A sworn construction cost statement executed by MDI and M.A. Mortenson Company (the "Design-Builder") with respect to the Hotel itemizing all Direct Costs and Indirect Costs to be incurred with respect to the acquisition, construction, and equipping of the Hotel and all related costs to be paid from the MDI Equity (the "Hotel Funds").

d. Copies of the DFA, the Metro Grant Agreement, the Metro Grant of Revenue Bond Proceeds and the Metro/State Lottery Bond Grant Agreement, and such other agreements as may be necessary to verify the availability of the Metro Funds.

e. The Hotel Purchase Agreement.

f. The Design-Build Contract, dated _____, 201__, between MDI and the Design-Builder, for the design and construction of the Hotel (the “Hotel Design-Build Contract”).

MDI, Metro and the Lender shall provide such additional documents and instruments as may be reasonably requested by the Disbursing Agent during the term of this Project Funding Agreement.

Section 2. Sources of Project Funds. The following Project Funds shall be made available and shall be applied to finance the Hotel:

Sources of Project Funds	Amount of Project Funds
Metro Grant	\$ 4,000,000.00
Metro Revenue Bond Proceeds	Up to \$ 60,000,000.00
Lottery Funds	\$ 10,000,000.00
Developer Contribution	\$ _____
Total	\$ _____

Section 3. Disbursements for the Hotel.

a. The sole source of funds to finance the Hotel shall be the Project Funds, proceeds of the PDC loan, and any additional cash equity as may be required to pay for the costs of the Hotel.

b.

i. All disbursements of Loan Proceeds shall be made in accordance with the requirements of the Construction Loan Agreement and applicable provisions of this Project Funding Agreement. All disbursements of MDI Equity shall be made in accordance with the Hotel Purchase Agreement and this Project Funding Agreement. All disbursements of the Metro Funds shall be made in accordance with the DFA, the Metro Grant Agreement-Bond Proceeds, the Metro Grant Agreement, the State Lottery Funds Agreement and this Project Funding Agreement.

ii. On any date that MDI seeks a disbursement of Project Funds to pay Direct Costs and, except as provided in Section 5 below, Indirect Costs, MDI shall submit an Application for Payment Certification to Lender, Engineer, Metro, and the Disbursing Agent.

iii. Each Application for Payment shall clearly set forth the amounts due to each First Tier Contractor out of the requested disbursement and shall be accompanied by the documentation set forth on Exhibit B to this Project Funding Agreement. If such documentation includes an Alternative Certificate with respect to the certifications set forth in Exhibit B1(a) or 1(d), Metro and the Lender shall not be obligated to approve such Application for Payment unless Metro and the Lender are each satisfied that the matter identified in the Alternative Certificate is adequately addressed by damages available under the Hotel Purchase Agreement, the DFA or by other assurances provided by MDI. If such documentation includes an Alternative Certificate with respect to the certification set forth in Exhibit B1(e), the Lender, the Disbursing Agent and/or Metro may withhold their approval of such Application for Payment unless and until MDI deposits cash with Lender or Disbursing Agent in an amount equal to the difference between the sum of the undisbursed Loan Proceeds plus the undisbursed funds in the MDI Equity Account and the amount necessary to pay all unpaid costs of the Hotel.

iv.

(A) On or before the 5th calendar day before the end of each month, or if such 5th day before is not a Business Day, then on or before the first Business Day thereafter, MDI shall submit to Engineer and review with Engineer a “pencil draw” draft of each of MDI’s Application for Payments for the upcoming month, and shall coordinate with Engineer for Engineer’s inspection of the work to be included in such Application for Payments. Such draft Application for Payments and inspections are for the purposes of giving Engineer sufficient preparatory information to expedite Engineer’s review of the actual Application for Payments. Engineer shall complete its review of the Application for Payment and within three (3) Business Days from the date of receipt of such Application for Payment shall either issue an Engineer’s Report to the Disbursing Agent, with a copy to MDI, Metro and the Lender, or provide written notice of insufficiency of the Application for Payment to MDI, Metro, Lender, and Disbursing Agent.

(B) The Lender, Metro, and Disbursing Agent shall complete their respective review and shall approve or disapprove the Application for Payment within seven (7) Business Days from the date of receipt of such Application for Payment.

(C) Metro shall send written notice of its approval or disapproval of the Application for Payment (including, without limitation, its approval or disapproval of the Alternative Certificate) to MDI, Lender, and the Disbursing Agent within said seven (7) Business Day period. Metro’s approval or disapproval will be based on Metro’s reasonable determination (which may deviate from the Engineer’s Report only for demonstrable error) that the progress of construction is consistent with the Approved Plans, the Project Schedule, Hyatt Regency brand standards, applicable codes and the stated percent of construction completion.

(D) The Lender shall send written notice of its approval of the Application for Payment (including without limitation its approval or disapproval of an Alternative Certificate) to the Disbursing Agent, or shall send written notice of insufficiency, if applicable, of the Application for Payment to MDI, Metro, and Disbursing Agent within said seven (7) Business Day period, specifying any such insufficiency in reasonable detail.

(E) If notice of approval or disapproval is not timely delivered by any one or more of the foregoing parties, said party or parties shall be deemed to have delivered notice of approval unless Engineer issues a notice of insufficiency, in which case the failure to respond shall be deemed to be a notice of disapproval.

(F) If the Disbursing Agent has received the Engineer's Report and Metro's approval, the Lender's written approval of the Application for Payment and if the Disbursing Agent determines that the Application for Payment is in substantially proper form and that all the costs proposed to be paid from a disbursement are authorized to be paid from Project Funds, the Disbursing Agent shall submit the approved Application for Payment to Lender and Metro within one (1) Business Day following the Disbursing Agent's receipt of the Lender's and Metro's approval of such Application for Payment.

v. Each approved Application for Payment shall be paid from the sources that minimize the interest expense to the Project, as reasonably determined by Developer and specified by Developer in each Application for Payment, provided that a minimum of 10% of each approved Application for Payment shall be paid from the Developer Contribution.

vi. Provided that the conditions of the Construction Loan Agreement and this Project Funding Agreement have been satisfied, the Lender shall pay its pro rata share of the amount set forth in the Application for Payment to the Disbursing Agent within three (3) Business Days after receipt of such approved Application for Payment. Provided that the conditions of the DFA have been satisfied, Metro shall pay its pro rata share of the amount set forth in the Application for Payment to the Disbursing Agent within three (3) Business Days after receipt of such approved Application for Payment. Upon receipt of such funds from the Lender and Metro, the Disbursing Agent shall draw upon the MDI Equity Account in an amount equal to the pro rata share of the amount set forth in the Application for Payment to be paid from MDI Equity.

c. Any money drawn by or delivered to the Disbursing Agent for the payment of costs pursuant to an approved Application for Payment shall be paid by Disbursing Agent wire transfer within one (1) Business Day of the date of receipt of such money. Except as provided in this Section 3(c), such money shall be paid to the Design-Builder in the amount due to the Design-Builder (including all of its subcontractors) as set forth in the Application for Payment, and the balance of the Application for Payment to MDI.

Section 4. Additional Terms and Conditions of Disbursements.

a. With each request for a disbursement of Project Funds under this Project Funding Agreement, MDI shall be deemed to have represented and warranted to Metro, the Lender, and the Disbursing Agent that there are no "Defaults" or "Events of Default" on the part of MDI under any documents executed and delivered by MDI in connection with the Note, as of the date

of such request for disbursement, and that all conditions to be satisfied by MDI for such disbursements set forth in the Hotel Purchase Agreement, the Construction Loan Agreement, the Metro Grant Agreement, the Metro Grant of Revenue Bond Proceeds, the Metro/State Lottery Bond Grant Agreement and this Project Funding Agreement have been satisfied.

b. In the event that the remaining undisbursed Project Funds are not sufficient to complete the Hotel, the Disbursing Agent may withhold disbursement of Project Funds until the Disbursing Agent receives a deposit from MDI of sufficient money to complete the Hotel in accordance with the terms of the Hotel Purchase Agreement. All monies so deposited shall be advanced by Disbursing Agent to pay costs of the Hotel in the same manner as, and prior to, further advances of MDI Equity.

c. In the event that the Disbursing Agent shall determine that proper documentation to support a given disbursement, as required by this Project Funding Agreement, including, without limitation, the documentation set forth in EXHIBIT B to this Project Funding Agreement has not been furnished, the Disbursing Agent shall withhold payment of such portion of such disbursement as shall not be so supported by proper documentation, and shall promptly notify the Hotel Owner, Lender, MDI, and Metro of the discrepancy or omission of such documentation. Until such time as such discrepancy or omission is corrected to the reasonable satisfaction of the Disbursing Agent, it shall continue to withhold such amount. In the event that such discrepancy or omission is not corrected within five (5) Business Days, the Disbursing Agent shall provide written notice to Metro, Lender and the Hotel Owner and shall either (i) deposit such funds into the MDI Account or the Construction Escrow Account, as applicable or (ii) upon written request from Metro or the Lender, as applicable, return such funds to Metro or the Lender, as applicable, provided that returning such funds does not affect the priority of the Mortgage with respect to any such funds returned to the Lender. In the event the Disbursing Agent receives a notice of insufficiency from any party in accordance with the terms of this Project Funding Agreement, Disbursing Agent may, at its option and in its sole discretion, withhold payment of all or a portion of the advances of Project Funds until such time as the matters leading to the issuance of the notice of insufficiency have been cured.

d. In the event the Disbursing Agent shall disburse any Project Funds pursuant to this Master Disbursement Agreement, and Disbursing Agent later determines that the MDI representations pursuant to subparagraph (a) above is inaccurate or incomplete, the Disbursing Agent shall nevertheless be entitled to rely on the MDI certification as provided in the preceding paragraph. If the Disbursing Agent makes the determination described in this paragraph it will immediately notify all parties of the determination, and a party may require that no future disbursements are made to MDI until MDI provides a corrected and complete certification.

e. Notwithstanding anything herein to the contrary, the Lender may advance solely from the Loan Proceeds, and pay directly to itself, the accrued interest due and payable on the Note regardless of whether MDI submits an Application of Payment in connection with such interest cost.

f. In the event that MDI is entitled to receive payment pursuant to the terms of the Hotel Purchase Agreement and an Application for Payment is determined to be insufficient or is disapproved for any reason, MDI shall be entitled to pursue, and nothing herein shall be deemed a waiver of, MDI's rights and remedies under the Hotel Purchase Agreement.

g. MDI acknowledges and agrees that each Application for Payment shall be submitted simultaneously to the parties entitled to receive the same pursuant to the terms of this Project Funding Agreement.

Section 5. Miscellaneous Provisions.

a. The Hotel Owner shall be responsible for making inspections of the Hotel during the course of construction, and shall determine to its own satisfaction that the work done or material supplied by the payees to whom payment is to be made out of each disbursement has been properly done or supplied in accordance with applicable contracts with such payees. Metro may, and MDI shall allow access for Metro's representatives to, make inspections of the Hotel during the course of construction, and Metro may determine to its own satisfaction that the work done or material supplied by the payees to whom payment is to be made out of each disbursement has been properly done or supplied in accordance with applicable contracts with such payees. The Disbursing Agent, Metro and the Lender shall not be required to conduct any inspections of the Hotel. Any inspections by any party to this Project Funding Agreement are intended to be for the sole benefit of such party and neither the Hotel Owner nor any other person shall be entitled to rely on such inspections.

b. It is expressly understood and agreed that neither Metro, the Disbursing Agent, nor the Lender assumes any liability or responsibility for the satisfactory completion of the Hotel for the payment of the costs of the Hotel, for the adequacy of funds deposited with or advanced pursuant hereto to complete the Hotel, for inspections during construction, nor for any other acts on the part of the Hotel Owner, MDI, or the Design-Builder to be performed in the construction of the Hotel; provided, however, that nothing in this Section 5(b) shall limit the obligations of such parties to perform their respective covenants as set forth in the documents to which they are a party.

c. All obligations of Metro, the Disbursing Agent, and the Lender, hereunder, including the obligation to make disbursements, are imposed solely and exclusively for the benefit of the parties hereto, and no other person, shall have standing to require satisfaction of such obligations in accordance with their terms or be deemed to be a beneficiary of such obligations, any and all of which may be freely waived in whole or in part.

d. Metro, the Disbursing Agent, and the Lender make no representations and assume no duties or obligations as to third parties concerning the quality of the construction of the Hotel, or the absence therefrom of defects.

e. Any condition of this Project Funding Agreement which requires the submission of evidence of the existence or non-existence of a specified fact or facts implies as a condition the existence or non-existence, as the case may be, of such fact or facts, and the Disbursing Agent shall, at all times, be free independently to establish to its satisfaction and in its reasonable discretion such existence or non-existence.

f. MDI may not assign this Project Funding Agreement or any of its rights or obligations hereunder, without the prior written consent of Metro, the Disbursing Agent and the Lender, in their sole discretion.

g. Whenever in this Project Funding Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be

included and all covenants and agreements contained in this Project Funding Agreement by or on behalf of Metro, MDI, the Disbursing Agent, and the Lender shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not.

h. The Disbursing Agent shall disburse the Project Funds with the same degree of care that it would use in its general construction loan disbursing activities on behalf of third parties with respect to projects comparable to the Project described herein and Metro, and MDI, hereby disclaim the existence of any higher standard or duty of care owed by the Disbursing Agent to Metro, MDI, or the Lender with respect to the disbursement of the Project Funds; provided, however, the Disbursing Agent shall be liable to such parties for its negligence or willful misconduct in performing such duties. The Disbursing Agent shall have and may exercise such powers under this Project Funding Agreement as are specifically delegated to the Disbursing Agent by the terms hereof, together with such powers as are reasonably incidental thereto. As to any matters not expressly provided for in this Project Funding Agreement, the Disbursing Agent shall not be required to exercise any discretion or take any action, but may request the consent of Metro, or the Lender as applicable, to any such action not so provided for. The Disbursing Agent shall not be required to take any action which exposes the Disbursing Agent to personal liability or which is contrary to this Project Funding Agreement or applicable law. The Disbursing Agent shall not have any implied duties or any implied obligations to take any action under this Project Funding Agreement, including, without limitation, any implied duties or implied obligations that expose the Disbursing Agent to personal liability or are contrary to applicable law or any of the Loan Documents, the DFA or the Hotel Operating Agreement, and shall only have such duties and obligations as are specifically provided by this Project Funding Agreement to be taken by the Disbursing Agent. The Disbursing Agent shall act as an independent contractor in performing its obligations as the Disbursing Agent hereunder and nothing contained herein shall be deemed to create a fiduciary, joint venture, agency or partnership relationship among or between the Disbursing Agent and MDI or among or between the Disbursing Agent, Metro, or the Lender.

i. Neither the Disbursing Agent nor any of the Disbursing Agent's directors, officers, agents, attorneys, or employees shall be liable to the Hotel Owner, MDI, Metro or the Lender for any action taken or omitted to be taken by it or them under this Project Funding Agreement or in connection herewith, except that the Disbursing Agent shall be obligated on the terms set forth herein for performance of its express obligations hereunder. Notwithstanding anything in this Project Funding Agreement to the contrary, the Disbursing Agent shall not be relieved of any liability imposed by law for its negligence or willful misconduct.

j. MDI agrees to indemnify and hold harmless the Disbursing Agent, the Lender, Metro, and their respective officers, directors, employees, and agents from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgments and suits, of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Disbursing Agent, the Lender or Metro or any of their respective officers, directors, employees, or agents, as well as commercially reasonable costs, expenses or disbursements incurred by any of such parties in connection therewith, in any way relating to or arising out of any investigation, litigation, or proceeding concerning or relating to or in connection with the performance of their respective duties under this Project Funding Agreement to the extent related to or arising in connection with the Hotel, except to the extent arising from the negligence or willful misconduct of the respective party. Without limitation of the foregoing, MDI agrees to reimburse the Disbursing Agent, the Lender and Metro promptly upon demand for any commercially reasonable out-of-pocket expenses (including counsel fees) incurred by the Disbursing Agent, the Lender, Metro, or their respective officers, directors, employees, or agents in connection with the preparation, execution, administration, or enforcement of, or obtaining legal advice in respect of

rights or responsibilities under, this Project Funding Agreement to the extent related to or arising in connection with the Hotel.

k. The Disbursing Agent may resign at any time as the Disbursing Agent under this Project Funding Agreement by giving not less than sixty (60) days written notice thereof to the Hotel Owner, MDI, Metro, and the Lender. Upon any such resignation, the Lender shall appoint a successor disbursing agent hereunder with the consent of MDI and Metro, which consent will not be unreasonably withheld, except that MDI's consent or approval is not required if a Default or Event of Default has occurred and is continuing under any of the Loan Documents. If the Lender fails to appoint a successor disbursing agent within thirty (30) days after such notice has been given, then Metro shall appoint a successor disbursing agent hereunder subject to the same consents required for an appointment by the Lender.

l. The Disbursing Agent may conclusively rely upon and shall be protected in acting upon any document believed by the Disbursing Agent to be genuine and to have been signed or presented by the proper parties in good faith after reasonable due diligence on the Disbursing Agent's part to ascertain the genuineness and execution of such document. None of the Disbursing Agent, Metro or the Lender insures that the Project will be completed, nor does it insure that the Project when completed will be in accordance with the Approved Plans, nor that sufficient Project Funds will be available for the completion, nor does it make the certification of Engineer its own, nor does it assume any liability for same other than procurement as one of the conditions precedent to each disbursement.

m. Notwithstanding anything herein to the contrary, all Project Funds shall be disbursed through the Disbursement Agent as provided in this Project Funding Agreement, except for Indirect Costs which the Disbursing Agent or the Lender may deduct from each advance and pay directly to the payees (which may include the Lender).

n. The parties acknowledge that none of the Disbursing Agent, the Lender or Metro shall be responsible for creating, furnishing or reporting any IRS 1099 notices or filings for any payments it disburses under this Project Funding Agreement for the parties.

o. The headings of the sections, paragraphs, and subdivisions of this Project Funding Agreement are for the convenience of reference only, and are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

p. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

q. Neither this Project Funding Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

r. Any notice which any party hereto may desire or may be required to give to any of the parties shall be in writing and shall be deemed to have been properly given or served by (i) personal delivery, (ii) depositing the same with the United States Postal Service, or any official successor thereto, designated as Certified Mail, Return Receipt Requested, bearing adequate postage, (iii) depositing the same with a reputable private courier or overnight delivery service, or (iv) facsimile copy with transmitting-device confirmation of delivery. Each such notice shall be effective (a) immediately upon personal delivery or upon delivery by facsimile, (b) three (3) days after being deposited in the U.S. Mail, or (c) one (1) Business Day after being deposited with

such courier service. The time period within which a response to any such notice must be given, however shall commence to run from the date of receipt of the notice by the addressee thereof and provided further any notice received after 5:00 p.m. shall be deemed to have been received on the next Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, any party hereto shall have the right from time to time to change its address and shall have the right to specify as its address any other address within the United States of America. Notwithstanding the foregoing, each Application for Payment and each notice of approval or disapproval of the same shall be given by electronic mail with delivery receipt and shall be effective immediately upon delivery by electronic mail.

To MDI: Mortenson Development, Inc.
700 Meadow Lane North
Golden Valley, Minnesota 55422-4899
Attn: Thomas Lander

With a copy to: Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402-3901
Attn: Charles S. Ferrell, Esq.

To Metro: Martha Bennett, Chief Operating Officer
Metro
600 NE Grand Avenue
Portland, OR 97232

With a copy to: Office of the Metro Attorney
Alison Kean, Metro Attorney
600 NE Grand Avenue
Portland, OR 97232

To the Disbursing Agent: _____

With a copy to: _____

To the Lender: _____

And:

s. In consideration of the performance of Disbursing Agent's obligations hereunder, the Disbursing Agent will be paid a disbursing fee pursuant to separate agreements between the Disbursing Agent and MDI.

t. This Project Funding Agreement may be executed in any number of counterparts with same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument.

u. This Project Funding Agreement is effective as of the date stated on the cover page and, unless terminated as allowed by its terms, shall terminate, upon the date the final action required by a party to the Agreement is completed.

v. THE UNDERSIGNED EACH WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING TO WHICH ANY PARTIES TO THIS PROJECT FUNDING AGREEMENT ARE INVOLVED AND WHICH DIRECTLY OR INDIRECTLY IN ANY WAY ARISES OUT OF, IS RELATED TO, OR IS CONNECTED WITH THIS PROJECT FUNDING AGREEMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER, WHETHER ARISING OR ASSERTED BEFORE OR AFTER THE DATE OF THIS PROJECT FUNDING AGREEMENT.

w. The parties hereto agree that the exclusive jurisdiction and venue for any proceeding relating to a dispute arising under this Project Funding Agreement shall be any State or Federal court in the State of Oregon.

IN FURTHERANCE WHEREOF, the parties hereto have caused this Project Funding Agreement to be executed as of the date and year first above written.

[Signature pages follow]

Signature Page of the MDI to the Project Funding Agreement, dated _____, 201_.

MORTENSON DEVELOPMENT, INC.

By: _____
Name: _____
Title: _____

Signature Page of Metro to the Project Funding Agreement, dated _____, 201_.

METRO, a municipal corporation organized under the laws of the State of Oregon and Metro Charter

By: _____
Name: _____
Title: _____

Signature Page of the Lender to the Project Funding Agreement, dated _____, 201_.

[LENDER]

By: _____
Name: _____
Title: _____

Signature Page of the Disbursing Agent to the Project Funding Agreement, dated _____, 201_.

[DISBURSING AGENT]

By: _____
Name: _____
Title: _____

EXHIBIT A

DEFINITIONS

“Alternative Certificate” shall have the meaning ascribed to that term in Exhibit B attached hereto.

“Application for Payment” shall mean a completed AIA Form G702/703 and supporting schedules and certificates in the form attached to this Project Funding Agreement as Exhibit D requesting an advance of Loan Proceeds.

“Application for Payment Certification” means a certificate executed by MDI in the form attached to the Construction Loan Agreement.

“Approved Plans” means the plans and specifications identified on Exhibit G attached hereto.

“Architect” means _____, a _____.

“Business Day” shall mean any day that banks are open for business in Portland, Oregon.

“Change Order” shall have the meaning set forth in the Construction Loan Agreement..

“Construction Escrow Account” shall mean the account to be established with _____, wherein _____ will hold all Project Funds received by it and make disbursements therefrom.

“Construction Loan Agreement” is defined in the Recitals.

“Contract Documents” shall mean the Hotel Design-Build Contract, the Approved Plans and any Change Orders and other addenda thereto.

“Developer Contribution” is defined in the Recitals.

“Direct Costs” means all expenditures incurred or to be incurred for work, labor or materials furnished in connection with the design, development and construction of the Work, the cost categories of which are set forth in the project budgets.

“Disbursement Schedule” shall mean the schedule of the amounts of advances, to be funded pursuant to this Project Funding Agreement, anticipated to be requested each month during the term of construction of the Project (including an itemization of Direct Costs and Indirect Costs to be included in each such request), attached hereto as Exhibit E, as such disbursement schedule may change from time to time.

“Draw” means partial payments of the Project Costs made to MDI from time to time pursuant to this Project Funding Agreement.

“Engineer” means _____.

“Engineer’s Report” means a report to Metro, Lender and Disbursing Agent (i) confirming the progress of the Work done to date, (ii) confirming that such Work has been completed in a good and

workmanlike manner and in accordance with the Contract Documents and (iii) agreeing with the percentage of completion stated in the Application for Payment.

“First Tier Contractor” shall mean Design-Builder and those Persons furnishing Labor or Materials for the Project under a contract with MDI or Design-Builder.

“Force Majeure” shall mean wars, terrorism, explosion, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated, governmental action or inaction not reasonably anticipated, other acts of god, and other events beyond Developer’s reasonable control. “Force Majeure” specifically includes the refusal by the holder of the Developer Contribution Mortgage to make casualty insurance proceeds available to Developer for restoration and construction, and in such case the period of Force Majeure shall include the time needed to renegotiate or refinance the Developer Contribution Mortgage and related re-mobilization matters.

“Indirect Costs” means costs and expenditures, other than Direct Costs, incurred or to be incurred by MDI through substantial completion with respect to the Project, the cost categories of which are enumerated in the project budgets, including without limitation, costs of title disbursing services, costs of surveys, environmental assessments, development fees, appraisal fees, fees for zoning reports, governmental approvals and consultants’ fees.

“Intervening Liens” means any lien against the Project or any portion thereof filed with respect to any portion of the Work. Intervening Lien does not include any lien caused by or on account of: _____

“Lien” shall mean any lien that may be imposed by law or by contract against the Project or any portion thereof for the payment of labor or materials rendered by a person or entity in connection with the Work.

“Lien Rights” shall mean the right of a person to assert a Lien.

“Lottery Funds” means the \$10,000,000 lottery revenue bond proceeds payable to Metro to fund a portion of the construction of the Hotel as more fully described in the DFA and the [*Metro State Lottery Revenue Bond Grant Agreement*].

“Metro Funds” means the Metro Grant, the Metro Revenue Bond Proceeds, and the Lottery Funds, collectively.

“Metro Grant” means the \$4,000,000 grant for Project Costs to be provided by Metro pursuant to the DFA and the Metro Grant Agreement.

“Metro Revenue Bond” means revenue bond(s) issued by Metro expected to provide approximately \$60 million in net proceeds, and secured by the Visitor Facilities Trust Account Transient Lodging Tax Revenues defined in that certain Visitor Facilities Trust Account Intergovernmental Agreement, as amended through October 25, 2013.

“Metro Revenue Bond Proceeds” means the net proceeds of the Metro Revenue Bonds, not to exceed \$60 million.

“Project Costs” means, collectively, Direct Costs and Indirect Costs as shown in the project budgets.

“Subcontractor(s)” shall mean those persons furnishing labor or materials for the Project under a contract with Design-Builder.

“Substantial Completion Deadline” means ____ days after the date of this Project Funding Agreement, subject to Force Majeure.

“Unconditional Lien Release” shall mean such instrument as is required by applicable law to extinguish and completely release any Lien Rights available to a person, including any contractor, subcontractor or supplier, supplying materials or labor and/or performing Work in the Project or any portion thereof.

“Work” shall mean all labor and materials required to complete the construction of the Project including all improvements, site grading, demolition of existing improvements, if any, landscaping, signage, installation of utilities, curb and gutter and parking areas.

EXHIBIT B

DOCUMENTS TO ACCOMPANY EACH APPLICATION FOR PAYMENT

Each Application for Payment shall be accompanied by:

(1) A certificate of MDI to the effect that:

(a) the construction of the Project to date has been performed in accordance with the Approved Plans and the progress thereof is such that the Hotel will be completed by the Substantial Completion Deadline, subject to Force Majeure, delays caused by Hotel Owner, Metro or parties under any of their control, Change Orders or Intervening Liens,

(b) the amount of the Direct Costs for which such Draw is required is due to General Contractor for work, labor or materials furnished for the construction and installation of the applicable portion of the Project insofar as actually incorporated therein up to the date of such Application for Payment (in the case of the first Application for Payment) or to the date of such Application for Payment from the date of the previous Application for Payment (in the case of any subsequent Application for Payment),

(c) no part of the Project Costs described in such Application for Payment has been made the basis for any previous Draw,

(d) a statement that no uncured event of default by MDI has occurred under the terms of the Hotel Purchase Agreement,

(e) a statement that the undisbursed proceeds of the sum of the Project Funds equals or exceeds the amount necessary to pay all unpaid costs to complete construction of the Hotel, and

(f) all governmental approvals required to be obtained by the date of the Application for Payment for the construction of the Project at its then stage of completion shall have been obtained and are in full force and effect.

In the event MDI is unable to provide the certification required in (a), (d) or (e) above, MDI may provide an alternative certificate (an "Alternative Certificate") specifying the projected date of Substantial Completion, the uncured event of default and/or the amount of any deficit needed to complete construction of the applicable portion or portions of the Project.

(2) MDI and Design-Builder's application and certificate for payment (AIA Document G702/703 and supporting continuation schedules);

(3) A detailed written description and copies of all Change Orders and Work Change Directives issued through the date of the Application for Payment.

(4) If a portion of the Draw is for Indirect Costs, a certificate from MDI, in the applicable portion of the Application for Payment (a) to the effect that the amount of such Indirect Costs is justly due and owing and (b) specifying the stage of and percentage of completion of the amount remaining in the applicable project budget for the pre-development, off-site and/or Indirect Costs for which such Draw is requested.

(5) Design-Builder's schedule of the disbursements due to and already made by Design-Builder to First Tier Contractors on account of the work to be completed and the amount due to each First Tier Contractor in the current Application for Payment.

(6) The Architect's approval of the Application for Payment.

(7) An Unconditional Lien Release (conditioned only upon payment to MDI of the amount requested) from MDI and Design-Builder in the total amount of the progress payment being requested.

(8) Unconditional lien waivers from each First Tier Contractor covering the amounts disbursed to such First Tier Contractor from the immediately preceding Draw. Notwithstanding the foregoing, if the Disbursing Agent have not received a lien waiver covering the amounts disbursed to a Subcontractor for all work, labor or materials furnished for the construction and installation of the applicable portion or portions of the Project paid through the date of the previous Application for Payment, the absence of such lien waiver shall not delay any Draw, provided that either (1) (a) the aggregate cost of all such work, labor or materials for which lien waivers have not been received at any time does not exceed \$1,000,000, and (b) the Disbursing Agent may withhold from such Draw an amount equal to 150% of the aggregate cost of all work, labor or materials for which lien waivers have not been received or (2) such lien waivers have been received by the Disbursing Agent after the submission of the Application for Payment and prior to the date that is five (5) Business Days prior to the date Hotel Owner requests as the date of disbursement of such Draw.

(9) In the case of materials delivered to, stored on, and not yet incorporated in the Project (or suitably stored in a bonded warehouse or Design-Builder's off-site construction staging area), provided, however, that the aggregate amount of advances of Loan Proceeds or MDI Equity for such materials stored and not yet incorporated in the Hotel, as applicable, does not exceed \$1,000,000 per component of the Project at any time:

(i) the Design-Builder's certification that it holds good, marketable title to the materials and which title shall pass to Hotel Owner, as applicable, on payment to the Design-Builder of the advance;

(ii) delivery in the name of Hotel Owner, as applicable, to the Project (or into a bonded warehouse with prepaid storage fees with warehouseman's receipt delivered to the Lender or Hotel Owner, as applicable) in undamaged condition conforming to the Approved Plans and in a condition which is ready for immediate installation or adequate storage at the Project or the off-site construction staging area;

(iii) evidence of appropriate insurance coverage insuring Hotel Owner's interest, as applicable, in the materials while in storage and naming the Lender as mortgagee/loss payee; and

(iv) if requested by Lender in its reasonable discretion, evidence that the Lender has a first priority security interest in all such stored materials.

EXHIBIT C
FORM OF MECHANICS LIEN ENDORSEMENT

EXHIBIT D
APPLICATION FOR PAYMENT

EXHIBIT E
DISBURSEMENT SCHEDULE

EXHIBIT F
LEGAL DESCRIPTION

EXHIBIT G
LIST OF APPROVED PLANS

GUARANTY OF COMPLETION

THIS GUARANTY OF COMPLETION (this “Guaranty”) is made as of _____, 2014, by MORTENSON DEVELOPMENT, INC., a Minnesota corporation (“Guarantor”) for the benefit of METRO, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter (“Metro”).

RECITALS:

A. Guarantor and Metro are parties to that certain Development and Financing Agreement (the “Development Agreement”) dated May __, 2014, relating to the development of a convention center hotel (the “Hotel”) as described therein;

B. Guarantor and _____ (“Lender”) are parties to that certain [*Construction Loan Agreement*] pursuant to which Lender will provide to Guarantor a loan for the construction of the Hotel, such loan evidenced by a note, and secured by a mortgage (collectively, and together with such other documents executed by Guarantor and/or Lender in connection therewith, the “Loan Documents”).

C. Guarantor and [Hyatt] are parties to that certain Hotel Purchase Agreement (the “Hyatt Purchase Agreement”) dated _____, 2014, pursuant to which Guarantor agrees to develop and construct the Hotel and Hyatt agrees to purchase it.

D. Guarantor, Metro and [*specify other parties*] are parties to that certain Project Funding Agreement (the “Project Funding Agreement”) dated _____, 2014, pursuant to which the parties thereto commit to make funds available for the costs of development and construction of the Hotel.

Capitalized terms used herein but not defined herein shall have the meaning set forth in the Development Agreement.

NOW, THEREFORE, as an inducement to Metro to enter into the Development Agreement and the Project Funding Agreement and perform its obligations thereunder, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Guaranty. Guarantor hereby irrevocably and unconditionally guarantees to Metro to complete construction of the Project (defined below) in accordance with the Development Agreement, subject to Force Majeure, at Guarantor’s expense in accordance with the plans and specifications identified on Exhibit A attached hereto prepared by Guarantor and approved by Metro, as such approved plans and specifications may be modified from time to time in accordance with the Development Agreement (the “Approved Plans”; the Hotel as described in the Approved Plans is the “Project”), free and clear of all liens and in compliance with applicable laws, provided:
 - a. Metro performs all of its obligations under the Development Agreement and the Project Funding Agreement; and

- b. Each party to the Project Funding Agreement (other than Guarantor) performs all of its obligations under the Project Funding Agreement, provided that:
 - i. a party's failure to perform under the Project Funding Agreement that is the result of Guarantor's breach of the Development Agreement, the Loan Documents or the Hyatt Purchase Agreement shall not limit the Guaranty or excuse Guarantor's performance thereof; and
 - ii. Lender's refusal to make casualty insurance proceeds available to Guarantor for restoration and construction shall not limit the Guaranty or excuse Guarantor's performance thereof, but in such case the period of Force Majeure shall include the time needed to renegotiate or refinance the Construction Loan Agreement and related re-mobilization matters and Metro agrees to reasonably cooperate with Guarantor in connection with any such re-mobilization matters.
2. Hyatt Purchase Agreement. Guarantor has agreed to construct the Project for Hyatt pursuant to the Hyatt Purchase Agreement for a price and pursuant to a schedule as set forth in the Hyatt Purchase Agreement, and Guarantor agrees that Metro may enforce the guaranty set forth in Section 1 above by enforcing Guarantor's obligations under the Hyatt Purchase Agreement, as the Hyatt Purchase Agreement may be amended from time to time with the consent of Metro, including enforcing the price and schedule pursuant to the Hyatt Purchase Agreement, subject and subordinate to the rights of Hyatt and Lender pursuant to the Loan Documents, on the following terms and conditions:
- a. If Hyatt notifies Metro that Guarantor has defaulted under the Hyatt Purchase Agreement, and if Hyatt declines or fails for a period of thirty (30) days after notice from Metro to enforce the obligations of Guarantor under the Hyatt Purchase Agreement, then Metro may, upon prior written notice to Guarantor and Hyatt, enforce the Hyatt Purchase Agreement directly against Guarantor, including but not limited to delay damages, so long as Metro concurrently causes the obligations of Hyatt under the Hyatt Purchase Agreement to be performed, including but not limited to payment if and when due. Metro shall have no obligation to perform any such obligations of Hyatt, provided that Guarantor shall have no obligation to continue its performance under this Guaranty or the Hyatt Purchase Agreement in the absence of performance of the obligations of Hyatt, including but not limited to payment, under the Hyatt Purchase Agreement.
 - b. If Hyatt defaults under the Hyatt Purchase Agreement, Guarantor shall give Metro written notice thereof and Metro shall have thirty (30) days after receipt of such notice to cure such default or cause it to be cured (or, except for defaults which may be cured by the payment of money, such longer period after said receipt as may be reasonably necessary given the nature of the default so long as Metro is diligently pursuing a cure to such default), during which period Guarantor shall forbear exercising any right or remedy it may have with respect to such default, provided that

if any payments are suspended pursuant to the Project Funding Agreement on account of such default, within five (5) days after the expiration of Hyatt's cure period provided in the Hyatt Purchase Agreement, and continuing thereafter Metro must cause any amounts suspended on account of Hyatt's default to be released and paid to Guarantor.

3. Direct Access Agreements. The obligations of Guarantor under the Hyatt Purchase Agreement are supported by a Direct Access Agreement executed by the Design-Builder pursuant to which the Design-Builder grants certain additional rights and remedies to Hyatt. The obligations of Guarantor pursuant to the Loan Documents are supported by a Direct Access Agreement executed by Design-Builder to which the Design-Builder grants certain additional rights and remedies to Lender. The rights of Metro under this Guaranty are subordinate to the rights of Hyatt and Lender under such Direct Access Agreements.
4. Transfer. The Guaranty shall remain in full force and effect notwithstanding any transfer of the Project or any interest therein by Guarantor, including but not limited to any transfer to the SPE, Lender or to Hyatt.
5. Termination of Guaranty. Upon Final Completion of the Project, as certified by the Engineer, as defined in and pursuant to the Project Funding Agreement, issuance of a certificate of occupancy for the Project (which may be temporary or partial so long as it permits occupancy of the Project as a hotel), and receipt of final lien waivers pursuant to the Project Funding Agreement this Guaranty shall permanently terminate and expire.
6. Waiver of Suretyship; Acceptance. The liability of the Guarantor hereunder shall not be affected or impaired in any way by any of the following acts or things (which Metro is hereby expressly authorized to do, omit or suffer from time to time without notice to or consent of anyone): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all of the guaranteed obligations; (ii) any modification of the terms of the guaranteed obligations; (iii) any modification, alteration, substitution, exchange, surrender, cancellation, termination, release or other change, impairment, limitation, loss or discharge of any collateral security for any of the guaranteed obligations; or (iv) any manner, order or method of application of any payments or credits on any guaranteed obligations. The Guarantor waives any and all defenses and discharges available to a surety, guarantor, or accommodation co-obligor, dependent on its character as such, other than payment and performance of the guaranteed obligations. Guarantor also hereby waives: (i) presentment, demand for payment, notice of dishonor or nonpayment, and protest of the guaranteed obligations; and (ii) notice of the acceptance hereof by Metro and of the creation and existence of all guaranteed obligations. Metro shall not be required to first resort for payment of the guaranteed obligations to any other persons or corporations, their properties or estates, or to any collateral, property, liens or other rights or remedies whatsoever.
7. Notices. All notices given under this Guaranty shall be in writing and may be delivered by personal delivery, by overnight courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, or by e-mail, and addressed as follows:

To MDI: Mortenson Development, Inc.
700 Meadow Lane North
Golden Valley, Minnesota 55422-4899
Attn: Thomas Lander

With a copy to: Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402-3901
Attn: Charles S. Ferrell, Esq.

To Metro: Martha Bennett, Chief Operating Officer
Metro
600 NE Grand Avenue
Portland, OR 97232

With a copy to: Office of the Metro Attorney
Alison Kean, Metro Attorney
600 NE Grand Avenue
Portland, OR 97232

Notices shall be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

8. Governing Law; Venue; Jurisdiction. This Guaranty shall be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions. Any action or suit to enforce or construe any provision of this Guaranty by either party shall be brought in the Circuit Court of the State of Oregon for Multnomah County or the Federal District Court located in Multnomah County, Oregon. The Circuit Court of the State of Oregon for Multnomah County or the Federal District Court located in Multnomah County shall have exclusive jurisdiction over all lawsuits brought by any Party against any other Party with respect to the subject matter of this Agreement, and each Party hereby irrevocably consents to such exclusive jurisdiction and waives any and all objections it might otherwise have with respect thereto.
9. No Amendment. This Guaranty can be waived, modified, or amended only explicitly in a writing signed by Metro and Guarantor. A waiver so signed shall be effective only in the specific instance and for the specific purpose given.
10. Counterparts. This Guaranty may be executed in any number of counterparts, whether signed by one or more persons or by all persons who collectively constitute Guarantor, each

of which, when so executed and delivered, shall be deemed original, but all such counterparts together shall constitute but one and the same instrument.

[Signature Page Follows]

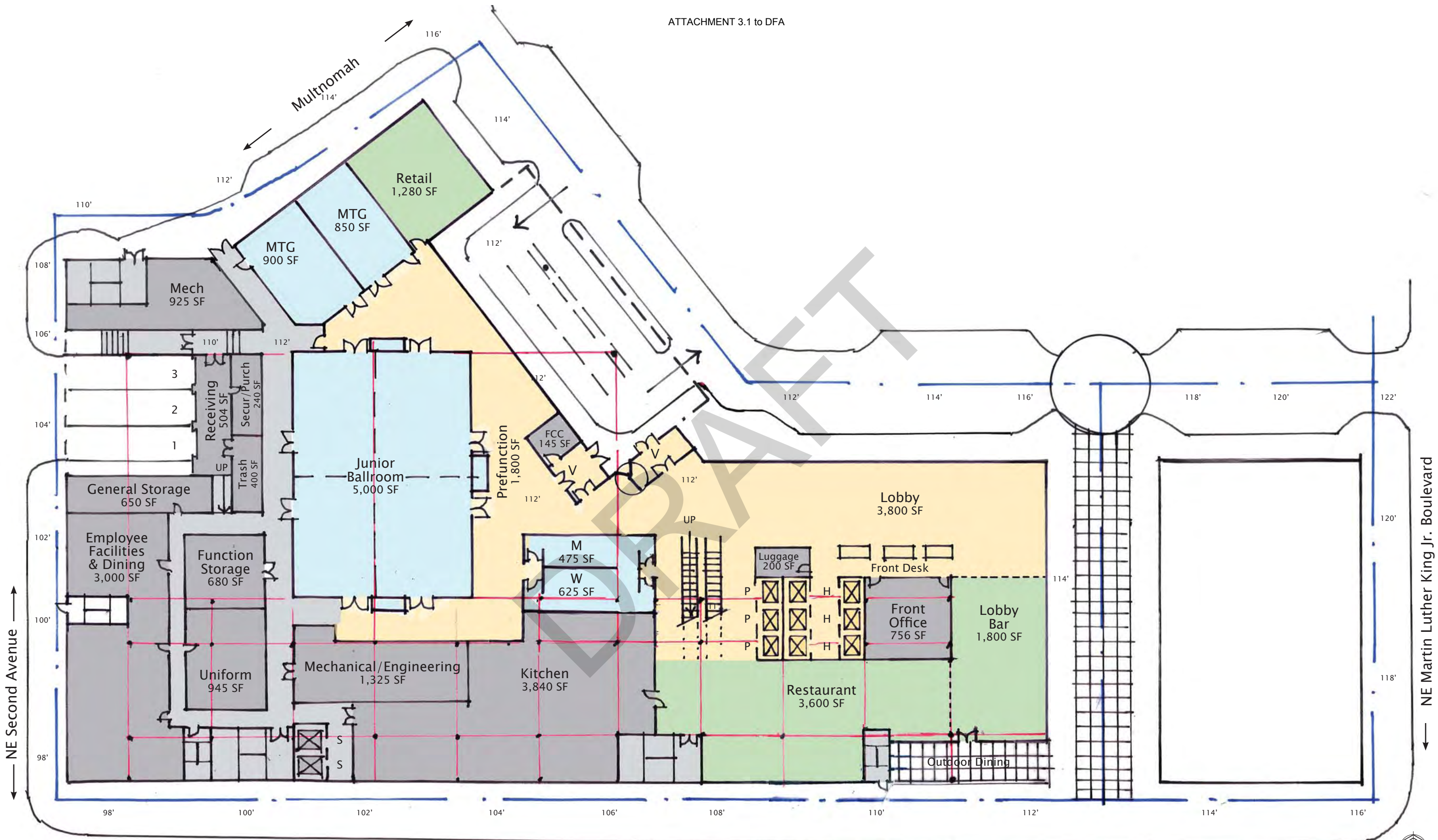
SIGNATURE PAGE TO
GUARANTY OF COMPLETION

MORTENSON DEVELOPMENT, INC.

By: _____
Its: _____

[METRO]

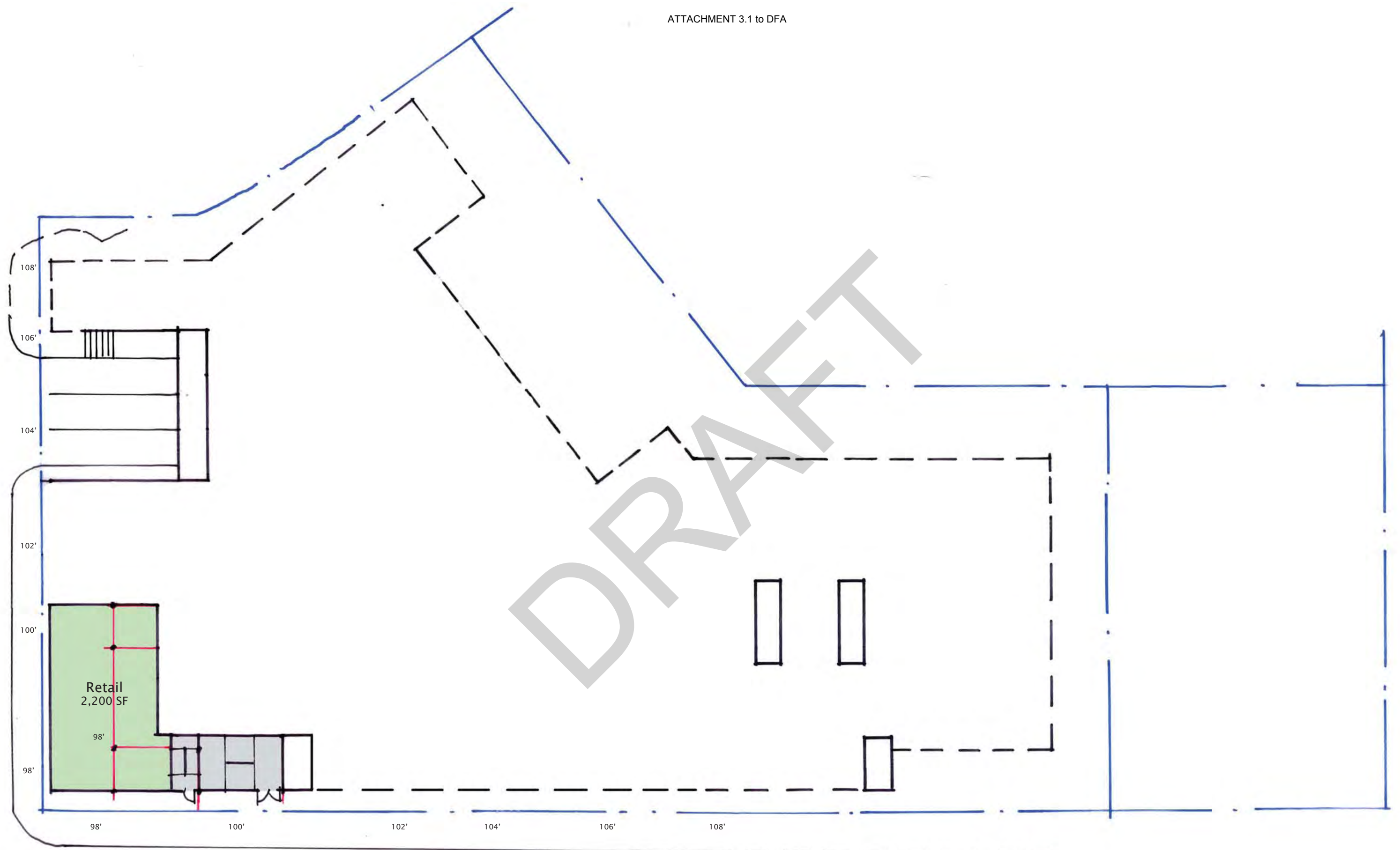
By: _____
Its: _____




May 20, 2013

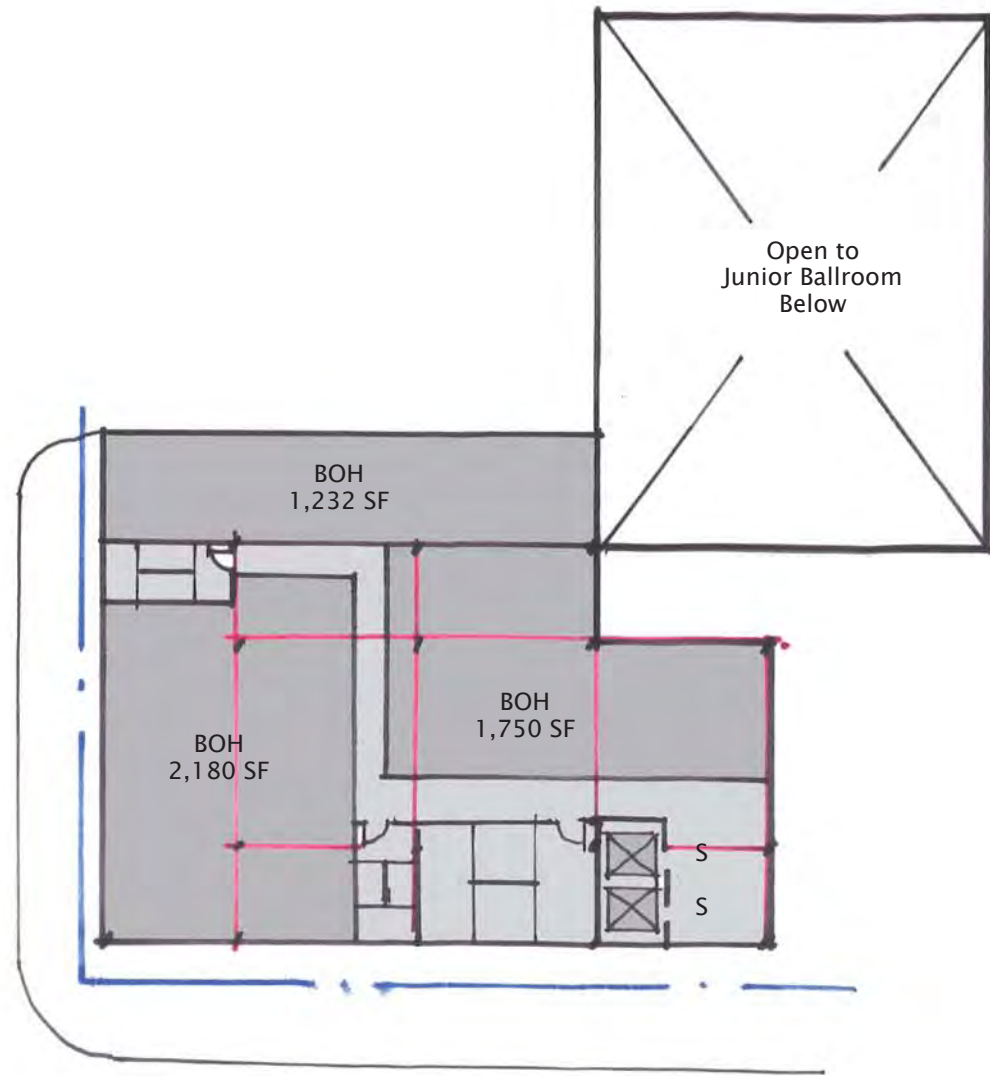
NE Holiday Street

Scale: 1"=30'-0"




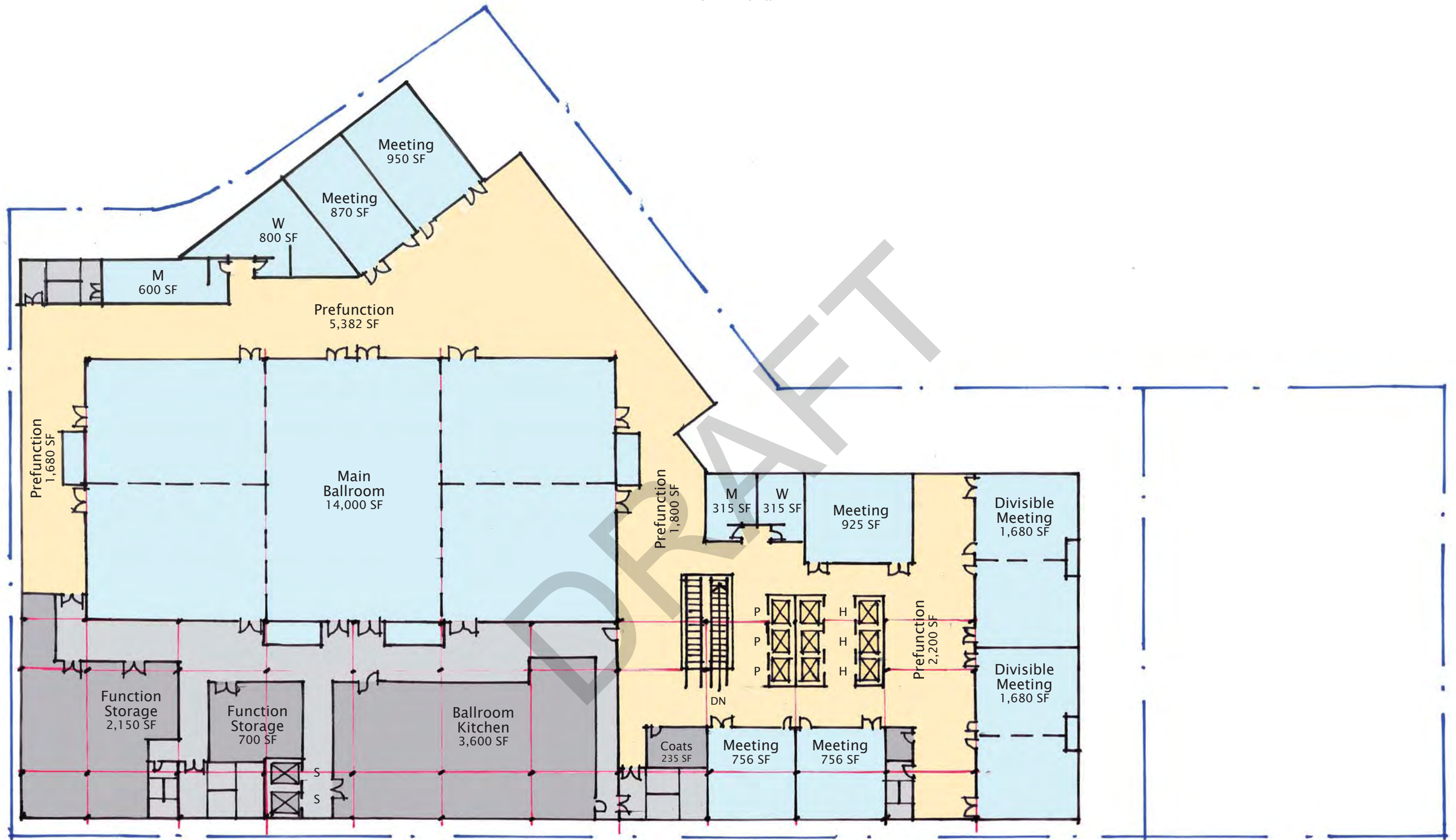
May 20, 2013

Scale: 1"=30'-0" 




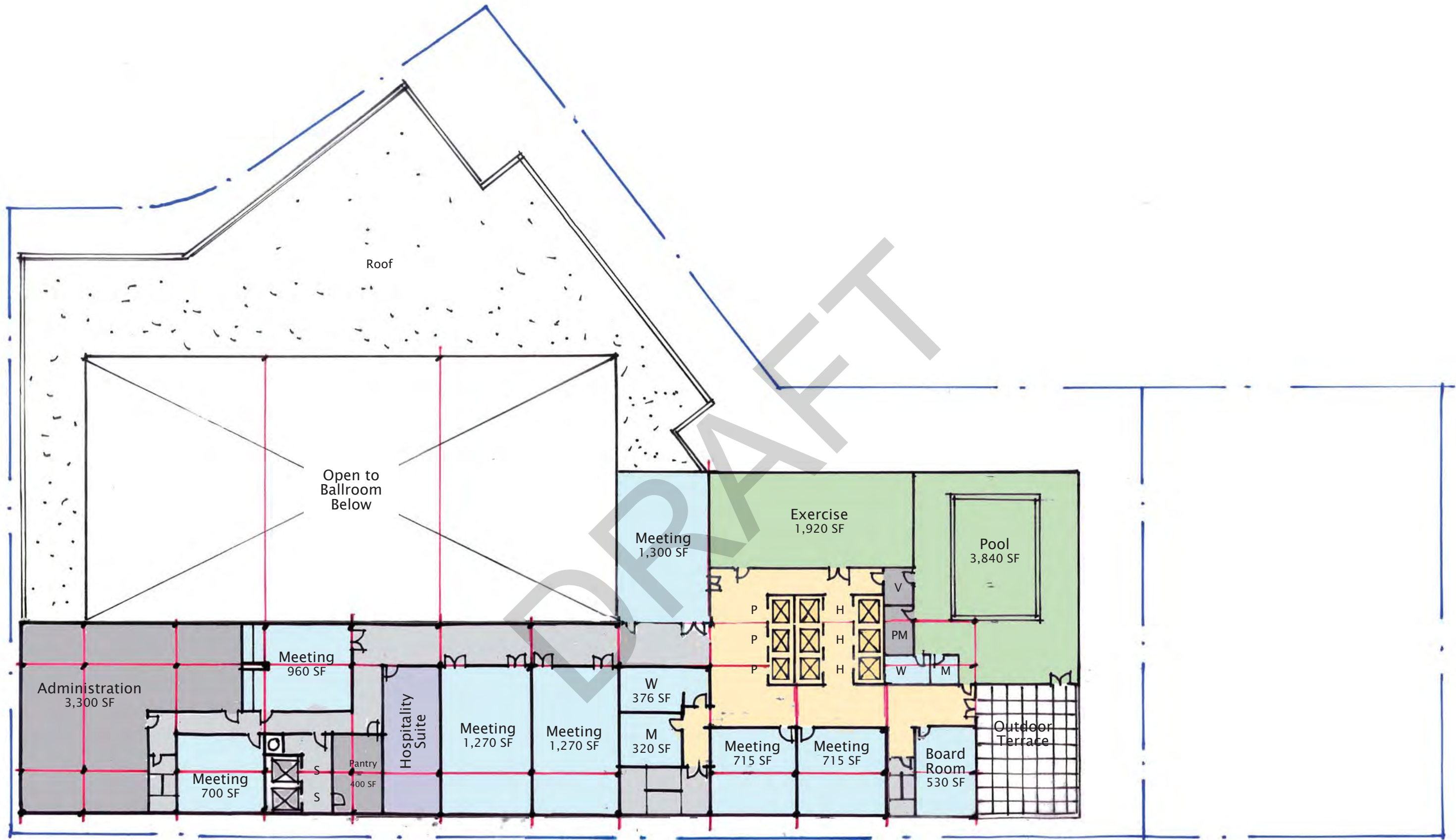
May 20, 2013

Scale: 1"=30'-0" 




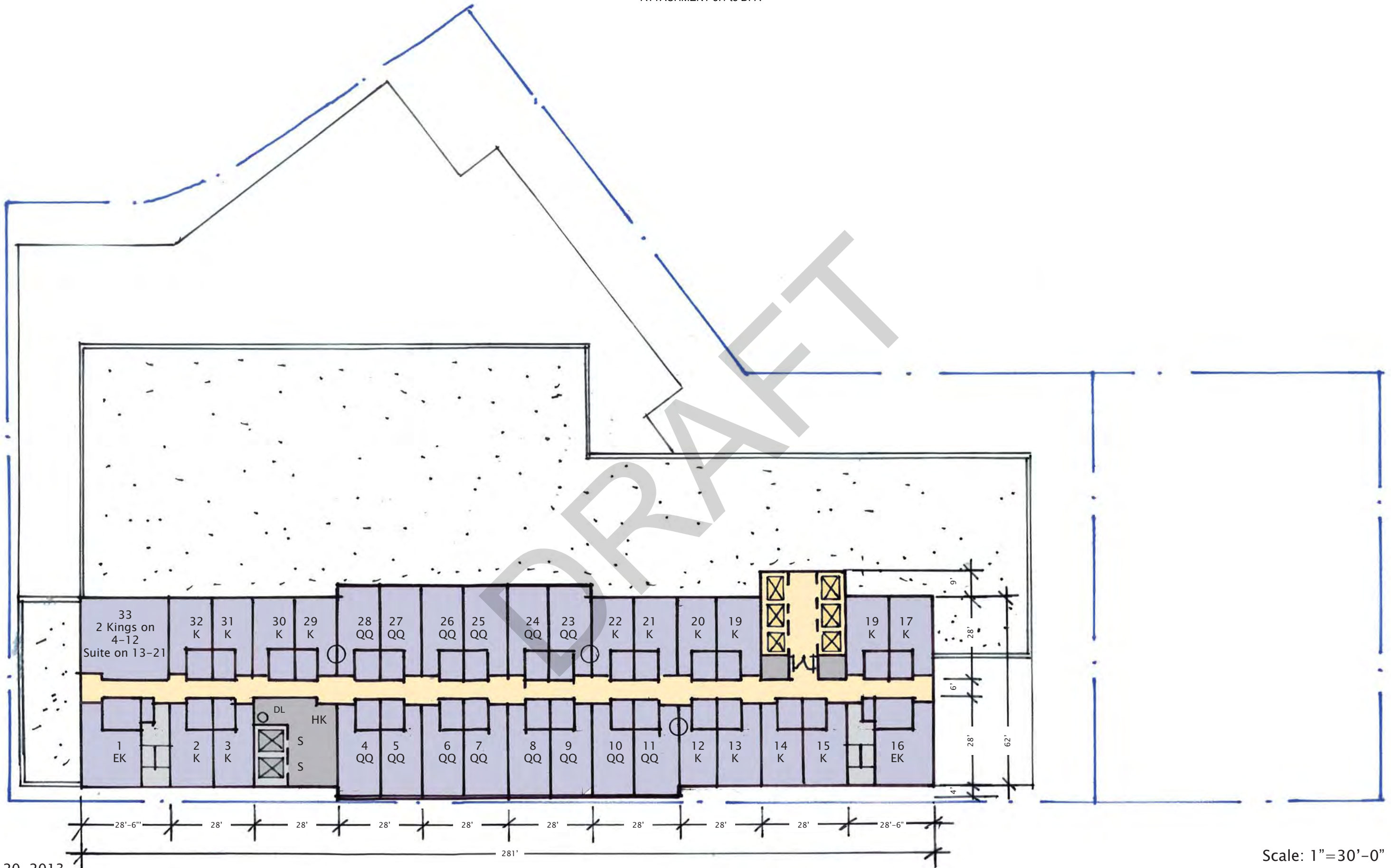
May 20, 2013

Scale: 1"=30'-0" 



May 20, 2013

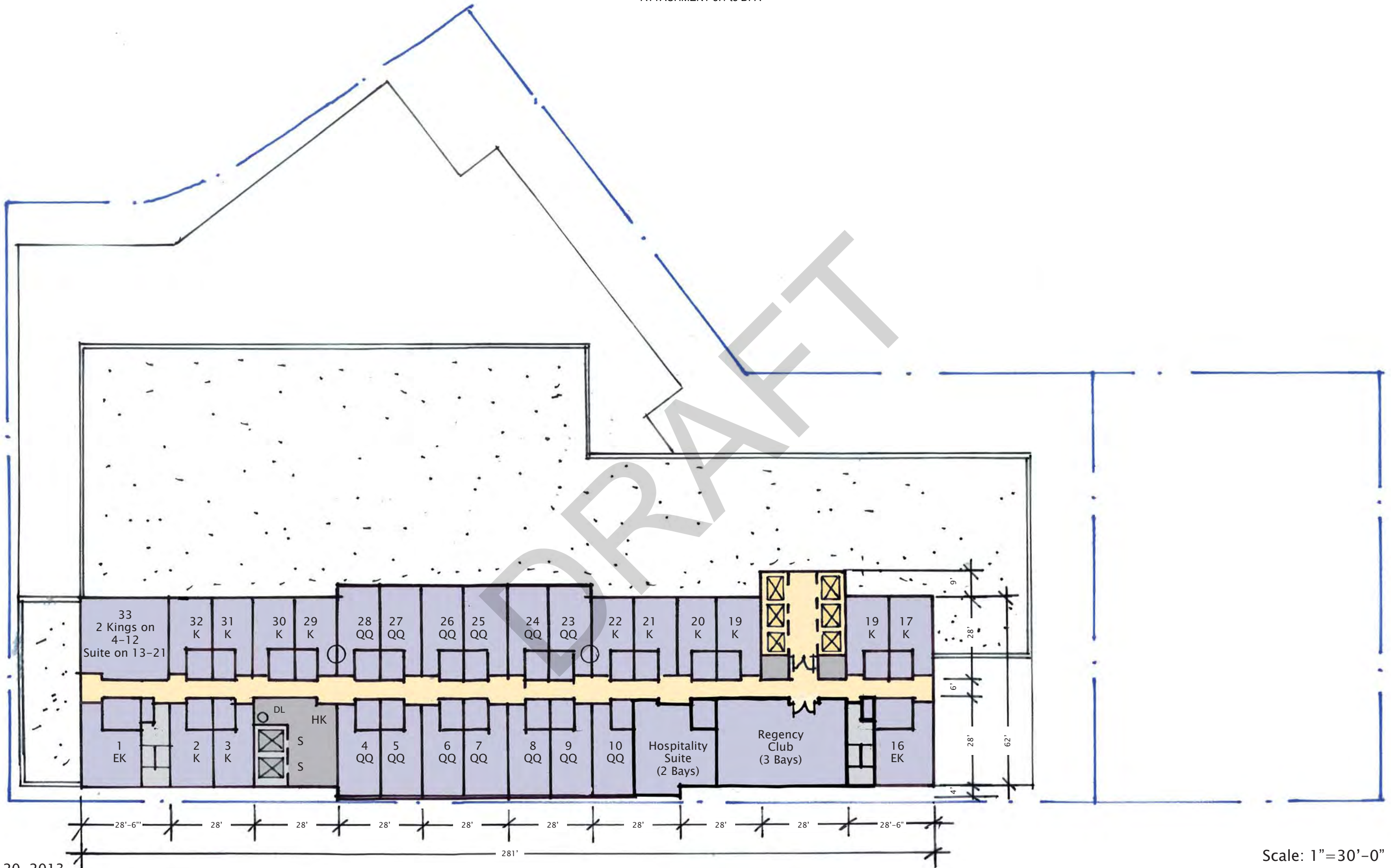
Scale: 1"=30'-0" 



May 20, 2013

Scale: 1"=30'-0"





May 20, 2013

Scale: 1"=30'-0"



600-ROOM HYATT REGENCY HOTEL SPACE SUMMARY

PUBLIC SPACE

[1] Lobby	3,800
[2] Lobby Bar	1,800
[2] Restaurant	3,600
[1, 2, 3] Public Restrooms	3,882
[2] Ballroom	14,000
[1] Junior Ballroom	5,000
[1, 2, 3] Meeting Rooms (16).....	16,297
[3] Board Rooms (1)	530
[1, 2] Prefunction	12,862
[3] Pool/Mechanical/Toilets	3,840
[3] Exercise.....	1,920
[2] Coats.....	235
[1] Fire Command Center.....	145

SUBTOTAL PUBLIC SPACE 67,911

BACK OF HOUSE AREAS

[1] Front Desk (In Lobby).....	—
[1] Front Office/Luggage/MATV/PBX.....	756
[1] Luggage	200
[3] Administration.....	3,300
[1] Main Kitchen.....	3,840
[2] Ballroom Kitchen.....	3,600
[1, 2] Function Storage/A/V Storage	3,530
[1] Receiving	504
[1] Uniform	945
[1] Employee Lockers/Toilets/Dining	3,000
[1] Security/Purchasing Offices	240
[1,3] Mechanical/Electrical/Low Voltage	2,250
[1,3] Storage.....	650
[1] Trash Room/Recycle/Can Wash/Refrigerated Garbage	400
[1, 5] Unassigned Back of House	5,162
HR, Engineering/Maintenance, Dirty Linen	—
Housekeeping/Clean Linen/Laundry	—

SUBTOTAL BACK OF HOUSE AREAS 28,377

CIRCULATION AND NET TO GROSS 32,243

A. TOTAL GSF – PUBLIC/BACK OF HOUSE..... 128,531

GUESTROOMS

1. King Room (14'x28' = 392 GSF)	@ 302 Keys	118,384
2. Queen/Queen Room (14'x32' = 448 GSF)	@ 252 Keys	112,896
3. Executive King Room 1 (18'x28' = 504 GSF)	@ 36 Keys	18,144
4. King Suite (28'x28' = 784 GSF)	@ 9 Keys	7,056
5. Hospitality Suite (920 GSF)	@ 2 Key	1,680

GUESTROOM GSF 258,160
Keys = 600 430 NSF/Key

STAIRS, ELEVATORS, SHAFTS, HK, STORAGE,
CONCIERGE LOUNGE 70,520

B. TOTAL GSF – GUESTROOM AREAS 328,680

FULL SERVICE HOTEL GSF SUMMARY

Level	Public/BOH	Guestroom	Total
Street	43,605*	—	43,605
1.5	7,476	—	7,476
2	52,990	—	52,990
3	24,460	828	25,288
4 (Typical)	—	18,214	18,214
5-21	—	309,638	309,638
TOTAL	128,531	328,680	457,211
GSF/Key @ 600 Keys	214	548	762

*Excluding 1,280 SF Lease Retail

HOTEL ROOM SUMMARY

Level	K	QQ	Executive King	King Suite	Hospitality Suite	Total Keys
3	—	—	—	—	1	1
4 (Typical)	18	14	2	—	—	34
5-12	144	112	16	—	—	272
13 (Typical)	16	14	2	1	—	33
14-20	112	98	14	7	—	231
21	12	13	2	1	1	29
TOTAL	302	251	36	9	2	600

*3-Module Club Lounge also located on Level 3

HYATT PORTLAND CONVENTION CENTER HOTELS

MEMORANDUM OF AGREEMENT

THIS AGREEMENT is made and entered into by and between Hyatt Corporation, a Delaware corporation (the "Employer"), Mortenson Development, StarTerra LLC [*the Schlessinger entity*], and Hyatt Corporation [*Hyatt development entity*], these latter three entities hereinafter collectively the ("Developer"), and UNITE HERE Local 8 (the "Union"), collectively the ("Parties").

1. This Agreement shall cover all employees employed in classifications listed in Exhibit A, or in classifications called by different names when performing similar duties, (referred to hereinafter as "Employees") at any hotel to be developed by Developer pursuant to the "Oregon Convention Center Hotel" Request for Proposals ("RFP") issued by the Oregon Metro Council in May 2012, which hotel will be the subject of a development agreement between Developer and Oregon Metro and perhaps other public agencies (collectively the "Agencies" and each an "Agency"). The entire project to be developed by Developer as a result of that RFP shall hereinafter be referred to as the "Project" and the hotel or hotels which are part of that Project shall hereinafter be referred to as "Hotel," subject to the provisions of Exhibit A. Hotel includes the food and beverage operations inside the Hotel, or immediately adjacent to and accessible from the Hotel, subject to the provisions of Exhibit A. The term "Employer" shall be deemed to include any person, firm, partnership, corporation, joint venture or other legal entity substantially under the control of: (a) the Employer covered by this Agreement; (b) one or more principal(s) of the Employer covered by this Agreement; (c) a subsidiary of the Employer covered by this Agreement; or (d) any person, firm, partnership, corporation, joint venture or other legal entity which substantially controls the Employer covered by this Agreement. The term "Union" shall include any successor organization to Union. This Agreement applies to the Hotel and to no other hotel operated, owned or controlled by the Employer. This Agreement does not apply to the workforce engaged in the construction of the Project.

2. The Parties hereby establish the following procedure for the purpose of ensuring an orderly environment for the exercise by the Employees of their rights under Section 7 of the National Labor Relations Act and to avoid picketing and/or other economic action directed at the Employer in the event the Union decides to conduct an organizing campaign among Employees.

3. The Parties mutually recognize that national labor law guarantees employees the right to form or select any labor organization to act as their exclusive representative for the purpose of collective bargaining with their employer, or to refrain from such activity.

4. The Employer will take a neutral approach to unionization of Employees. The Employer will not do any action nor make any statement that will directly or indirectly state or imply any opposition by the Employer to the selection by such Employees of a collective bargaining agent, or preference for or opposition to any particular union as a bargaining agent.

5. The Union and its representatives will not coerce or threaten any Employee in an effort to obtain authorization cards.

6. Whenever during the term of this Agreement, the Employer finds it necessary to hire new Employees for vacancies in job classifications covered by this Agreement at the Hotel, the Employer shall notify the Union to request applicants for such vacancies. When requesting applicants, the Employer shall state the qualifications applicants are expected to possess. The Union may refer applicants for the job vacancies specified by the Employer. The Union's selection of applicants for referral shall be on a non-discriminatory basis and shall not be based upon or in any way affected by membership in the Union or the Union's bylaws, rules, regulations, constitutional provisions, or any other aspects or obligation of Union membership policies or requirements, or upon personal characteristics of an applicant where discrimination based upon such characteristics is prohibited by law. The Employer agrees that any interest demonstrated by an applicant in joining the Union shall not constitute grounds for discriminatory or disparate treatment nor adversely impact the applicant's ability to be hired by the Employer. The Employer may accept or reject any applicant for employment referred by the Union. The Employer shall be the sole judge of an applicant's suitability, competence and qualifications to perform the work of any job to be filled.

7. If the Union provides written notice to the Employer of its intent to organize Employees covered by this Agreement, the Employer shall provide access to its premises and to the Union as described in this Paragraph. The Union may engage in on-site organizing efforts in the Organizing Areas, as defined below, between the hours of 7:00 AM and 10:00 PM during Employees' non-working times (before work, after work and during meals and breaks) and/or during such other periods as the Parties may mutually agree upon. "Organizing Areas" shall mean the following: the employee cafeteria, the employee locker rooms, areas immediately adjacent to the cafeteria and locker rooms, other non-work areas where employees regularly take their breaks (e.g. a back stairwell near a restaurant or bar which is far from the cafeteria or locker rooms), and areas on Hotel property but outside the Hotel building (e.g. smoking and outdoor break areas, outside the employee entrance). The Parties also agree that if there are Employees with whom, under the Organizing Area access rules outlined above, the Union would not be able to achieve non-work time access inside the Hotel, the Parties will attempt to mutually agree upon additional areas for access, and will refer the matter to the Arbitrator if they are not able to reach agreement within fourteen (14) days of the issue being raised. The Union agrees that it will not engage in Organizing efforts anywhere on the Employer's property other than the Organizing Areas specified above, and that will confine its Organizing activity to the periods specified above, below, and/or mutually agreed upon. The Union further agrees that it will provide the Hotel with a list of its authorized union representatives (not to exceed five (5) in total) to be permitted such access, that its authorized representatives will check in with Human Resources prior to or upon arriving at the property, and must do so prior to entering the employee cafeteria, employee locker room or areas immediately adjacent thereto (and also must do so prior to 5:30 PM if the representatives will be arriving after 5:30 PM). Provided, however, should the Union desire to visit the Hotel, as provided herein, between 10:01 PM and 6:59 AM, it will provide written notice to the Human Resources twenty-four (24) hours in advance. "Organizing" includes communicating with Employees before and after recognition of the Union as provided in Paragraph 9. The Union agrees not to disparage Hotel while conducting its Organizing. It shall not be considered disparagement for the Union or its representatives to articulate demands, positions or analyses on bargaining issues such as wages, benefits, and working conditions, or to comment to workers on actions taken by managers in the Hotel in a non-derogatory fashion.

8. Within ten (10) days following receipt of written notice of intent to organize Employees, the Employer will furnish the Union with a complete list of Employees, including both full and part-time Employees, showing their job classifications, departments, telephone numbers, home addresses, and, if available, email addresses. Thereafter, the Employer will provide updated complete lists monthly.

9. The Union is not presently recognized as the exclusive collective bargaining representative of the Employees. The Union may request recognition as the exclusive collective bargaining agent for such Employees. The arbitrator identified in Paragraph 15(a), or another person mutually agreed to by Employer and Union, will conduct a review of Employees' authorization cards submitted by the Union in support of its claim to represent a majority of such Employees. Said cards will be compared to an accurate, up-to-date Employee list provided by the Employer to the arbitrator and the Union, with a comparison to employee signatures on file with the Employer. That list shall be provided by the Employer to the arbitrator and to the Union within seven (7) days in advance of the scheduled card count. If that review establishes that a majority of such Employees has designated the Union as their exclusive collective bargaining representative or joined the Union, the Employer will recognize the Union as such representative of such Employees. Such review shall not be delayed due to disputes over unit inclusion or unit scope; upon the request of either party, such disputes shall be addressed in the first 30 days immediately after recognition before submitted to arbitration; provided however, the Union shall have no authority to extend the bargaining unit beyond the unit described in Exhibit A. The Employer will not file a petition with the National Labor Relations Board for any election in connection with any demands for recognition provided for in this Agreement. The Union and the Employer agree that if any other person or entity petitions the National Labor Relations Board for any election as a result of or despite recognition of the Union pursuant to this Paragraph, (a) the Employer and the Union will each request that the NLRB dismiss the petition on grounds of recognition bar or, if they have agreed to a collective bargaining agreement covering Employees at the time the petition is filed, on grounds of contract bar, (b) if the petition is not dismissed, the Employer and the Union shall agree to a full consent election agreement under Section 102.62(c) of the NLRB's Rules and Regulations, and (c) the Employer and the Union shall at all times abide by the provisions of this Agreement, except that the Union may file unfair labor practice charges to block the election if it has evidence that the Employer's violations of this agreement would likely destroy laboratory conditions if an election were held immediately, but the parties shall seek deferral of the merits to arbitration. Except as provided above, the Union and the Employer will not file any charges with the National Labor Relations Board in connection with any act or omission occurring within the context of this Agreement; arbitration under Paragraph 15 shall be the exclusive remedy.

10. If the Union is recognized as the exclusive collective bargaining representative as provided in paragraph 9, negotiations for a collective bargaining agreement shall be commenced promptly and conducted in good faith to the end of reaching agreement expeditiously by all Parties. If the Parties are unable to reach agreement on a collective bargaining agreement within one hundred twenty (120) days after recognition pursuant to paragraph 9, all unresolved issues shall be submitted for resolution to final and binding arbitration pursuant to Paragraph 15(b), unless the Parties mutually extend such deadline. The arbitrator shall be selected pursuant to paragraph 15(b) below.

11. During the term of this Agreement, the Union will not engage in picketing or other economic activity at or against the Hotel, or against the Employer at the Hotel or related to the Hotel, and the Employer will not engage in a lockout of the Employees. Notwithstanding the termination provisions of Paragraph 16 below, if the Employer recognizes any union besides Union as the exclusive collective bargaining representative of Employees, or any of them, this paragraph shall terminate immediately and without notice.

12. In the event that the Employer sells, transfers, or assigns all or any part of its right, title, or interest in the Hotel or substantially all of the assets used in the operation of the Hotel, or in the event there is a change in the form of ownership of the Employer, the Employer shall give the Union reasonable advance notice thereof in writing, and the Employer further agrees that as a condition to any such sale, assignment, or transfer, the Employer will obtain from its successor or successors in interest a written assumption of this Agreement and furnish a copy thereof to the Union, in which event the assignor shall be relieved of its obligations hereunder to the extent that the assignor has fully transferred its right, title, or interest. The Employer does not have any obligation with respect to sales, transfers or assignments of the Hotel by the Developer or the Developer's replacement of the Employer as Hotel operator.

13. Subject to the Employer having the power and authority to do so, the Employer shall incorporate the entirety of paragraphs 4,6, 7, 8, 9, and 10 of this of Agreement in any contract, subcontract, lease, sublease, operating agreement, franchise agreement or any other agreement or instrument giving a right to any person to operate any enterprise in the Hotel employing employees in classifications listed in Exhibit A, or in classifications called by different names when performing similar duties, and shall obligate any person taking such interest, and any and all successors and assigns of such person, to in turn incorporate said paragraphs in any further agreement or instrument giving a right as described above. The Employer shall enforce such provisions, or at its option, assign its rights to do so to the Union. The Employer shall give the Union written notice of the execution of such agreement or instrument and identify the other party(ies) to the transaction within fifteen (15) days after the agreement or instrument is signed. The terms "Employer" and "Hotel" shall be modified in such agreement or instrument to conform to the terminology in such agreement or instrument but retain the same meaning as in this Agreement, and the terms "Employer" and "Employees" as used herein shall be modified to refer, respectively, to the person or persons receiving a right to operate an enterprise in the Hotel and the employees of such person or persons.

14. The Developer shall incorporate the entirety of paragraphs 4,6, 7, 8, 9, and 10 of this of Agreement in any contract, subcontract, lease, sublease, operating agreement, franchise agreement or any other agreement or instrument giving a right to any person other than the Employer to operate the Hotel or any enterprise in the Hotel employing employees in classifications listed in Exhibit A, or in classifications called by different names when performing similar duties, and shall obligate any person taking such interest, and any and all successors and assigns of such person, to in turn incorporate said paragraphs in any further agreement or instrument giving a right as described above. The Developer shall enforce such provisions, or at its option, assign its rights to do so to the Union. The Developer shall give the Union written notice of the execution of such agreement or instrument and identify the other party(ies) to the transaction within 15 days after the agreement or instrument is signed. The terms "Employer" and "Hotel" shall be modified in such agreement or instrument to conform to the terminology in such agreement or instrument but retain the same meaning as in this

Agreement, and the terms "Employer" and "Employees" as used herein shall be modified to refer, respectively, to the person or persons receiving a right to operate the Hotel or any enterprise in the Hotel and the employees of such person or persons. Furthermore, in the event that the Developer sells, transfers, or assigns all or any part of its right, title, or interest in the development of the Hotel or substantially all of the assets used in the operation of the Hotel, or in the event there is a change in the form of ownership of the Developer, the Developer shall give the Union reasonable advance notice thereof in writing, and the Developer further agrees that as a condition to any such sale, assignment, or transfer, the Developer will obtain from its successor or successors in interest a written assumption of this Agreement and furnish a copy thereof to the Union, in which event the assignor shall be relieved of its obligations hereunder to the extent that the assignor has fully transferred its right, title, or interest. The term "Developer" shall be deemed respectively to include any person, firm, partnership, corporation, joint venture or other legal entity substantially under the control of: (a) the Developer covered by this Agreement; (b) one or more principal(s) of the Developer covered by this Agreement; (c) a subsidiary of the Developer covered by this Agreement; or (d) any person, firm, partnership, corporation, joint venture or other legal entity which substantially controls the Developer covered by this Agreement. To the degree that the Developer or one of its controlling partners has or acquires any right to operate as an Employer at the Project, it shall be bound by the obligations of Employer.

15. (a) The Parties agree that any disputes over the interpretation or application of this Agreement shall be submitted to expedited and binding arbitration with Frederic Horowitz as the arbitrator. If he is unavailable to serve within thirty (30) calendar days of notification then Tim Williams shall be the alternate arbitrator. If the alternate arbitrator above is not available to serve within thirty (30) days of notification, then one of the other arbitrators listed in paragraph 15(b) below shall be the arbitrator, if available, with availability checked in the order listed. The arbitrator shall have the authority to determine the arbitration procedures to be followed. The Parties hereto agree to comply with any order of the arbitrator, which shall be final and binding. The United States District Court for the District of Oregon shall have exclusive jurisdiction in any action concerning arbitration under this Agreement, including enforcement of the arbitration award. Any Party who refuses to arbitrate or challenges the legality of the agreement and thus makes court litigation necessary shall be liable for the prevailing party's legal fees and expenses, unless the challenge to the arbitration or the award appeared to be meritorious at the time it was raised.

(b) The Parties agree that if, at any point following expiration of the one hundred twenty (120) day negotiation period provided in Paragraph 10, they are unable to reach a collective bargaining agreement as provided in Paragraph 10, either party may request that all unresolved issues shall be submitted to expedited and binding interest arbitration by an impartial arbitrator selected by the following procedure: The Parties shall identify an arbitrator to serve from among the following five (5) potential arbitrators, all of whom have experience in interest arbitration of unresolved collective bargaining issues: _____, _____, _____, _____, or _____ [Andy Kahn suggestions: Louella Nelson, Ronald Hohn, Norman Brand, Frank Silver, Bonnie Vogue. Erik had emailed to Marc Liz Ford, Tony Vivenzio, and Michael Beck. Are Frederic Horowitz and/or Tim Williams also on this list?]. Selection of the arbitrator shall be conducted within ten (10) days of request by either party by alternately striking names from the list of arbitrators immediately above. The party to strike first shall be determined by coin toss. If that arbitrator is not available to serve within

Portland Convention Center Hotel
Mortenson/Hyatt/Schlesinger Local 8
10.10.12

sixty (60) days of selection for hearing and will not be available within thirty (30) days of the hearing's close for issuing a decision, then the next-to-last name stricken from the list shall be asked to serve in that role (and so on until an available arbitrator is found.) The arbitrator shall have the authority to determine the arbitration procedures to be followed. Fees and costs of the arbitrator shall be split evenly, 50/50, between the Union and the Employer. The Arbitration Award shall be final and binding and enforceable in the United States District Court for the District of Oregon, which shall have exclusive jurisdiction in any enforcement action.

16. This Agreement shall be of no force and effect and shall be null and void if the Developer is not successful in entering into a mutually acceptable agreement(s) with one or more of the Agencies for development of the Hotel, as well as securing the necessary approvals from any city, state or federal entity to construct the Hotel.

17. Subject to Paragraph 16, this Agreement shall be in full force and effect from the date it is fully executed on behalf of the Employer, the Union, and the Developer until four (4) years from the full public opening of the Hotel, at which point this Agreement shall terminate. However, this Agreement shall expire sooner with respect to any group of Employees upon execution of a collective bargaining agreement covering those Employees, or issuance of an interest arbitration award which concludes the first collective bargaining agreement negotiations for those Employees, either of which explicitly supersedes this Agreement.

18. The Employer, the Developer, and the Union agree that they have entered into this Agreement freely and voluntarily and without duress, coercion or any other unlawful or improper inducement by the Union or any other private or governmental entity or person, and for adequate consideration. The Parties further agree that they will not contest the legality or enforceability of this Agreement in any forum, nor aid any other person in doing so.

IN WITNESS WHEREOF, the Parties hereto by their duly designated representatives have hereunto set their hands.

FOR THE EMPLOYER:

FOR THE UNION:

Hyatt Corporation

UNITE HERE Local 8

By: Russ Melaragno

By: _____

Its: V.P., LABOR RELATIONS

Its: _____

Date: 10/30/12

Date: _____

EXHIBIT A

All regular full-time and regular part-time hotel service, housekeeping, and food and beverage employees, including room cleaners, housepersons, bell persons, telephone operators, kitchen employees, servers, bussers, bartenders, cashiers, hosts, concierges, on-site laundry workers, on-site reservations employees, on-site auditors, and front desk, spa/health club employees, employed by an employer at the Hotel, including parking, only if operated by the Employer (the Employer has the right not to operate the parking), but excluding all secretarial, accounting (though not on-site night auditor), office clerical, maintenance, and sales employees, all other employees, and all supervisors, managers and guards as defined in the National Labor Relations Act. The bargaining unit excludes any person working in a retail enterprise not operated by the Employer and an adjacent full-service/sit-down restaurant located within the "Project", if any, operated by a party other than Employer, provided that there is at least one Employer-operated restaurant inside the Hotel which is the main source of breakfast and lunch for hotel guests and whose employees are included in this bargaining unit, and provided further that banquet staff and room service staff, and the kitchen which services banquets and room service, are included in this bargaining unit.

The Parties acknowledge that, a decision between Developer and the relevant governmental bodies ("Agencies") about whether there will be one or two hotels in the Project has not yet been finalized. In the event that the Agencies and Developer work out a proposal for two hotels within the Project which includes two hotels, the Union shall have sole discretion to decide whether the parties will treat the two hotels as one bargaining unit or as two separate bargaining units for purposes of organizing under this Agreement, and shall inform the Employer of its decision in this regard prior to providing its notice of intent to organize pursuant to Paragraph 7. In the event that Union opts to consider the two hotels to be separate bargaining units, the procedures set forth above shall apply separately to each of the bargaining units, any timeframes and notice requirements provided for in this agreement for the Hotel shall run independently for each bargaining unit.

FOR THE DEVELOPER:

[Mortenson entity] MORTENSON Development, INC.

By: Thomas Landon
THOMAS LANDON

Its: VICE PRESIDENT AND GENERAL MANAGER

Date: 10/30/12

[Schlesinger entity] Star Terra LLC

By: Brian Pulcini

Its: managing member

Date: 10/30/12

Hyatt Corporation

By: Russ Melaragni

Its: V.P., LABOR RELATIONS

Date: 10/30/12

R:\37138.001\PROPOSED FINAL PORTLAND.DOCX

DRAFT

Budget and Construction Management Process

During the Predevelopment and Construction Periods of the Project, Metro and Developer will conduct the following efforts to 1) Reach agreement on the Closing Project Budget, 2) Jointly review Scope Documents, the City Design Documents, later construction documents, and subsequent modifications, 3) Review construction period draw requests, and 4) Monitor the progress schedule and construction quality according to the Project Funding Agreement. Capitalized terms used in this Attachment have the meaning set forth in the Development and Financing Agreement or the Project Funding Agreement, as applicable.

1. During Predevelopment Period

Developer will provide necessary documentation to Metro to determine and reach agreement on a lump sum price for the Project. Documentation shall be in a format agreed upon by the Parties and shall include:

- a. Design, engineering, programming and planning documents prepared by the Developer to be used for procurement (including bidding documents if a work package is to be bid) and construction.
- b. Industry-standard formatting of cost estimates, material quantity, labor amounts and unit pricing details.
- c. Back-up documentation for cost centers, upon request by Metro.
- d. Cost estimates provided with budget allocations using CSI format and/or estimates agreed upon by Developer and Metro.
- e. Detailed breakdown and estimates for bid packages required to complete the construction, including but not limited to General Conditions, staffing, equipment, operations, insurance and fee.
- f. A total project estimate to Metro, based on Drawings with at least the level of detail and specificity required pursuant to the City Design Review process, the Hotel Sale Agreement and Developer Contribution Mortgage, and further based on bids or other procurement commitments for contracts with subcontractors and suppliers. The estimate will be used as the Closing Project Budget for design and construction. Metro and Developer shall engage in an open book review of this estimate.
- g. Construction Disbursement Schedule for all anticipated draws during the construction process.

2. Self-Perform work by Developer

For all work to be self-performed by Developer, or its subsidiaries, each self-performed work package shall be completed as follows:

- a. During the Predevelopment and Construction Periods, Metro may complete verification for Developer lump sum price for the self-perform work packages.
- b. During the Predevelopment and Construction Periods, Metro shall be provided open book access to self-perform estimates to confirm market rate value verification for each self-perform work package.

3. General Conditions Work by Developer

For all work provided as General Conditions by Developer, or its subsidiaries, each General Condition cost center fulfilled by Developer shall be completed as follows:

- a. During the Predevelopment and Construction Periods, Developer shall provide backup information. Confirmation on documentation format and needs shall be coordinated with Metro.
- b. Metro shall be provided open book access to estimates of General Conditions work prior to the Closing date and before Developer can invoice for work. Metro may review and confirm the General Conditions will be completed at a fair market rate value.

4. During Construction

- a. Developer shall provide necessary documentation for Metro to review and approve payment applications and progress reports as consistent with Closing Project Budget, the Scope Drawings as modified during construction, and the Schedule, all as required by the Project Funding Agreement. Metro, or its designee, will approve all payments. Metro may restrict payments consistent with the Project Funding Agreement.
- b. Documentation will follow industry standards and shall be agreed to by all parties to the Project Funding Agreement.
- c. Monthly construction reports detailing construction progress, issues, opportunities, modifications, etc.
- d. Lien waivers shall be provided for Metro review.

5. Post-Construction

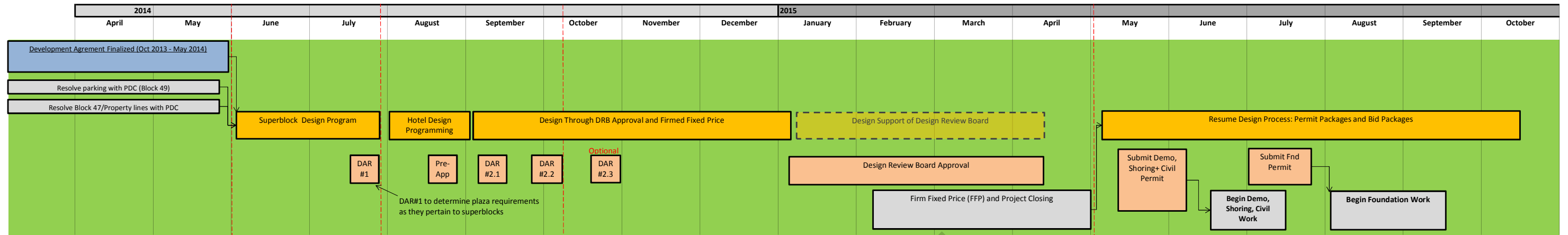
Metro may conduct a final audit at the end of the Project to confirm compliance with the approved Drawings, compliance with applicable equal employment opportunity and non-discrimination laws, and cost of work for budget line-items that are allowances. The scope of such audit shall not include audit of costs of any work performed on a fixed price basis. Developer shall provide all documentation requested by Metro that is within the agreed scope of this audit process.

Portland Convention Center Full Service Hotel (600-key) - Portland, OR
 Development Cost Summary
 PRELIMINARY - FOR DISCUSSION PURPOSES ONLY
 5/29/2014



USES						
HARD COSTS						
Land Costs				\$/BSF	% Total	Total
Land - Hotel Site				\$15.86	3.4%	\$7,250,000
Land - Block 47				\$3.50	0.8%	\$1,600,000
Legal				\$0.00	0.0%	\$0
Total Land Costs				\$0.00	4.1%	\$8,850,000
Parking				\$0.00	0.0%	\$0
Hotel				\$273.40	58.6%	\$125,000,000
Construction Escalation				\$18.04	3.9%	\$8,250,000
Construction Bond				\$2.19	0.5%	\$1,000,000
Total Hotel Construction Costs				\$293.63	62.9%	\$134,250,000
FF&E & OS&E				\$/Key	% Total	Total
FF&E	600 keys			\$25,920	7.3%	\$15,552,000
OS&E	600 keys			\$10,800	3.0%	\$6,480,000
Low Voltage/IT	600 keys			\$5,400	1.5%	\$3,240,000
Food Service	600 keys			\$3,240	0.9%	\$1,944,000
Total FF&E & OS&E				\$45,360	12.8%	\$27,216,000
TOTAL HARD COSTS				\$283,860	79.8%	\$170,316,000
SOFT COSTS				\$/GSF	% Total	Total
Development Costs						
Accounting				\$0.02	0.0%	\$10,000
Marketing				\$0.16	0.0%	\$75,000
Survey				\$0.03	0.0%	\$15,000
Development Expense				\$4.05	0.9%	\$1,850,000
Finance Structuring & Placement Fee			2.00%	\$9.33	2.0%	\$4,266,507
Owner's Rep Fee				\$3.28	0.7%	\$1,500,000
Public Relations Consultant				\$1.09	0.2%	\$500,000
Environmental Consultant				\$0.02	0.0%	\$10,000
Geotechnical Consultant				\$0.07	0.0%	\$30,000
Legal (Mortenson)				\$2.19	0.5%	\$1,000,000
Franchise Fees				\$0.00	0.0%	\$0
Technical Services Agreement				\$0.87	0.2%	\$400,000
Testing				\$0.33	0.1%	\$150,000
Sanitary Sewer Impact Fees				\$4.56	1.0%	\$2,086,800
Storm Sewer Impact Fees				\$0.05	0.0%	\$23,773
Transportation Impact Fees				\$3.75	0.8%	\$1,712,778
Park & Rec Impact Fees				\$0.74	0.2%	\$336,461
Water Bureau Impact Fees				\$0.20	0.0%	\$89,750
School Impact Fees				\$0.06	0.0%	\$26,400
Building Permit/Plan Review				\$3.67	0.8%	\$1,680,000
Management & Pre-Opening Expenses				\$12.99	2.8%	\$5,940,000
Real Estate Taxes	\$60,000 2011 taxes		24	\$0.55	0.1%	\$250,000
Total Development Costs				\$48.01	10.29%	\$21,952,469
Financing Costs						
Construction LTC	65.0%	\$139,325,329				
Construction Loan Fees		1.00%		\$3.03	0.65%	\$1,386,615
Closing Costs	65.0%	40	0.0001	\$1.21	0.26%	\$554,646
Construction Interest	4.50%	55%	24	\$15.01	3.22%	\$6,863,742
Financing Reserve Fund			1.50%	\$7.00	1.50%	\$3,199,880
Debt Service Reserve Fund				\$0.00	0.00%	\$0
Operating Reserve Fund				\$2.19	0.47%	\$1,000,000
Legal (Lender)				\$0.66	0.14%	\$300,000
Transfer Tax plus Local Option	100%	56	0.0001	\$0.00	0.00%	\$0
Title Insurance	75.0%	24	0.0001	\$0.55	0.12%	\$249,591
Inspection Fees		\$1,000.00	24	\$0.05	0.01%	\$24,000
Construction Disbursements		\$500.00	24	\$0.03	0.01%	\$12,000
Total Financing Costs				\$29.72	6.4%	\$13,590,473
Development Fee	3.5%	\$213,325,329 Total		\$16.33	3.50%	\$7,466,386
TOTAL SOFT COSTS				\$94.07	20.2%	\$43,009,329
TOTAL COST				\$466.58	100%	\$213,325,329

Site & Building Program		Cost / Unit	
Gross Building SF (GSF)	457,211	\$	467 per gsf
Keys	600	\$	355,542 per key
Efficiency Ratio (GSF/Key)	762		



DRAFT

ATTACHMENT 16.1.6

Michelle Rossolo v. Multnomah County Elections Division and Tim Scott, Director, and Metro
Multnomah County Circuit Court Case No. 1401-00046

Paige Richardson v. Metro, Clackamas County Circuit Court Case No. CV14-030408

Validation Proceeding to Determine the Regularity and Legality of Metro's Contracts and
Decisions in Connection with the Convention Center Hotel Project, Multnomah County Circuit
Court Case No. 1404-05077

DRAFT

INSURANCE REQUIREMENTS

Developer will cause to be maintained in force until Final Completion, or such lesser or longer period as is expressly provided below or in the Development Agreement, the following insurance (and the Developer shall be a named insured on all of the insurance set forth below to be carried by Design-Builder):

1.1 Design - Builder's Insurance

1.1.1 The Design-Builder shall maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located and with an AM Best rating of no less than A VIII, such insurance as will protect the Design-Builder from claims set forth below which may arise out of or result from the Design-Builder's operations and completed operations under the Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, a Subcontractor, a sub-subcontractor of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable:

1.1.1.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work being performed;

1.1.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;

1.1.1.3 Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than the Design-Builder's employees;

1.1.1.4 Claims for damages insured by usual personal injury liability coverage;

1.1.1.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;

1.1.1.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

1.1.1.7 Claims for bodily injury or property damage arising out of completed operations; and

1.1.1.8 Claims involving contractual liability insurance applicable to the Design-Builder's obligations, subject to policy terms and conditions.

1.1.2 The insurance required under Section 1.1.1 above shall be written for not less than the limits of liability specified herein or required by law, whichever coverage is greater. Coverages shall be maintained without interruption from the date of commencement of the Work until the date of Final Completion and termination of any coverage required to be maintained after Final Completion, and, with respect to the Design-Builder's completed operations coverage, until ten (10) years after Final Completion.

1.1.3 Certificates of insurance shall be filed with the Owner, Metro and Construction Lender prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. At least 30 days' written notice will be given to the certificate holders prior to cancellation or non-renewal.

1.1.4 Commercial General Liability Coverage: Design-Builder shall obtain occurrence coverage in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, Four Million Dollars (\$4,000,000) general aggregate per project, and Four Million Dollars (\$4,000,000) products/completed operations aggregate. Coverage shall be not less than the equivalent of the 2007 version of the CG 0001 policy form and include coverage for:

- .1 Premises and Operations
- .2 Explosions, Collapse and Underground Hazard
- .3 Personal/Advertising Injury
- .4 Products/Completed Operations
- .5 Broad Form Property Damage

To the extent allowed by law, the policy shall be endorsed to include the Owner, Metro, and Construction Lender as additional insureds and shall waive subrogation against such additional insureds. Additional insured coverage shall be on a primary and non-contributory basis to other liability insurance maintained by the Owner, Metro and Construction Lender.

1.1.5 Automobile Liability Coverage: Design-Builder shall obtain coverage in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and will include all owned, non-owned and hired vehicles.

1.1.6 Excess/Umbrella Liability: Design-Builder shall obtain Commercial Umbrella Liability Insurance for bodily injury, and property damage liability over Contractor's primary Employer's Liability, Commercial General Liability and Commercial Automobile Liability with limits of not less than Twenty-Five Million Dollars (\$25,000,000) per occurrence.

1.1.7 Workers' Compensation: Design-Builder is responsible to provide statutory benefits and employers liability required by law. Employer's liability limits shall not be less than One Million Dollars (\$1,000,000) each accident, One Million Dollars

(\$1,000,000) disease each employee, One Million Dollars (\$1,000,000) disease policy limit. Such policy shall be endorsed to waive subrogation against Owner, Metro and Construction Lender.

1.1.8 Pollution Liability: The Design-Builder shall procure and maintain a Contractor's Pollution Liability policy with limits not less than Five Million Dollars (\$5,000,000) per claim. Coverage shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, mold and fungi, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos) for which the Design-Builder or its Subcontractors of any tier are responsible. If coverage is written on a claims-made basis, the Design-Builder warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained for no less than four (4) years after Final Completion. To the extent allowed by law, the policy shall be endorsed to include the Owner, Metro, and Construction Lender as additional insureds and shall waive subrogation against such additional insureds.

1.1.9 Professional Liability Insurance: Design-Builder shall obtain coverage in an amount not less than Five Million Dollars (\$5,000,000) per claim. If coverage is written on a claims-made basis, the Design-Builder warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained for up to four (4) years after Final Completion.

1.1.10 Builder's Risk Insurance: The Design-Builder shall purchase and maintain a single Builder's Risk Insurance policy that will cover the Project. Said policy shall be in the amount of the initial Design-Build Contract amount for construction of the Project, plus any subsequent contract modifications to any of the contract amount, comprising the total value for the Project on a replacement cost basis.

1.1.10.1 Builder's risk Coverage shall be on an "all-risk" or equivalent policy form and shall include terrorism, theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, earthquake, wind, flood, partial occupancy, debris removal, increased cost of construction, and architect's fees and expenses. Coverage for property in-transit and stored off-site shall be provided at sublimits no less than Two Million Dollars (\$2,000,000) each.

1.1.10.2 The Design-Builder agrees to name the following parties as additional insureds to the policy:

1. Owner;
2. Metro;
3. Developer;
4. Subcontractors of any tier;

1.1.10.3 Upon completion and submission of an application for coverage, Design-Builder shall endorse delay in completion coverage to the Builder's Risk policy on behalf of Metro in an amount not to exceed \$3,500,000 including an indemnity period of one year and a deductible period of 30 days. Metro shall be the named insured and be responsible for any deductibles as respects this coverage. The premium for this coverage shall be paid as part of the costs of issue of the Metro Revenue Bond.

1.1.10.4 Developer, Design-Builder, Owner, Metro and Construction Lender waive all rights against each other, and any of their contractors, Subcontractors, sub-subcontractors of any tier, agents and employees, each of the other for damages caused by fire or other causes of loss to the extent covered by Builder's Risk insurance obtained pursuant to this Agreement or other property insurance applicable during construction, except such rights as they have to proceeds of such insurance. Mortenson Development, Inc., Design-Builder, the Owner, Metro and Construction Lender, as appropriate, shall require of the Designer, Designers Consultants, separate contractors, if any, and the subcontractors, sub-subcontractors of any tier, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

1.1.10.5 The builder's risk insurance policy shall be purchased from the start of the earliest Work on site under any of the Design-Build Agreements until the date of Substantial Completion. Should any of the individual Projects or a portion of any Project be completed and receive a certificate of occupancy or Substantial Completion prior to any other Work insured by this Builder's Risk policy, the Owner of such property shall be required to procure permanent property insurance on such property. Upon placement of permanent property insurance, the Builder's Risk policy shall then cease to cover the completed and insured property.

1.1.10.6 If the builder's risk insurance requires deductibles, the Design-Builder shall pay costs not covered because of such deductibles.

1.1.10.7 Design-Builder will provide a copy of the builder's risk policy upon request.

