

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE) RESOLUTION NO. 17-4810
DEVELOPMENT AND FINANCE AGREEMENT)
FOR THE CONVENTION CENTER HOTEL) Introduced by General Manager of Metro
PROJECT) Visitor Venues Scott Cruickshank

WHEREAS, Metro owns and operates the Oregon Convention Center with the expertise and oversight of the Metropolitan Exposition and Recreation Commission; and

WHEREAS, on June 26, 2014, the Metro Council via Resolution No. 14-4520, ("For the Purpose of Authorizing Execution of Development and Finance Agreement with the Oregon Convention Center Hotel Project Developer") authorized the Chief Operating Officer to execute the Development and Financing Agreement (DFA) with Mortenson Development, Inc. and Hyatt Hotels Corporation; and

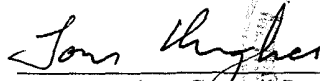
WHEREAS, closing of the DFA is scheduled to occur in mid-July, 2017, with hotel construction to commence promptly thereafter; and

WHEREAS, staff recommends a final amendment to the DFA to among other things clarify certain conditions to closing and address the issues identified in the attached staff report;

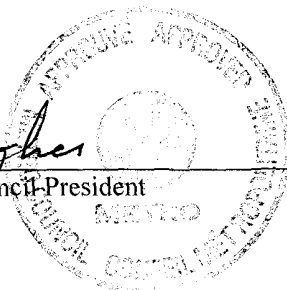
NOW THEREFORE BE IT RESOLVED THAT:

The Metro Council hereby approves an Amendment to the Development and Financing Agreement in a form substantially similar to the draft attached as Exhibit A to this Resolution and authorizes the Metro Chief Operating Officer to execute such amendment.

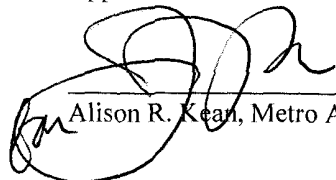
ADOPTED by the Metro Council this 29 day of June, 2017.



Tom Hughes, Council President



Approved as to Form:



Alison R. Kean, Metro Attorney

**SEVENTH AMENDMENT TO
DEVELOPMENT AND FINANCING AGREEMENT**

THIS SEVENTH AMENDMENT TO DEVELOPMENT AND FINANCING AGREEMENT (this “**Seventh Amendment**”) is made effective as of the 30th day of June, 2017 (the “**Effective Date**”), by and between MDI SECOND AVENUE PORTLAND HOTEL OWNER, LLC, a Delaware limited liability company (“**Developer**”), and METRO, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter (“**Metro**”). Capitalized terms used herein without definition have the meanings provided in the Agreement (as defined below).

A. Metro and Developer are parties to that certain Development and Financing Agreement dated July 3, 2014, as amended by that Amendment to Development and Financing Agreement dated as of January 5, 2015, that Second Amendment to Development and Financing Agreement dated as of September 29, 2015, that Third Amendment to Development and Financing Agreement dated as of March 30, 2016, that Fourth Amendment to Development and Financing Agreement dated as of April 29, 2016, that Fifth Amendment to Development and Financing Agreement dated as of May 31, 2016, and that Sixth Amendment to Development and Financing Agreement dated as of March 31, 2017 (as so amended the “**Agreement**”).

B. In accordance with Section 2.12 of the Agreement and by assignment dated April 1, 2017, Mortenson Development, Inc., as original developer under the Agreement (“**Original Developer**”), assigned its rights and responsibilities under the Agreement, except the Guaranty of Completion which remains an obligation of Original Developer through Substantial Completion, to MDI Second Avenue Portland Hotel, LLC, a Minnesota limited liability company (“**MDI Second Avenue**”). By assignment dated as of June 30, 2017, MDI Second Avenue has assigned its rights and responsibilities under the Agreement (with the Guaranty of Completion remaining an obligation of Original Developer) to Developer. Notwithstanding Section 2.12 of the Agreement, Metro consents to the assignment from MDI Second Avenue to Developer.

C. The parties wish to amend the Agreement as set forth herein.

NOW THEREFORE, in consideration of the mutual agreements herein, Developer and Metro hereby agree to amend the Agreement as follows:

1. The second sentence of Recital G is deleted and replaced with the following:

“Developer proposed and Metro accepted that Hyatt Hotels Corporation, through one of its wholly owned subsidiaries (“Hyatt”) or another assignee will purchase the Project from Developer or its successor, and thereafter an affiliate of Hyatt will manage and operate the Hotel, subject to the Room Block Agreement, Restrictive Covenant, Labor Peace Agreement and Section 2.18 of this Agreement.”

2. The parties confirm that sections 2.1, 4.6, and 17.1.2.7 are satisfied.

3. Section 2.5 is amended to delete the reference to Hyatt.

4. Section 2.8 of the Agreement is amended and restated as follows:

“Metro and the State of Oregon Department of Administrative Services (“DAS”) have executed a grant agreement for the Lottery Funds to be used for capital funding of the Project (the “DAS Grant Agreement”). Metro has received the Lottery Funds from DAS. Prior to Metro’s transfer of the Lottery Funds to Developer, the parties will execute an agreement acknowledging that the terms of use of the Lottery Funds shall be in accordance with the DAS Grant Agreement (the “Lottery Funds Grant Pass-Through Agreement”).”

5. The Project Funding Agreement, attached as Attachment 2.13 to the Agreement, is hereby replaced in its entirety with the amended and restated Project Funding Agreement attached hereto as Exhibit 2.13.

6. Section 2.14 is amended to reflect that Prosper Portland (f/k/a PDC) and Developer have entered into the Parking Structure Development Agreement dated as of December 14, 2016.

7. Developer and Hyatt agree that the parking easement agreement executed and delivered as of the Closing Date fulfills the requirements of Sections 2.15, 17.1.3.4, and 17.2.3 and that any parking management agreement shall be subject to approval pursuant to such easement agreement.

8. The first sentence of Section 2.16 of the Agreement is amended and restated as follows:

“Design-Builder (defined in Section 7.1) has entered into an architectural services agreement with Elness Swenson Graham Architects, which will serve as the lead design firm (the “Architect Agreement”).”

9. The parties agree that the Deed Restriction recorded on the Closing Date fulfills the requirements of Sections 2.19, 17.1.2.9, and 17.2.2.

10. Section 2.21 and all references to a district energy system are amended to reflect that Developer will not be using a district energy system for the Project and has no obligation to enter into any agreement with respect thereto.

11. Section 2.22 of the Agreement is amended and restated as follows:

“Developer will cause M. A. Mortenson Company, as Design-Builder, to provide to Metro at Closing a Direct Access Agreement, substantially in the form attached as Exhibit 2.22 to the Seventh Amendment. Developer acknowledges and agrees to the rights and remedies, including without limitation cure rights, granted to Metro or otherwise referenced or provided to Metro in the Direct Access Agreement. The Direct Access Agreement in favor of Metro will by its terms be subordinate to the Direct Access Agreement given to Hotel Owner and to the Direct Access

Agreement or collateral assignment given to the holder of the Development Contribution Mortgage. Any reference in this Agreement or in any exhibit to this Agreement to a payment and performance bond shall be interpreted as a reference to said Direct Access Agreement.”

12. New Section 2.23 shall be added as follows:

“At Closing, Developer will execute the Prevailing Wage Compliance Agreement, in the form attached as Exhibit 2.23 to the Seventh Amendment.”

13. Section 4.4 is amended and restated as follows:

“The parties agree that pursuant to ORS 279C.800(6)(a)(B), the Project is a ‘public works’ for purposes of Oregon’s prevailing wage rate law. Design-Builder and Developer will comply with ORS 279C.800 et seq. in the Project construction. At Closing, Developer shall have executed the Prevailing Wage Compliance Agreement in the form attached as Exhibit 2.23 to the Seventh Amendment.”

14. The last sentence of Section 4.7 of the Agreement is amended and restated as follows:

“The Parties agree they will continue the public outreach effort set forth herein after Closing and through the Final Completion and during the first two years of Hotel Operation. After Closing, the Parties agree to work in good faith to design and adopt a formal Outreach Plan to ensure that the public outreach goals are achieved.”

15. New Section 4.8 shall be added as follows:

“Concurrent with Construction Loan Closing, Developer shall make a payment in the amount of \$300,000 to Metro to be used to fund a workforce development plan that creates strategies to build an inclusive, equitable construction workforce within the Portland Metropolitan Region (the “Apprenticeship Development Program”). The purpose of the Apprenticeship Development Program will be to provide support for maximizing apprenticeship opportunities and retention strategies for laborers of color and women on the worksite. The Apprenticeship Development Program will be designed to complement Developer’s workforce efforts to achieve the Prosper Portland’s Workforce Equity Program Specifications, will serve as a supplemental investment in workforce equity, and its applicability will be limited to the construction period.”

16. Pursuant to Section 5 of the Agreement, Metro confirms that Developer has satisfied the appraisal condition set forth therein.

17. Pursuant to Section 6.3 of the Agreement, the parties confirm they have complied with the obligations set forth therein.

18. Pursuant to Section 6.5.2 of the Agreement, Metro confirms that it has reviewed and approved the updated Drawings described therein.
19. Pursuant to Section 6.5.3 of the Agreement, Metro confirms that it has reviewed and approved the City Design Drawings.
20. Pursuant to Sections 6.5.4 and 6.5.5 of the Agreement, Metro confirms that it has reviewed and approved the 30% Construction Documents, as described and modified pursuant to the Fourteenth Amendment to Hotel Purchase Agreement dated _____, 2017.
21. Section 6.5.5 is amended to add the following at the end of the last sentence:

“The foregoing approved 30% Construction Documents shall be referred to as the “Closing Scope Documents” and shall constitute the Scope Documents and Drawings, as of the date hereof, subject to further evolution pursuant to the terms of this Agreement.”
22. Pursuant to Section 6.5.6 of the Agreement, Metro confirms that it has reviewed and approved the Closing Project Budget dated July 26, 2017, and Schedule dated May 1, 2017.
23. The last sentence of Section 7 of the Agreement is amended and restated as follows:

“In addition, Metro has approved the following to serve as Developer’s Engineers for the Project: KPFF Consulting Engineers (Civil Engineer); OEG (Electrical Engineer); Viking Automatic Sprinkler Company (Fire Sprinkler Engineer); Johnson Controls Inc. (Low Voltage/Technology Engineer); JH Kelly, LLC (Mechanical Engineer); and DCI Engineers (Structural Engineer).”
24. Section 8.2 of the Agreement is amended and restated as follows:

“Developer will revise the Initial Project Budget based on the Design-Builder’s mutually agreed lump sum or guaranteed maximum price which will be developed from Drawings of at least the level of detail and specificity required pursuant to the City Design Review process, the Initial Hotel Sale Agreement and Developer Contribution Mortgage (the “Closing Project Budget”). The Closing Project Budget shall include a comprehensive statement of all Project Costs and shall be in the same format as the Initial Project Budget. Closing shall not occur unless Metro has approved of the Closing Project Budget, including the Design-Builder’s lump sum or guaranteed maximum price.”
25. The second sentence of Section 9.2 is amended and restated as follows:

“Metro may approve or disapprove of any plans which materially deviate from the Closing Scope Documents using the criteria and process set forth

in Section 6.5 and failure of Developer to secure any such required approval shall be considered a breach of this Agreement.”

26. The second sentence of Section 10.1.1 of the Agreement is amended and restated as follows:

“Developer has entered into a DBIA 525 or equivalent lump sum contract with the Design-Builder for construction of the Project. Developer will provide Metro with a copy of the current Design-Build Contract upon request.”

27. Pursuant to Section 10.1.3, Metro confirms it has received copies of any Developer and Design-Builder contractor or developer licenses required by the applicable Laws.

28. Section 10.2.1 is amended and restated as follows:

“Developer shall construct or cause the construction of the Project, in a good and workmanlike manner, in accordance with (a) this Agreement, (b) the Closing Scope Documents, as such documents may be modified from time to time in accordance with this Agreement, and (c) the Project Schedule (defined in 11.1) subject only to Excused Delays.”

29. The following is added after the last sentence of Section 14.2:

“Metro agrees that no later than one (1) business day following Developer’s delivery of the evidence that Developer has placed into escrow or otherwise provided to Metro (a) all material documents to the funding of Developer’s Contribution, including a fully executed Loan Agreement and related ancillary documents, and (b) reasonable evidence that all conditions precedent to Closing (other than the Metro Funding and any conditions dependent upon the Metro Funding), can be satisfied concurrent with Closing, Metro shall execute the Bond Purchase Agreement with its underwriter, Piper Jaffray & Co. The Bond Purchase Agreement shall provide for the sale and purchase of the Metro Revenue Bonds pursuant to which the funding of the Revenue Bonds shall occur on or before ten (10) days after Developer’s delivery of the evidence set forth above.”

30. Metro acknowledges (a) receipt of Mortenson Development, Inc.’s financial statements dated effective not more than sixty (60) days prior to the Scheduled Closing date and (b) that Developer is a newly-formed entity with no assets or financial statements and accordingly, Metro waives the condition set forth in Section 17.1.2.8.

31. Section 17.1.3.2 shall be amended and restated as follows:

“Metro shall have funded that portion of the Metro Grant and the Lottery Funds that are required by the Project Funding Agreement to be funded at Closing.”

32. Section 17.1.3.3 shall be amended and restated as follows:

“The Developer Contribution Mortgage will be acceptable to Developer in its sole discretion.”

33. The following sentence is added to the end of Section 17.1.2.9:

“, and Metro is able to obtain a satisfactory title insurance policy insuring the priority of the Restrictive Covenant.”

34. Section 18.2 is amended and restated as follows:

“18.2 Events of Closing

The Closing shall occur at a location to be agreed-upon or by written closing instructions. At Closing, the following events shall occur in two phases in the order set forth below.

18.2.1 Phase I

- (a) Metro and Developer shall execute and deliver into escrow counterparts of all Related Agreements to which Metro and Developer are the only parties;
- (b) Metro shall deliver to Developer its certificate confirming Metro’s representations and warranties set forth in Section 16.1;
- (c) Developer shall deliver to Metro its certificate confirming Developer’s representations and warranties set forth in Section 16.2;
- (d) Metro shall deliver to Developer its certificate confirming that all Metro’s conditions to Closing set forth in Section 17.1.1 have been satisfied;
- (e) Developer shall deliver to Metro its certificate confirming that all Developer’s conditions to Closing set forth in Section 17.1.1 have been satisfied;
- (f) Metro shall deliver to Developer its certificate confirming that except for the conditions set forth in 17.1.2.1, 17.1.2.4, and 17.1.2.9, all Metro’s conditions to Closing set forth in Section 17.1.2 have been satisfied;
- (g) Developer shall deliver to Metro its certificate confirming that except for the conditions set forth in 17.1.3.1 and 17.1.3.2, all Developer’s conditions to Closing set forth in Section 17.1.3 have been satisfied;

- (h) Hyatt shall deliver into escrow its certificate to Developer and Metro confirming that all conditions to Closing set forth in Section 17.2, except those which may only be waived by Developer or Metro, have been satisfied;
- (i) In accordance with Section 14.2, Developer shall deliver evidence that Developer placed into escrow or otherwise provided to Metro all material documents to the funding of Developer's Contribution, including a fully executed Loan Agreement and related ancillary documents; and
- (j) In accordance with Section 14.2, Metro shall within one (1) business day thereafter execute the Bond Purchase Agreement with its underwriter, Piper Jaffray & Co., for the sale and purchase of the Metro Revenue Bonds.

18.2.2 Phase II. Ten days following the completion of the Phase I Closing and only after all of the documents set forth above in Section 18.2.1 have been delivered into escrow:

- (a) Metro shall have issued the Metro Revenue Bonds in accordance with the terms of the Bond Purchase Agreement, thus satisfying Metro's condition to precedent to Closing set forth in Section 17.1.2.1;
- (b) Developer shall have funded the portion of the Developer Contribution required under the Project Funding Agreement to be funded at Closing, thus satisfying Metro's condition precedent to Closing set forth in Section 17.1.2.4;
- (c) Metro shall have funded that portion of the proceeds of the Metro Revenue Bond, the Metro Grant and the Lottery Funds that are required by the Project Funding Agreement to be funded at Closing, thus satisfying Developer's condition precedent to Closing set forth in Sections 17.1.3.1 and 17.1.3.2; and
- (d) Developer shall close on the acquisition of the Project Site and the Restrictive Covenant shall be recorded and shall not be subordinate to the Developer Contribution Mortgage, thus satisfying Metro's condition precedent to Closing set forth in Section 17.1.2.9."

35. Metro acknowledges and agrees that Paragraph 4 of the Direct Access Agreement, attached as Exhibit 2.22 to the Seventh Amendment, satisfies Developer's obligation under Section 18.3.2 to provide a customary construction warranty to be included in the Closing documents.

36. New Section 18.3.3 shall be added as follows:

“Developer shall comply with and enforce all terms of the Design-Build Contract. Developer’s breach or default under the Design-Build Contract, or Developer’s failure to enforce the Design-Build Contract shall constitute an event of default under this Agreement. In addition to the rights and remedies set forth herein, Metro shall have all rights and remedies set forth in the Direct Access Agreement. To the extent that any of the rights or remedies afforded to Metro under the Direct Access Agreement conflict with the rights and remedies set forth herein, Metro may elect to pursue the rights and remedies set forth in either the Direct Access Agreement or this Development and Finance Agreement, whichever Metro deems most beneficial to Metro.”

37. New Section 22.2.3 shall be added as follows:

“From and after Closing Metro waives any and all rights and remedies to terminate this Agreement; provided, however, that the foregoing waiver shall not be construed to limit any other rights or remedies available to Metro under this Agreement and the Related Agreements, including any right of Metro under the Project Funding Agreement to suspend performance.”

38. The Recitals set forth above are incorporated into this Seventh Amendment by reference as though fully set forth herein. The Agreement is modified only in the specific respects set forth in this Seventh Amendment. Except as expressly modified, the Agreement remains unchanged and in full force and effect. This Seventh Amendment constitutes the entire agreement between the parties with respect to the subject matter contained in this Seventh Amendment. If there is any conflict between the terms and provisions of the Purchase Agreement and the terms and provisions of this Seventh Amendment, this Seventh Amendment shall control. This Seventh Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures on this Seventh Amendment transmitted by email, fax or other electronic means shall be valid and binding.

*[Remainder of Page Intentionally Blank;
Signature Page Follows.]*

**DEVELOPER SIGNATURE PAGE
TO
SEVENTH AMENDMENT TO DEVELOPMENT AND FINANCING AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have caused this Seventh Amendment to be executed as of the date first written above.

DEVELOPER:

MDI SECOND AVENUE PORTLAND HOTEL
OWNER, LLC, a Delaware limited liability
company

By: _____
Name: Mark G. Sherry
Its: President

**METRO SIGNATURE PAGE
TO
SEVENTH AMENDMENT TO DEVELOPMENT AND FINANCING AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have caused this Seventh Amendment to be executed as of the date first written above.

METRO:

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

By: _____

Name: _____

Its: _____

**JOINDER OF HYATT
TO
SEVENTH AMENDMENT TO DEVELOPMENT AND FINANCING AGREEMENT**

Hyatt joins in this Seventh Amendment for the limited purpose of agreeing to the rights and obligations of “Hyatt” as set forth in Section 17.2 and 18.2 of the Agreement, as amended by this Seventh Amendment, and Section ___ of this Seventh Amendment 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 the Agreement or this Seventh Amendment.

HYATT HOTELS CORPORATION

By: _____

Name: _____

Its: _____

ATTACHMENT 2.13
TO
DEVELOPMENT AND FINANCING
AGREEMENT

PROJECT FUNDING AGREEMENT

between

Metro

And

MDI SECOND AVENUE PORTLAND HOTEL OWNER, LLC,

And

FORTRESS CREDIT CO LLC,

as administrative agent for the Lenders (as defined in the Loan Agreement)

And

[Disbursing Agent]

Dated as of _____, 2017

PROJECT FUNDING AGREEMENT

This Project Funding Agreement, dated as of June ___, 2017 (this “**Agreement**”), is made and entered into by and among MDI Second Avenue Portland Hotel Owner, LLC, a Delaware limited liability company (“**MDI**”)¹, Metro, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter (“**Metro**”), [FORTRESS CREDIT CO LLC, as administrative agent for the Lenders (as defined in the Loan Agreement) (as defined below)) (in such capacity, and together with its successors and assigns, the “**Agent**”), and _____² as disbursing agent as provided herein (“**Disbursing Agent**”).

RECITALS

A. Pursuant to the terms of that certain Development and Financing Agreement, dated as of July 3, 2014 (the “**Original DFA**”), as amended by that certain Amendment to Development and Financing Agreement dated as of January 5, 2015 (the “**First Amendment to DFA**”), that certain Second Amendment to Development and Financing Agreement dated as of September 29, 2015, that certain Third Amendment to Development and Financing Agreement dated as of March 30, 2016, that certain Fourth Amendment to Development and Financing Agreement dated as of April 29, 2016, that certain Fifth Amendment to Development and Financing Agreement dated as of May 31, 2016, that certain Sixth Amendment to Development and Financing Agreement dated as of March 31, 2017, and that certain Seventh Amendment to Development and Financing Agreement dated as of June 30, 2017 (as further amended from time to time, the “**DFA**”), by and among MDI, as successor-in-interest to Mortenson Development, Inc. 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**”).

B. Pursuant to the terms of the DFA, Metro has agreed to assist in the development of the Hotel by making certain grants to MDI. The total grant funds being disbursed to MDI is \$74,000,000 (of which \$600,000 has already been disbursed to MDI or its affiliate to fund certain pre-development costs) consisting of (i) the Metro Revenue Bond Proceeds, (ii) the Metro Grant, and (iii) the Lottery Funds. Each grant is made pursuant to the terms and conditions of an applicable grant agreement (respectively, the “Metro Revenue Bond Grant Agreement”, the “Metro Grant Agreement”, and the “Lottery Grant Agreement.”).

C. Certain obligations of MDI under the DFA are guaranteed by that certain Guaranty of Completion executed by Mortenson Development, Inc., a Minnesota corporation (“**Guarantor**”) for the benefit of Metro.

C. Pursuant to the terms of a Hotel Purchase Agreement dated as of April 22, 2016 (as amended from time to time, the “**Hotel Purchase Agreement**”), H.E. Portland, L.L.C., a

¹ NTD: Please confirm that the Development Agreement will be assigned to MDI prior to Closing

² NTD: Guaranty Title writing for Old Republic (under review by Lender)

Delaware limited liability company (“**Hotel Owner**”) has agreed to purchase the Hotel from MDI upon completion of the construction of the Hotel.

D. Under the terms of a Construction Loan and Security Agreement made and entered into as of even date herewith (the “**Loan Agreement**”), by and between MDI, as Borrower, the Agent, as Administrative Agent, [FORTRESS CREDIT CO LLC], as the initial lender (in such capacity, the “**Initial Lender**”) and the other lenders from time to time party to such agreement (collectively, the “**Lenders**”) Lenders have agreed to make, and MDI has agreed to accept, a loan in the maximum principal amount of [**\$167,000,000**] (the “**Loan**”) upon the terms and conditions set forth in the Loan Agreement. The Loan is evidenced by a promissory note made by MDI in favor of Initial Lender in the principal amount of the Loan (such note, together with all extensions, renewals, modifications, amendments, restatements, substitutions and replacements, the “**Note**”). The Note is secured by, among other things, that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement dated as of the date hereof, from MDI, as grantor, to [_____], as trustee, for the benefit of Agent, as the beneficiary (as the same may be amended, modified, extended, renewed or restated from time to time, the “**Mortgage**”; and together with the Loan Agreement, the Note and all other documents evidencing, securing, guaranteeing or otherwise relating to the Loan, the “**Loan Documents**”) in respect of the Land and all improvements now or hereafter located thereon, and all other property mortgaged and/or granted as security to Agent pursuant to the Mortgage and/or the other Loan Documents (collectively, the “**Loan Collateral**”).

E. Subject to and in accordance with the terms and conditions of the Loan Documents, 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, development, construction, financing and equipping of the Hotel (the “**Hotel Development Costs**”); (ii) a portion of the interest due on the Note; (iii) the funding of one or more reserve funds pursuant to the Loan Agreement, and (iv) such other amounts as more particularly set forth in the Loan Documents.

F. The Hotel Owner, MDI, Metro, and the Agent have requested that the Disbursing Agent supervise the disbursement of the Metro Funds and the Loan Proceeds (collectively, the “**Project Funds**”).

G. 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 Initial Disbursement of Project Funds. In addition to any documents required to be provided as a condition to any disbursement of Project Funds under any of the Metro Agreements or the Loan Agreement, prior to the initial disbursement of any Project Funds, the Disbursing Agent shall have received fully executed copies of the following:

a. The Agent’s Approval Notice and the Metro Approval Notice for the applicable initial Application for Payment;

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 and Indirect Hotel Development Costs.

d. Confirmation that the full amount of the Metro Funds have been deposited with Disbursing Agent into a restricted, non-interest bearing account that only the Disbursing Agent is authorized to draw upon (the “**Metro Account**”).

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 (as the same may have been amended, the “**Hotel Design-Build Contract**”).

MDI, Metro and the Agent 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. Subject to Section 3.b. below, 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	\$ 60,000,000.00
Lottery Funds	\$ 10,000,000.00
Loan Proceeds	\$[167,000,000]
Total Project Funds:	\$_____

Section 3. Disbursements for the Hotel.

a. The source of funds to finance the Hotel shall be the Project Funds, and any additional cash equity as may be required to pay for the costs of the Hotel. Metro and MDI each acknowledge and agree that pursuant to Section 2 of the First Amendment to DFA, \$600,000 of the funds to be delivered by Metro pursuant to the Metro Grant have previously been disbursed to MDI or its affiliate to fund certain pre-development costs. Metro acknowledges and agrees that as of the date hereof, Project Funds do not include any equity funds from MDI; *provided, however*, that nothing herein shall be construed to limit Metro or the Agent’s right to require that MDI provide such funds at a later date in accordance with the requirements of this Project Funding Agreement, the Metro Agreements and/or the Loan Documents.

b. All disbursements of Loan Proceeds shall be made subject to and in accordance with the terms and conditions of the Loan Documents and, to the extent not

inconsistent therewith, the applicable provisions of this Project Funding Agreement. All disbursements of the Metro Funds shall be made in accordance with the Metro Agreements and this Project Funding Agreement.

i. On any date that MDI seeks a disbursement of Project Funds to pay Hotel Development Costs, MDI shall submit an Application for Payment to the Agent, Engineer, Metro, and the Disbursing Agent. MDI shall submit an Application for Payment no more frequently than once per month.

ii. Each Application for Payment shall (i) clearly set forth the amounts due to each First Tier Contractor out of the requested Disbursement, (ii) shall be accompanied by the documentation set forth on Exhibit B to this Project Funding Agreement, and (iii) shall otherwise satisfy the requirements for each Draw Request (as defined in the Loan Agreement) as set forth in the Loan 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 Agent shall not be obligated to approve such Application for Payment unless Metro and the Agent are each satisfied in its sole discretion 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 Agent, the Disbursing Agent and/or Metro may withhold their approval of such Application for Payment unless and until MDI deposits cash with the Agent or Disbursing Agent in an amount equal to the difference between the undisbursed Project Funds and the amount necessary to pay all unpaid costs of the Hotel or other condition in Metro's and the Agent's sole discretion.

iii.

(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 Payment³ shall either issue an Engineer's Report to the Disbursing Agent, with a copy to MDI, Metro and the Agent (the "**Engineer's Report**"), or provide written notice of insufficiency (an "**Insufficiency Notice**") of the Application for Payment to MDI, Metro, the Agent, and Disbursing Agent.

(B) Metro and Disbursing Agent shall complete their respective review and shall approve or disapprove the Application for Payment

³ NTD: Lender to confirm with consultant that this timeline can be met

within seven (7) Business Days from the date of receipt of such Application for Payment.

(C) Metro shall send written notice of its approval (a “**Metro Approval Notice**”) or disapproval (a “**Metro Disapproval Notice**”) of the Application for Payment (including, without limitation, its approval or disapproval of the Alternative Certificate) to MDI, the Agent, 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. If Metro does not deliver the Metro Approval Notice or the Metro Disapproval Notice, as the case may be, within such seven (7) Business Day period, and (1) if Engineer has not issued an Insufficiency Notice with respect to such Application for Payment in accordance with Section 3(b)(iii)(A) above, Metro shall be deemed to have delivered a Metro Approval Notice dated as of such seventh (7th) Business Day, or (2) if Engineer has issued an Insufficiency Notice with respect to such Application for Payment in accordance with Section 3(b)(4)(A) above, Metro shall be deemed to have delivered a Metro Disapproval Notice dated as of such seventh (7th) Business Day. The Metro Approval Notice shall constitute Metro’s conditional commitment to disburse such funds, conditioned only upon the Agent’s delivery of the Lender’s Share of the Approved Amount and Agent’s and Metro’s authorization to disburse pursuant to Section 3.c. below.

(D) If the Agent approves the Application for Payment and all other conditions to the applicable draw have been satisfied in accordance with its requirements and procedures and any applicable time deadlines outlined in the Loan Documents, the Agent shall, within [] days thereafter send written notice thereof (or of a partial payment as determined by Agent in its sole discretion) (the “**Agent Approval Notice**”) to Metro, MDI and Disbursing Agent. The Agent Approval Notice shall constitute Agent’s commitment to fund Lender’s Share of the Approved Amount (defined below) subject only to Metro’s delivery of Metro’s Share of the Approved Amount and Agent’s and Metro’s authorization to disburse pursuant to Section 3.c. below.

(E) The amount requested in the applicable Application for Payment that is approved by *both* Agent and Metro shall be referred to as the “**Approved Amount**”, and each of the Lender’s Share and Metro’s Share of the disbursement pursuant to such Application for Payment shall be calculated based upon the Approved Amount.

iv. Within one (1) Business day after the Disbursing Agent has received all of the Engineer’s Report, the Metro Approval Notice and the Agent Approval Notice, the Disbursing Agent shall: (A) withdraw from the Metro Account funds in an amount equal to Metro’s Share of the Approved Amount, (B)

deposit such funds into the Construction Escrow Account, and thereafter (C) deliver written notice to Metro, the Agent and MDI that it has deposited Metro's Share of the Approved Amount into the Construction Escrow Account (the "**Deposit Notice**"). The deposit of Metro's Share of the Approved Amount into the Construction Escrow Account and the delivery of the Deposit Notice to the Agent constitutes Metro's conditional approval of the disbursement of its funds, conditioned only upon the Agent's delivery of the Lender's Share of the Approved Amount and Agent's and Metro's authorization to disburse pursuant to Section 3.c. below.

v. Within three (3) Business Days after receipt of the Deposit Notice, the Agent shall deliver to Disbursing Agent by wire transfer funds in an amount equal to Lender's Share of the Approved Amount, which amounts shall be deposited by Disbursing Agent into the Construction Escrow Account and shall be held and disbursed in strict accordance with the provisions of this Project Funding Agreement.

c. Immediately (or as soon as reasonably practicable thereafter) after (but only after) (i) the full amount of the Approved Amount has been deposited in the Construction Escrow Account, and (ii) Disbursing Agent has received an additional [**telephonic or email**] authorization from both Metro and the Agent therefor, Disbursing Agent shall remit by wire transfer all funds in the Construction Escrow Account (other than amounts in payment for Indirect Costs as provided in Section 4.b. below) in accordance with the instructions set forth in the approved Application for Payment. The authorizations described in this Section 3(c) are solely for the purpose of confirming compliance with the terms and conditions of this Project Funding Agreement, and, as applicable pursuant to Sections 3(d) and (e) below, the Loan Documents and the Metro Agreements, and do not authorize any additional discretionary approval by Metro or Agent.

d. Except as expressly set forth in this Project Funding Agreement, nothing contained in the Loan Documents or this Project Funding Agreement (including, without limitation, the provisions of this Section 3 hereof) shall operate to limit the rights and obligations of Metro or MDI under the Metro Agreements with respect to the disbursement of the Metro Funds, or the rights of Metro to refuse, limit, or condition disbursement of the Metro Funds pursuant to the terms of the Metro Agreements.

e. Except as expressly set forth in this Project Funding Agreement, nothing contained in this Project Funding Agreement (including, without limitation, the provisions of this Section 3 hereof) shall operate to modify or limit the rights and obligations of the Agent and MDI or any other party under the Loan Documents with respect to the disbursement of Loan Proceeds, and the rights of the Agent to refuse, limit or condition disbursement thereof in accordance with the provisions of the Loan Documents.

f. 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 after the satisfaction of all conditions to disbursement described herein. Except as provided in Section 4(b) below, such money shall be paid to the parties set forth in the Application for Payment (to the extent

approved by the Agent and Metro hereunder), and the balance of the Application for Payment to MDI.

g. Notwithstanding anything contained in the Metro Agreements, including, without limitation, the DFA and the provisions of Section 3 of this Project Funding Agreement, hereof, after the Metro Funds have been fully disbursed Metro shall have no right to approve or disapprove any subsequent Application for Payment; provided, however, that Metro shall have the right to disapprove any Application for Payment for Change Orders that (i) decrease the number of hotel rooms at the Hotel to less than 570 rooms, or (ii) decrease the aggregate square footage of ballroom space at the Hotel by more than [] square feet, which approval or disapproval shall not be unreasonably withheld, conditioned or delayed and shall be deemed granted if Metro does not deliver written notice of such disapproval to MDI, the Agent and Disbursing Agent within seven (7) Business Days from the date of receipt of such Application for Payment.

Section 4. Additional Terms and Conditions of Disbursements.

a. With each Application for Payment, MDI shall be deemed to have represented and warranted to Metro, the Agent, and the Disbursing Agent that as of the date thereof (i) there are no “Defaults” or “Events of Default” or any event which, with the giving of notice or the passage of time could ripen into a “Default” or an “Event of Default” on the part of MDI under this Project Funding Agreement, the Metro Agreements, the Hotel Purchase Agreement or the Loan Documents, or any other documents executed and delivered by MDI in connection therewith, and (ii) all conditions to be satisfied by MDI with respect to the payments being requested in the Application for Payment under the Metro Agreements, the Hotel Purchase Agreement, the Loan Documents and this Project Funding Agreement have been satisfied.

b. Notwithstanding anything herein to the contrary, all Project Funds shall be disbursed through the Disbursing Agent as provided in this Project Funding Agreement, except for Indirect Costs that are owing to or payable by Disbursing Agent or Agent, which the Disbursing Agent or the Agent may, upon written notice to Metro, deduct from each advance and pay directly to the payees (which may include the Agent), regardless of whether an Application for Payment has been submitted therefor.

c. 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. 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; provided, however, that (i) in no event shall the Disbursing Agent, Metro or the Agent be required to conduct any inspections of the Hotel, (ii) no such inspection shall grant to Metro any rights to approve or disapprove any matter relating to the construction except as expressly provided in this Project Funding Agreement. 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, the Agent nor any Lender assumes any liability or responsibility for the satisfactory completion of the Hotel or for the payment of the Hotel Development Costs, 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 Agent 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, the 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. Other than to the Agent in connection with the Loan, 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 Agent, each in their sole discretion.

f. Whenever in this Project Funding Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors and permitted 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, the Agent and the Lenders shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not.

g. 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, MDI and the Agent hereby disclaim the existence of any higher standard or duty of care owed by the Disbursing Agent to Metro, MDI, or the Agent 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 and for any breach by Disbursing Agent under this Agreement. 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 Agent 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 Purchase 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, the Agent or any Lender.

h. 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, the Agent or any 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.

i. MDI agrees to indemnify and hold harmless the Disbursing Agent, the Agent, the Lenders, Metro, and each of their respective affiliates, successors, assignees, officers, directors, employees, and agents (the "**Indemnified Parties**") 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 any of the Indemnified Parties, as well as commercially reasonable costs, expenses or disbursements incurred by any of such Indemnified 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, 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 Agent, the Lenders and Metro promptly upon demand for any commercially reasonable out-of-pocket expenses (including counsel fees) incurred by the Disbursing Agent, the Agent, any Lender, Metro, or any of the Indemnified Parties 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.

j. 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 Agent. Upon any such resignation, the Agent 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 Agent fails to appoint a successor disbursing agent within thirty (30) days after such notice has been given to Agent, then Metro shall appoint a successor disbursing agent hereunder subject to the same consents required for an appointment by the Agent. Notwithstanding any other

provision of this Agreement, Disbursement Agent shall not assign this Agreement or delegate its duties under this Agreement, without the Agent's and Metro's prior written consent.

k. The Disbursing Agent may conclusively rely upon and shall be protected in acting upon any document reasonably 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, the Agent or any 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 the same other than procurement as one of the conditions precedent to each disbursement.

l. The parties acknowledge that none of the Disbursing Agent, the Agent, any 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.

m. 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.

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

o. This Project Funding Agreement and any provision hereof may only be amended, modified, restated, changed, waived, discharged, or terminated (as applicable, a "Change"), by an instrument in writing signed by each and every one of MDI, Metro and the Agent. Any Change that is not in writing and that is not signed by each and every one of MDI, Metro and the Agent shall be null and void and have no force or effect.

p. 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: MDI Second Avenue Portland Hotel Owner, LLC
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 Agent: [Fortress Administrative Agent Entity]
c/o Fortress Investment Group LLC
1345 Avenue of the Americas
New York, New York 10105
Attention: Constantine M. Dakolias
E-Mail Address: _____

With a copy to: [Fortress Administrative Agent Entity]
c/o Fortress Investment Group LLC
[_____]]
San Francisco, California [_____]]
Attention: James K. Noble, III, Esq.
E-Mail Address: _____

With a copy to: Fortress Investment Group LLC
5221 North O'Connor Boulevard
Suite 700
Dallas, Texas 75039
Attention: Andrew Osborne
E-Mail Address: _____

With a copy to: Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
Attention: Robert L. Golub, Esq.
E-Mail Address: _____

q. 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.

r. 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.

s. 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.

t. 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.

u. WITH RESPECT TO ANY DISPUTES TO WHICH LENDER IS A PARTY CONCERNING THIS PROJECT FUNDING AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER (A "**LENDER RELATED DISPUTE**"), THE CONTRACTUAL RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS PROJECT FUNDING AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA BUT ONLY TO THE EXTENT THAT SUCH CHOICE OF NEW YORK LAW DOES NOT VIOLATE ORS 15.355. FOR THE AVOIDANCE OF DOUBT, THE PARTIES AGREE THAT THE FOREGOING CHOICE OF NEW YORK LAW SHALL NOT BE APPLICABLE TO ISSUES PERTAINING TO THE POWERS, AUTHORITY, CAPACITY AND IMMUNITY OF METRO, WHICH SHALL BE GOVERNED SOLELY BY THE LAWS OF THE STATE OF OREGON. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF MDI, METRO, DISBURSEMENT AGENT AND AGENT (ON BEHALF OF ITSELF AND EACH LENDER) HEREBY UNCONDITIONALLY AND

IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THE CONTRACTUAL RIGHTS AND OBLIGATIONS OF THE PARTIES TO THIS AGREEMENT ARISING IN ANY LENDER RELATED DISPUTE

v. ANY DISPUTES CONCERNING THIS PROJECT FUNDING AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER OTHER THAN A LENDER RELATED DISPUTE SHALL BE GOVERNED BY THE PROVISIONS OF SECTION 23.7 OF THE ORIGINAL DFA.

Section 6. Additional Agreements Regarding Development Agreement and this Project Funding Agreement.

a. Consent to Assignment. Metro acknowledges and agrees that pursuant to an Assignment of Permits, Licenses, Approvals, Agreements and Documents of even date herewith, MDI has assigned all of its right, title and interest in, to and under the Metro Agreements to Agent for the benefit of Lenders as additional security for the payment and performance of the Loan, and Metro hereby consents to such assignment; provided, however, Metro agrees that neither the Agent nor the Lenders shall have any obligation or liability of any kind under or with respect to the Metro Agreements, either before or after its exercise of any rights hereby granted to it, and MDI agrees to save and hold the Agent and the Lenders harmless of and from, and to indemnify each against, any and all such obligations and liabilities, contingent or otherwise, except for Agent's own gross negligence or willful misconduct. Metro agrees to look solely to MDI for the performance of any of the obligations of MDI under the Metro Agreements. However, if the Agent exercises any rights and privileges conferred upon it by the collateral assignment to the Agent referred to herein and asserts the present right to have the benefits of the Metro Agreements and to enforce the same against Metro in the place and stead of MDI, and subject to the Agent's cure of any defaults of MDI under the Metro Documents in accordance with Section 6.e. below, Metro agrees to perform for, and for the benefit of, Agent, all of its obligations under and pursuant to the Metro Agreements (including, without limitation, the obligation to make the Metro Funds available for the payment of Hotel Development Costs in accordance with the provisions of the Metro Agreements), so long as there exists no present default under the Metro Agreements that remains uncured (other than those obligations which are personal to MDI and incapable of being performed by another party).

b. No Lien on Property. Metro acknowledges and agrees that other than pursuant to (i) the Restrictive Covenant, and (ii) the Room Block Agreement (which pursuant to its terms will be subordinate to the lien of Lenders), the Metro Agreements and the rights of Metro thereunder do not create a lien on any portion of the Property and that Metro shall look solely to MDI and Guarantor (and not the Property) to enforce any of its rights thereunder.

c. No Modification or Cancellation. MDI and Metro agree that, without the prior written consent of the Agent, (a) neither MDI nor Metro will amend or modify or consent to the amendment or modification of the Metro Agreements; and (b) other than pursuant to the introductory clause of Section 22.2.1 of the Metro Agreements (which provides that the Metro Agreements shall terminate as a result of Final Completion of the Project) neither MDI nor Metro will cancel or terminate, or accept the cancellation or

termination of any of the Metro Agreements, except that, subject to Section 6.e. below, Metro may terminate the Metro Agreements in accordance with (but only in accordance with) their respective terms (provided, however, no provision of any Metro Agreement shall be interpreted to give Metro any right to terminate any of the Metro Agreements as a result of the transfer of the Loan Collateral to the winning bidder at a judicial or non-judicial foreclosure sale or to Agent or its nominee or designee pursuant to a deed in lieu of foreclosure), provided that, as set forth in Section 6(i) below, such winning bidder, nominee or designee assumes in writing those obligations of MDI under any of the Metro Agreements first arising after the date of such transfer (other than those obligations which are personal to MDI and incapable of being performed by a Successor Owner).

d. Representations. MDI and Metro, as applicable, represent and warrant to Agent that (i) neither MDI nor Metro is in breach or default of its obligations under any of the Metro Agreements, and no event or state of facts now exists which with notice or the passage of time or both would constitute a default thereunder, and there are no other material liabilities or claims for any default thereunder; (ii) all fees, expense reimbursements and payments currently due and owing from the MDI to Metro, and from Metro to MDI under the Metro Agreements (if any) have been paid in full; (iii) Neither MDI nor Metro has executed or granted any modification or amendment whatsoever of any of the Metro Agreements other than this Project Funding Agreement; (iv) the Metro Agreements are in full force and effect in accordance with its terms; (v) each of the conditions to Closing (as defined in the DFA) set forth in Section 17.1 of the DFA have been satisfied or waived by MDI or Metro, as applicable; (vi) Metro has approved the Closing Project Budget (as defined in the DFA), including the Design-Builder's lump sum price and (vii) no Event of Default (as defined in the DFA) or other default under any of the other Metro Agreements has occurred and is continuing. Each Metro Approval Notice shall be deemed to include a reaffirmation of each of the representations and warranties of Metro set forth herein as of the date of such Metro Approval Notice.

e. Notices of Default; Cure. Metro shall copy the Agent on all written notices of default ("**MDI Default**") sent to MDI under the DFA at the address for the Agent specified in this Project Funding Agreement and shall send such notice ("**MDI Default Notice**") at the same time and in the same manner delivered to MDI. The Agent shall have the right (but not the obligation) to cure any MDI Default for the period beginning on the date the Agent receives the MDI Default Notice from Metro and ending on the latest of (i) the expiry of any cure period given to MDI to cure such MDI Default and (ii) thirty (30) days after the date that Agent receives such MDI Default Notice (the "**Initial Cure Period**"); provided that if such MDI Default cannot reasonably be cured by the Agent within the Initial Cure Period, then the Agent shall have such additional period of time after the Initial Cure Period reasonably required to accomplish such cure, including, in respect of a MDI Default which requires physical possession by the Agent of the Loan Collateral to effect such cure, such period of time as may be required for the Agent to foreclose on the Loan Collateral, obtain possession of the Loan Collateral and cure any such MDI Default. With respect to any MDI Default described in Sections _____ of the Loan Agreement ("**Incurable Defaults**") , such Incurable Default shall be deemed waived by Metro in favor of the Agent provided the Agent cures all other MDI Defaults within the period herein given. If and so long as the Agent shall have the right to cure the MDI Default, Metro shall refrain from exercising any of its remedies under

any of the Metro Agreements, including termination. In the event that MDI's estate in bankruptcy rejects any of the Metro Agreements, at the request of the Agent, Metro shall enter into new Metro Agreements with the Agent or, subject to Metro's approval, Agent's nominee or designee on the terms of the Metro Agreements so rejected, subject to the Agent's cure rights hereunder. Agent shall provide Metro with notice of any MDI Default under the Loan Documents at the same time and in the same manner delivered to MDI.

f. [Guaranty. Metro will not enforce its rights and remedies against Guarantor under the Guaranty so long as Agent is performing under the DFA.]

g. Further Assurances. MDI hereby authorizes Metro to act and deal with the Agent under the DFA upon receipt by Metro of a notice that MDI is in default under the Loan Documents, and neither Metro nor the Agent shall be liable to MDI for such actions. MDI hereby irrevocably appoints the Agent as its agent and attorney-in-fact, coupled with an interest, to exercise all powers and rights of MDI concerning all matters pertaining to the DFA; however, the Agent shall have no duty to take any actions on MDI's behalf and shall have no fiduciary or similar relationship or obligation with or to MDI or Metro.

h. Insurance and Condemnation Proceeds. Notwithstanding anything to the contrary set forth in the Metro Agreements, unless and until the Loan is paid and performed in full, the collection and distribution of insurance proceeds and condemnation awards with respect to the Hotel or the application of same to the repayment of the Loan, shall be governed by the terms and conditions of the Loan Agreement, which, the parties agree, shall supersede any provision to the contrary set forth in the Metro Agreements.

i. Documents and Information. At any time and from time to time upon request from the Agent, Metro shall provide to the Agent any information or documentation requested by the Agent to the extent such information or documentation (i) is in Metro's possession or control and (ii) relates to MDI or its Affiliates, Disbursing Agent, the Land, the Hotel, the Hotel Owner, the Hotel Purchase Agreement, the DFA or this Project Funding Agreement.

j. Binding Effect; Survival. The provisions of this Paragraph 6 shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns. For avoidance of doubt the Agent's and Lenders' rights hereunder, including the right to enforce the DFA and this Project Funding Agreement, shall survive in favor, and inure to the benefit, of any person or entity who acquires title to Loan Collateral (as defined in the Loan Agreement) pursuant to a foreclosure or a deed in lieu thereof ("**Successor Owner**"). Without limiting the foregoing any Successor Owner of the Loan Collateral shall be deemed a successor to the rights of the Agent hereunder, provided that such Successor Owner assumes in writing those obligations of MDI under the DFA first arising after the date of such assumption and cures all existing MDI Defaults (other than Incurable Defaults).

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 _____, 2017.

**MDI SECOND AVENUE PORTLAND HOTEL
OWNER LLC**

By: _____
Name: _____
Title: _____

Signature Page of Metro to the Project Funding Agreement, dated _____, 2017.

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

By: _____
Name: _____
Title: _____

Signature Page of the Agent to the Project Funding Agreement, dated _____,
2017.

[LENDER]

By: _____
Name: _____
Title: _____

Signature Page of the Disbursing Agent to the Project Funding Agreement, dated _____, 2017.

[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 Elness Swenson Graham Architects, the architect engaged by (or on behalf of) MDI with respect to the design and construction of the Hotel, together with any successor or additional Architect engaged by (or on behalf of) MDI with the prior written consent of the Agent and Metro.

“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.

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

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

“Contract Documents” shall mean the Hotel Design-Build Contract, the Approved Plans and any Change Orders (as defined in the DFA) and other addenda thereto.

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

“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.

“Engineer” shall mean Marx Okubo, or such other independent contractor as may be designated by the Agent in its sole discretion from time to time in such non-exclusive capacity to issue the Engineer’s Report and/or the Insufficiency Notice, as the case may be, pursuant to Section 3(b)(iii)(A) above.

“Engineer’s Report” means a report to Metro, the Agent 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.]

“Grant Agreements” means collectively, the Metro Grant Agreement, the Metro Revenue Bond Grant Agreements, and the Lottery Bond Grant Agreement.

“Indirect Costs” means costs and expenditures (other than incurred for work, labor or materials furnished in connection with the design, development and construction of the Work (“**Direct Costs**”)), the cost categories of which are set forth in the project budgets, 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, interest expense, fees and costs and other amounts payable to Agent under the Loan Agreement, 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: _____.

“Lender’s Share” means ten percent (10%), until such time as the Metro Fund has been fully disbursed, after which the Lender’s Share shall mean one hundred percent (100%).

“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.

“Loan Agreement” is defined in the Recitals.

“Lottery Bond Grant Agreement” means the [*Lottery Bond Funds Pass Through Agreement*], dated _____.

“Lottery Funds” means the \$10,000,000 lottery revenue bond proceeds granted to Metro to fund a portion of the development of the Hotel, pursuant to the State of Oregon Lottery Bond Grant Agreement. The terms and conditions under which Metro will distribute the Lottery Funds to MDI and MDI will use the Lottery Funds are more specifically set forth in the Lottery Bond Grant Agreement.

“Metro Agreements” means the DFA, the Direct Access Agreement and the Grant Agreements.

“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 Grant Agreement” means the Grant Agreement between Metro and MDI dated _____, 2017.

“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 Grant Agreement” means the Agreement for Grant of Revenue Bond Proceeds between Metro and MDI dated _____, 2017.

“Metro Revenue Bond Proceeds” means the net proceeds of the Metro Revenue Bonds, not to exceed \$60 million, provided to MDI pursuant to the DFA and the Metro Revenue Bond Grant Agreement.

“Metro’s Share” means ninety percent (90%), until such time as the Metro Funds have been fully disbursed, after which Metro’s share shall mean zero (0).

“State of Oregon Lottery Bond Grant Agreement” means the grant agreement between the State of Oregon and Metro, dated effective April 14, 2015.

“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 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:

(a) 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;

(b) 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 Agent 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;

(c) 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

(d) if requested by the Agent 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

ATTACHMENT 2.22
TO
DEVELOPMENT AND FINANCING AGREEMENT

DIRECT ACCESS AGREEMENT

This Direct Access Agreement (“**Metro DAA**”) is entered into effective as of _____, 2017 by M. A. Mortenson Company (“**Design-Builder**”) for the benefit of Metro, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter (“**Metro**”).

RECITALS

A. Design-Builder and MDI Second Avenue Portland Hotel Owner, LLC (the “**Developer**”) have entered into a Standard Form of Agreement– Cost Plus Fee with a Guaranteed Maximum Price and General Conditions of Contract Between Developer and Design-Builder DBIA Document No. 535, dated as of April 22, 2016 (as modified and as may hereafter be further modified, the “**Design-Build Contract**”) for the construction of a hotel as set forth therein (the “**Project**”).

B. Developer has agreed to act as developer in connection with the construction of the Project pursuant to a Development and Financing Agreement between Developer and Metro dated as of July 3, 2014 and as amended by that Amendment to Development and Financing Agreement dated as of January 5, 2015, that Second Amendment to Development and Financing Agreement dated as of September 29, 2015, that Third Amendment to Development and Financing Agreement dated as of March 30, 2016, that Fourth Amendment to Development and Financing Agreement dated as of April 29, 2016, that Fifth Amendment to Development and Financing Agreement dated as of May 31, 2016, and that Sixth Amendment to Development and Financing Agreement dated as of March 31, 2017, and that Seventh Amendment to Development and Financing Agreement dated as of June 8, 2017 (as so amended and as may hereafter be further amended, the “**DFA Agreement**”).

C. Developer has further agreed to develop and sell the Project to H. E. Portland, L.L.C. (“**Buyer**”) pursuant to that certain Hotel Purchase Agreement dated as of April 22, 2016, as amended by First Amendment to Hotel Purchase Agreement dated July 21, 2016, Second Amendment to Hotel Purchase Agreement dated August 3, 2016, Third Amendment to Hotel Purchase Agreement dated August 22, 2016, Fourth Amendment to Hotel Purchase Agreement dated September 21, 2016, Fifth Amendment to Hotel Purchase Agreement dated October 14, 2016, Sixth Amendment to Hotel Purchase Agreement dated November 11, 2016, Seventh Amendment to Hotel Purchase Agreement dated November 18, 2016, Eighth Amendment to Hotel Purchase Agreement dated December 5, 2016, Ninth Amendment to Hotel Purchase Agreement dated December 21, 2016, Tenth Amendment to Hotel Purchase Agreement dated January 31, 2017, Eleventh Amendment to Hotel Purchase Agreement dated February 28, 2017 and Twelfth Amendment to Hotel Purchase Agreement dated May 8, 2017 (as amended and as may hereafter be further amended, the “**Hotel Purchase Agreement**”). In conjunction with the Hotel Purchase Agreement, Design-Builder entered into that certain Direct Access Agreement dated as of April 22, 2016 for the benefit of Buyer (“**Buyer DAA**”).

D. As of even date herewith, Developer has financed a portion of the construction costs to build the Project (“**Development Contribution Mortgage**”) with _____, a _____ (“**Lender**”). In conjunction with the Development

Contribution Mortgage, Design-Builder has entered into that certain Direct Access Agreement dated as of even date herewith for the benefit of Lender (“**Lender DAA**”).

E. This Metro DAA sets forth the agreements that run directly between Design-Builder and Metro in connection with the Project.

AGREEMENT

For valuable consideration received, Design-Builder and Metro agree as follows:

1. Design-Builder represents and warrants that as of the date hereof (a) the Design-Build Contract has not been amended, modified or supplemented and is in all respects in full force and effect and enforceable against Design-Builder in accordance with its terms, and (b) no default exists by Developer under the Design-Build Contract.

2. If Developer defaults under the Design-Build Contract, Design-Builder shall give concurrent written notice and a copy of the current Design-Build Contract to Developer and to Metro specifying the default and the steps necessary to cure the same, and Metro shall have thirty (30) days after receipt of such notice to cure such default or cause it to be cured (or 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 Design-Builder shall forbear exercising any right or remedy it may have with respect to such default, provided that within Metro’s cure period above, Metro pays Design-Builder in accordance with the terms of the Design-Build Contract. Metro shall have no obligation to cure any such default and except as expressly provided above, Design-Builder shall have no obligation to continue its performance under the Design-Build Contract in the absence of Metro’s payment. At any time if Developer has defaulted under the Design-Build Contract as provided above and Metro elects to perform and enforce the rights and obligations of the “Owner” under the Design-Build Contract in accordance with its terms, then Metro may enforce the Design-Build Contract directly against Design-Builder, so long as Metro concurrently performs the obligations of the “Owner”, including payment obligations thereunder. If Metro exercises its rights under the previous sentence, Design Builder shall have no obligation to continue future performance unless Metro provides reasonable evidence satisfactory to Design-Builder that Metro has adequate funds available and committed to fulfill all contractual obligations of the “Owner” under the Design-Build Contract.

3. If Metro notifies Design-Builder in writing that (a) either (i) Developer has defaulted under the DFA Agreement or (ii) Developer has failed to enforce the Design-Build Contract and such failure has continued uncured for more than ten (10) days after written notice from Metro, and (b) Metro elects to perform and enforce the rights and assume the limitations and obligations of the “Owner” under the Design-Build Contract in accordance with its terms without any modification then Metro may enforce the Design-Build Contract directly against Design-Builder pursuant to its then written terms without modification, including but not limited to delay damages, so long as Metro concurrently performs and assumes the obligations and limitations of the “Owner”, including but not limited to payment, under the Design-Build Contract.

4. From and after Closing, Metro shall have the non-exclusive benefit of, and non-exclusive right to enforce directly against Design-Build Contractor, all warranties provided by Design-Build Contractor under Sections 2.9 and 2.10 of the General Conditions of the Design-Build Contract (including warranties for construction and design defects), subject to and upon the terms and conditions of the Design-Build Contract.

5. Nothing herein contained shall be construed to impose upon Metro any duty to advance funds to Design-Builder except upon and subject to the terms of the DFA Agreement, or to see to the application of such amounts by Design-Builder. Design-Builder acknowledges that Metro is obligated under the DFA Agreement only to Developer and to no other person or entity unless Metro exercises its rights under Section 2 and 3 above.

6. Each of the rights granted to Metro pursuant to Sections 2 and 3, above, are subject and subordinate to the rights granted to Buyer under the Buyer DAA and to Lender under the Lender DAA. Developer shall cause Buyer (with respect to the Buyer DAA) and Lender (with respect to the Lender DAA) to copy Metro at the same time and in the same manner delivered to Developer or Design-Builder and at the address for Metro specified in the DFA Agreement on all written notices provided to Developer or Design-Builder.

7. This Agreement shall be binding upon Design-Builder and its successors and assigns and shall inure to the benefit of Metro and its successors and assigns.

[Signature Pages Follow]

**SIGNATURE PAGE
TO
DIRECT ACCESS AGREEMENT**

M. A. MORTENSON COMPANY

By: _____

Name: John J. Nowoj

Its: Vice President and General Manager

**SIGNATURE PAGE
TO
DIRECT ACCESS AGREEMENT**

The undersigned joins herein to consent to this Metro DAA and agrees to be bound by all provisions of this Metro DAA that are applicable to Developer.

MDI SECOND AVENUE PORTLAND HOTEL
OWNER, LLC, a Minnesota limited liability
company

By: _____

Name: Mark G. Sherry

Its: President

ATTACHMENT 2.23
TO
DEVELOPMENT AND FINANCING AGREEMENT

PREVAILING WAGE COMPLIANCE AGREEMENT

This COMPLIANCE AGREEMENT (this “Agreement”) is made this ___ day of July, 2017, by the Metro a municipal corporation of the State of Oregon and MDI Second Avenue Portland Hotel Owner, LLC, a Delaware limited liability company (“Owner”). Metro and Owner may be referred to jointly in this Agreement as the “Parties” and individually as a “Party.”

Recitals

Owner has or will receive from Metro a total of \$74,000,000.00 in public agency grant funds, the proceeds of which shall be used for development and construction of a full service hotel located at the corner of Second Avenue and Holladay Street, Portland, Oregon (the “Project”). Accordingly, the Project is a “public work” for purposes of Oregon’s prevailing wage rate law, ORS 279C.800 to 279C.870 (the “PWRL”), administered by the Bureau of Labor and Industries (“BOLI”). This Agreement satisfies the legal requirement that certain terms of the PWRL be included in a contract between Metro and Owner.

Agreement

1. Prevailing Wage Rate. The Parties agree that Owner will require the general contractor for the Project (the “General Contractor”) and all subcontractors to comply with all provisions in ORS 279C.800 through 279C.870 (as any of these statutes apply to payment of prevailing wages) with respect to the Project. Owner may not select as the General Contractor, a person or entity on the BOLI list of ineligible. Each worker in each trade or occupation employed in the performance of the work of the Owner on the Project, whether by the General Contractor, subcontractor or other person, must be paid not less than the applicable rate of wage as required by Oregon law, and Owner shall include this requirement in its contract with the General Contractor for the Project and require that the General Contractor include this requirement in all subcontracts. Owner shall include in the contract specifications for the Project, the prevailing wage rates identified in Section 1(I) below, a provision stating that a fee is required to be paid to the BOLI Commissioner as provided in ORS 279C.825(1), and a provision stating that the General Contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt. Owner shall require that the General Contractor submit all required weekly certified payroll for the Project to the attention of Metro’s designated representative by the 5th working day of the following month, and all other required documentation prior to the General Contractor or a subcontractor commencing work on the site. The parties, through this Agreement, are not acknowledging or establishing that the Project is a public improvement subject to public bidding laws under ORS 279C or otherwise. Owner also agrees to ensure compliance and to include the following provisions in the contract with the General Contractor for the Project:

A. Certified Payroll. The General Contractor shall submit monthly certified payroll for work on the Project to both the Owner’s designated representative and Metro’s designated representative by the 5th business day of the following month. The General Contractor shall include in each subcontract a provision requiring the subcontractor (a) to submit monthly certified payroll for work on the Project to the attention of the General Contractor’s representative by the 5th business day of the following month and (b) to include this provision in

all of its subcontracts. Owner, Metro, and General Contractor shall withhold payment as prescribed by ORS 279C.845(7) through 279C.845(8) if certified payroll statements are not filed in the time and manner prescribed under ORS 279C.800 through 279C.870, and the contracts with the General Contractor and all subcontractors shall so provide.

B. BOLI Fee. Owner will pay the fee to BOLI required under ORS 279C.825(1) and pursuant to the administrative rule of the Commissioner. The total hard construction costs of the Project shall be used for the purpose of calculating the fee. As a public works under ORS 279C.800(6)(a)(B), the fee will be based on the total project amount.

C. Public Works Bond. The General Contractor and all subcontractors, prior to starting any work on this Project, are required to file with the Construction Contractors Board a “public works bond” in the amount of \$30,000 with a corporate surety authorized to do business in the state of Oregon, unless exempt under the provisions of ORS 279C.836. The General Contractor shall file with the Construction Contractors Board a public works bond satisfying the foregoing requirements before commencement of work on the Project, unless otherwise exempt. The General Contractor shall include in each subcontract a provision requiring the subcontractor and each lower tier subcontractor (a) to have a public works bond satisfying the foregoing requirements filed with the Construction Contractors Board before commencement of work on the Project, unless otherwise exempt and (b) to include this provision in all of its subcontracts. The General Contractor shall verify that all subcontractors have filed the public works bond prior to commencement of work on the Project, and shall provide such verification to Metro upon request.

D. Contractor Eligibility. The General Contractor may not award a subcontract to any person or entity on the BOLI list of ineligibles. The General Contractor shall include in each subcontract a provision (a) prohibiting the subcontractor from awarding a subcontract to a person or entity on the BOLI list of ineligibles and (b) requiring the subcontractor to include this provision in all of its subcontracts. General Contractor shall verify that none of the subcontractors are on the BOLI list of ineligibles.

E. Work Day/Work Week. No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it. In such cases, the employee shall be paid at least time and a half pay the regular rate of pay for: (1) all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (2) all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (3) all work performed on Saturday, and on any legal holiday specified in ORS 279C.540.

F. Employee Notice. The General Contractor must give to employees, who work on a public works contract, notice of the number of hours per day and days per week that the employees may be required to work as specified in ORS 279C.520, either: (a) in writing, either at the time of hire or before commencement of work on the contract, or (b) by posting a notice in a location frequented by employees.

G. Prompt Payment for Medical Services. The General Contractor shall promptly make payment, as due, to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the General Contractor, of all sums which the General Contractor agrees to pay for such services and all moneys and sums which the General Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service per ORS 279C.530. General Contractor shall also comply with ORS 656.017.

H. General Contractor's Failure to Make Prompt Payment. If, upon reasonable concern by Owner that General Contractor has failed, neglected or refused to make prompt payment of any claim for labor, equipment, services or materials furnished to General Contractor or a subcontractor by any person, or the assignee of the person, in connection with the Project as such claim becomes due, Owner may pay such claim to the person furnishing the labor, equipment, services or materials and charge the amount of the payment against funds due or to become due General Contractor under the contract. Owner reserves the right to make payments directly or by multiple-payee check and General Contractor, in its contract with Owner, shall consent to such direct and multiple-payee check payments. Upon Owner's request, General Contractor shall furnish to Owner the information required to facilitate such payments with each application for payment, including: (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons per ORS 279C.315.

I. Wage Rates.

i. Except as set forth below in subsection (ii), the prevailing wage rates for public works contracts in Oregon effective January, 2016, with Amendment effective as of April, 2016, are incorporated into this Agreement by reference.

ii. Notwithstanding the general applicable wage rates set forth in subsection (i) above, the prevailing wage rates for public works contracts in Oregon effective July, 2014, shall be paid for the following occupations: Boilermaker, Painter, Soft Floor Layer.

iii. All workers shall be paid the applicable prevailing wage rate as set forth in these documents, for work performed on the Project. General Contractor shall include in each subcontract a provision requiring the subcontractor (a) to pay the prevailing wage rates identified in this Section and (b) to include this provision in all of its subcontracts. A copy of the applicable prevailing wage rates are available from BOLI or its website:

https://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx

2. Notice. Any notice required or permitted under this Agreement shall be given when actually delivered or two (2) days after being deposited in the United States Mail as certified mail return receipt requested and addressed as follows:

To Owner: Mortenson Development, Inc.
700 Meadow Lane North
Minneapolis, MN 55422
Attn: Tom Lander and Nate Gundrum

To Metro: Metro
Attn: Scott Cruickshank
600 NE Grand Avenue
Portland, Oregon 97232

or to such other address as may be specified from time to time by any of the Parties in writing.

3. Miscellaneous.

A. Indemnification. Owner shall indemnify and hold Metro, its employees and agents harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees) incurred or alleged, as applicable, by third-parties which any of them may suffer or incur in connection with this Agreement, to the extent such third-party liabilities, claims, losses, damages, or expenses arise from the negligence or willful misconduct of Owner or anyone for whom Owner is responsible.

B. Counterparts. This Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the Parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

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

D. Governing Law. This Agreement shall be governed by and construed under Oregon law.

E. Assignment. No Party may assign this Agreement without the prior written consent of the other Parties.

F. Modification; Prior Agreements; Headings. This Agreement may not be modified or amended except by an instrument in writing signed by all Parties. This Agreement reflects and sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

G. Validity; Severability. If any provision of this Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.

H. Time of Essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as the date first set forth above.

OWNER:

MDI SECOND AVENUE PORTLAND HOTEL
OWNER, LLC, a Delaware limited liability
company

By: _____

Name: _____

Its: _____

METRO:

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

By: _____

Name: _____

Its: _____

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4810, FOR THE PURPOSE OF AMENDING THE DEVELOPMENT AND FINANCE AGREEMENT FOR THE CONVENTION CENTER HOTEL PROJECT

Date: June 29, 2017

Prepared by: Scott Cruickshank

BACKGROUND

Purpose of action

The purpose of this resolution is to approve general terms of an amendment to the 2014 Development and Finance Agreement (the “DFA”) with Mortenson Development, Inc. (“Developer”) related to the Oregon Convention Center hotel and authorizes the Metro Chief Operating Officer to execute the final terms.

Proposed Seventh Amendment to the DFA

The DFA was initially approved and signed in Spring of 2014, and has been amended multiple times over the last three years. The parties now desire to revise the DFA for a variety of reasons, including most notably to reflect, (1) that the Developer has now secured a Lender to provide the majority of the project financing; (2) that significant time has elapsed and the project has evolved such that some terms have been changed and or satisfied/waived, many to the mutual benefit of both parties; and (3) the structure and detailed events of “closing”.

Overview of Amendment Terms:

1. Adapting agreements to the satisfaction of Developer’s lender.
 - a. Updates the Project Funding Agreement, identifying the Lender (Fortress Credit Co LLC) and the Disbursing Agent
2. Salient conditions revised, satisfied, and/or waived.
 - a. Inclusion of Direct Access Agreement, whereunder Developer and the Design-Builder grant certain rights to Metro under the Design-Build Agreement (a contract to which Metro is not a party);
 - b. Inclusion of a Prevailing Wage Compliance Agreement, where under Developer recognizes the Hotel project as a “public works” and is obligated to comply with Oregon prevailing wage law;
 - c. Removal of Payment and Performance Bond, acknowledging that pursuant to the Hyatt Purchase Agreement terms (between Mortenson and Hyatt), design and development has advanced significantly further than the original project development plan; the Lender and Hyatt have also not required a payment and performance bond;
 - d. Inclusion of a \$300,000 Developer contribution towards an Apprenticeship Development program; The program is currently being created by Metro and is intended to create and support apprenticeship opportunities for women and people of color;
 - e. Acknowledgment of Metro’s receipt and satisfaction of certain closing conditions, including (for example) 30% construction drawings and a Property appraisal.
3. Events of Closing.
 - a. Phase 1: All DFA Related Agreements (forms of which have been attached to the DFA’s approved by the Metro Council) are executed and placed into escrow, Developer/Lender Loan

- Documents executed and placed into Escrow, Pricing of Bonds and Bond Purchase Agreement Executed with Metro's Underwriter (Piper Jaffray);
- b. Phase 2: Bond Closing & Loan Closing, Funding by all parties, and Property Acquired/Deed Restriction Recorded and Memorandum of Room Block Agreement recorded.

Resolution No. 17-4810 is before the Metro Council for consideration to provide authority to the COO to enter into the seventh amendment to the Hotel project.

Project status

Project is progressing toward financial close estimated to be mid-July, 2017. Construction would begin immediately thereafter, with completion estimated for December, 2019.

KNOWN OPPOSITION

NONE

RECOMMENDED ACTION

Staff recommends Metro Council's approval of Resolution 17-4810, providing authority for the COO to enter into the Seventh Amendment to the Development and Finance Agreement under the general terms outlined above, which will allow the project to proceed. The executed Seventh Amendment and all exhibits will be made available to the Council, and also to the public on the Metro website, as soon as they are finalized.