

# **Exhibit N to the Development Agreement**

## **Hotel Use Covenant**

EXHIBIT N

<INSERT RECORDING INFORMATION>

<TAX MAP PARCEL NUMBER>

**DECLARATION OF HOTEL USE COVENANTS**

This DECLARATION OF HOTEL USE COVENANTS (“Covenant”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by \_\_\_\_\_, a \_\_\_\_\_ corporation (“Declarant”), identified for indexing purposes as Grantor and Grantee.

**RECITALS**

R-1. Declarant is the fee simple owner of certain real property, known as <INSERT PARCEL> and as further described in **Exhibit A** (the “***Property***”).

R-2. The City of Richmond, Virginia (the “City”) seeks to revitalize the downtown community through the development of an identified project area that is currently not utilized to its full market potential, and that results in additional taxable value in both the project area and in surrounding properties.

R-3. The City and The NH District Corporation (the “**Developer**”) entered into that certain Development Agreement (the “***Development Agreement***”) and that certain Purchase and Sale Agreement (the “***PSA***”) whereby the City and the Developer agreed upon the terms under which the City agreed to convey the fee simple interest in the Property and according to the terms of which the Developer agreed, among other things, to design, develop and construct a minimum 500 room guest hotel, that shall consist of approximately 320,000 square feet of space, including public space, meeting space, restaurants, retail space, guest rooms, back of house areas and amenities, as described in Schedule F-1 to the Development Agreement (the “***Hotel***”). The Declarant further shall enter into a Franchise Agreement for no less than twenty years with a Selected Hotel Brand as defined in Schedule F-1 of the Development Agreement.

R-4. The Declarant was formed to acquire title to the Property and to oversee development and construction of the Hotel on behalf of the Developer.

R-5. The Hotel shall be developed and constructed in accordance with the Development Agreement, PSA and the Memorandum of Development Agreement (as defined herein).

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Declarant hereby declares that the Property shall be subject to this Covenant, which shall be binding in accordance with the terms herein on the Declarant and on all tenants and purchasers of the Hotel and all Transferees of the Property until the payment in full or defeasance of the Bonds (as defined herein). For purposes herein, Transferees shall be deemed all persons that may hereafter acquire any interest whatsoever in the Property, or any part thereof,

from Declarant, or any successor or assign of Declarant, or any other party, whether by sale, lease, assignment, hypothecation, or any other means of transfer (any and all of the foregoing means of transfer being herein referred to as “**Transfer**”), until the payment in full or defeasance of the Bonds. Wherever “Declarant” is used in this Covenant, the term includes any Transferee.

## ARTICLE I

### DEFINITIONS AND MISCELLANEOUS PROVISIONS

1.1 DEFINITIONS. For the purposes of this Covenant, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“**Affiliate**” means any Person directly or indirectly Controlling, Controlled by, or under Common Control with another Person.

“**Agreements**” shall mean the PSA, the Development Agreement and the Memorandum of Development Agreement as they relate to the Declarant and the development of the Hotel as well as all other agreements required to be entered into by the Declarant thereunder.

“**Bonds**” means obligations, both taxable and tax exempt, issued by the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia, under the Industrial Development and Revenue Bond Act, Va. Code Ann. §§ 15.24900—15.24920, as that law may be amended or re codified in the future.

“**Building Equipment**” shall mean all equipment owned by Declarant or leased or licensed by Declarant (but then only to the extent of Declarant's rights under such lease or license) incorporated in, located within, at or attached to and used or usable in the operation of, or in connection with, the Hotel Property owned by Declarant and shall include, but shall not be limited to: machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; washroom, toilet and lavatory plumbing equipment; window washing hoists and equipment; and all additions or replacements thereof, excluding, however, any personal property that is owned by sublessees, licensees, concessionaires or contractors, and proprietary software, management systems and the like.

“**Business Day**” means any day that is neither a Saturday, a Sunday, nor a day observed as a legal holiday by the City of Richmond, Virginia, the Commonwealth of Virginia, or the United States government.

“**CCD**” Capital City Development, LLC, a Virginia limited liability company.

“**CCP**” Capital City Partners, LLC, a Virginia limited liability company.

**“Closely Held Affiliate”** shall mean with respect to any Person (the “subject Person”), any other Person substantially all of the Equity interests in which are owned, directly or indirectly, by the same Persons that own, directly or indirectly, all of the Equity Interests of the subject Person.

**“Controlling Interest”** shall mean (i) the ownership, direct or indirect, by one Person of more than 50 percent of the profits, capital, or equity interest of another Person or (ii) the power to direct the affairs or management of another Person, whether by contract, other governing documents, operation

**“Covenant Date”** means the date written on the cover page of this Covenant, which date will be the date on which the parties have executed and delivered this Covenant.

**“Debt Financer”** shall mean any Person providing Debt Financing.

**“Debt Financing”** shall mean non-equity funds procured from an Institutional Lender to fund the construction and development of the Hotel.

**“Declarant”** is defined in the introductory paragraph.

**“Declarant Party”** means the Declarant, any Affiliate of Declarant, a Declarant Subcontractor, CCP, CCD, each Construction Contractor, any Contractor, advisor or agent of Declarant and their successors and permitted assigns.

**“Development Agreement”** is defined in the Recitals which is recorded in the Land Records.

**“Developer”** is defined in the Recitals.

**“Equity Interest”** shall mean with respect to any entity, (A) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (B) the legal (other than as a nominee) or a beneficial ownership of any partnership, membership or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (C) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such entity is a trust, and (D) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

**“FF&E”** shall mean all furniture, furnishings, wall, floor and ceiling coverings, fixtures (other than mechanical systems and similar improvements viewed as part of the Hotel building) and equipment located at or used in connection with the Hotel, including (without limitation): (a) all furniture, furnishings, built in serving or service furniture, carpeting, draperies, decorative lighting, doors, cabinets, hardware, partitions (but not permanent walls), television receivers and other electronic equipment, interior plantings, interior water features, artifacts and artwork, and interior and exterior graphics; (b) office furniture; (c) communications equipment; (d) all fixtures and specialized equipment used in the operation of kitchens, laundries, dry cleaning facilities, bars, restaurants and a hotel; (e) telephone and call accounting systems; (f) rooms management systems, point of sale accounting equipment, front and back office accounting, computer, duplicating systems and office equipment; (g) cleaning and engineering equipment and tools; (h)

vehicles; (i) recreational equipment; and (j) all other similar items which are used in the operation of the Hotel, excluding, however, any personal property which is owned by licensees, concessionaires or contractors, and any proprietary software, management systems and the like.

**“Foreclosure Transfer”** shall mean a transfer, sale or assignment occurring as a result of the foreclosure of, or other action in enforcement of, a Mortgage, or any transfer, sale or assignment of any or all of the Property, or any other transfer, sale or assignment of all or any part of the Property by judicial or other proceedings under, pursuant or pertaining to a Mortgage, or by virtue of the exercise of any power or right contained in a Mortgage, or by deed, assignment, or other conveyance-in-lieu of foreclosure or other action in enforcement of a Mortgage, or otherwise, or a transfer of some or all of the Equity Interests in Declarant occurring as a result of, or pursuant to, or in connection with a pledge, hypothecation or other collateral assignment of such Equity Interests, or any sale, transfer or assignment of some or all of the Equity Interest in Declarant, or in any Person holding, directly or indirectly, some or all of the Equity Interest in Declarant in any Person holding, directly or indirectly, some or all of the Equity Interests in Declarant by virtue of, or pursuant to, any right or power contained in a Mortgage or in any other document or instrument evidencing or securing a loan secured by a Mortgage, or by deed, assignment or other conveyance of some or all of such equity interests in lieu of a foreclosure, sale or other enforcement action, or otherwise (it being the intention of the parties that the term “Foreclosure Transfer” shall be given the broadest possible interpretation to over, reach, include and permit any sale, assignment or transfer whatsoever, and however effected or structured, of some or all of the Property, some or all of the Equity Interests in Declarant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Declarant following an uncured default under a Mortgage (including any document or instrument, whether or not recorded, that evidences or secures a debt secured by a Mortgage)):

(x) to a Mortgagee or its Designee or Foreclosure Transferee: or

(y) to any Person that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Property, or some or all of the Equity Interests in Declarant from a Mortgagee or its designee after such Mortgagee or designee has purchased or otherwise acquired some or all of the Property, or some or all of the Equity Interests in Declarant in a Foreclosure Transfer described in the immediately preceding clause (x).

Each Foreclosure Transfer shall be deemed, for the purposes hereof, to have occurred as of the date of the transfer, sale, assignment or conveyance-in-lieu thereof in question.

**“Franchise Agreement”** shall mean the Franchise License Agreement by and between the Declarant and \_\_\_\_\_, dated as of \_\_\_\_\_, as it may be amended, supplemented, modified, substituted or replaced.

**“Hazardous Material Laws”** has the meaning set forth in Section 16.1.2 (Hazardous Material Laws) of the Development Agreement.

**“Hotel”** is defined in the Recitals.

“**Hotel Manager**” shall mean [insert name] selected to be the Permitted Operator to manage and operate the Hotel prior to the City's obligation to commence the public offering of the Bonds.

“**Improvements**” means any and all site and vertical improvements, including the systems, cables, materials, equipment, property, buildings, structures, appurtenances, subsystem or other improvement any of which comprises the Hotel on or within the Property.

“**Institutional Lender**” mean a Person who, at the time it first makes a loan to Declarant, or acquires an interest in any such loan, is a savings bank, savings and loan association, credit union, commercial bank or trust company organized or chartered under the laws of the United States or any state thereof shall an agency) capacity); an insurance company organized and existing under the laws of the United States of America or any state thereof or the City or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a “REMIC” under the Code or other public or private investment entity (in each case whether acting as principal or agent); a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity) as principal or agent); an employees' welfare, benefit, pension or retirement fund; an institutional leasing company; an institutional financing company; any Federal or state governmental agency or entity or any combination of the foregoing entities (other than a Federal or state governmental agency); provided that each of the above entities shall qualify as an Institutional Lender only if (at the time it first makes a loan to Declarant or acquires an interest in any such loan) it (together with such entities, if any, with which its financial statements are consolidated) shall (y) have net assets (determined in accordance with generally accepted accounting principles) of not less than \$100,000,000 and (z) not be an Affiliate of Declarant or the Transferee(s).

“**Land Records**” means the land records of the City of Richmond, Virginia.

“**Law**” or “**Laws**” means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the City, the Declarant, a Declarant Party, the Hotel or to the Property or any portion thereof, including, without limitation, Hazardous Material Laws, whether or not in the present contemplation of the City or the Declarant, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, and local governments, authorities, courts, and any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Property or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and improvements thereon.

“**Management Agreement**” shall mean the Management Agreement dated \_\_\_\_\_ being the written agreement between the Declarant and Hotel Manager pursuant to which Hotel Manager has agreed to manage and operate the Hotel in accordance with the terms thereof and the terms of this Covenant that relate to the operation and management of the Hotel, and any replacements, substitutions, restatements or modifications thereof.

**“Management Transfer”** shall mean any transaction or series of transactions, by operation of law or otherwise, with the result that (1) Hotel Manager has conveyed a greater than fifty percent (50%) ownership interest in the Management Agreement to a Person who is not a Closely Held Affiliate of Hotel Manager or (2) a Controlling Interest of the Hotel Manager is conveyed to a Person who is not a Closely Held Affiliate of the Hotel Manager. The term “Management Transfer” shall not, however, include (i) the transfer of stock of a Public Company on a stock exchange or equivalent (e.g., NASDAQ) in the ordinary course of business or (ii) the merger of one Public Company into another Public Company, provided that (A) the surviving entity is a Public Company and a Permitted Operator and (B) this sentence is subject to and shall not limit the provisions of Section 4.2(a) hereof. In addition, the term “Management Transfer” shall not include (i) a transfer of all of the stock of the ultimate parent company of the Hotel Manager to another Person or (ii) the transfer of all of the assets of the ultimate parent company of the Hotel Manager to another Person; provided, that (A) in the case of the event described in the preceding clause (i), such parent company continues to be operated as a separate entity and remains a Permitted Operator, (13) in the case of the event described in the preceding clause (ii), the transferee organizes all of such transferred assets into a separate entity which remains a Permitted Operator, and (C) in either case, this sentence is subject to and shall not limit the provisions of Section 4.2(a) hereof.

**“Management Transferee”** shall mean a Person to whom a Management Transfer is made.

**“Master Plan”** means the master plan for Developer entire project under the Development Agreement developed by Declarant and approved by City, as further described on Exhibit L (Master Plan) attached hereto.

**“Member”** means any Person with an interest in Declarant.

**“Memorandum of Development Agreement”** means the Memorandum of Development Agreement to be recorded against title to each Private Development Parcel as set forth in, and as required by, Section 18.15 of the Development Agreement.

**“Mortgage”** means any mortgage, deed of trust or other similar instrument securing Debt Financing.

**“Mortgagee”** shall mean the Institutional Lender providing Debt Financing.

**“Notice Address”** shall mean the address for notice set forth below, as amended from time to time by notice sent to the other party as provided herein:

A. To the City:

Chief Administrative Officer  
City of Richmond, Virginia  
900 East Broad Street, Suite 201  
Richmond, Virginia 23219



with a copy to:

City Attorney  
City of Richmond, Virginia  
900 East Broad Street, Suite 400  
Richmond, Virginia 23219

B. To the Developer:

The NH District Corporation  
PO Box 280  
Richmond, Virginia 23218  
Attention: President

C: To the Declarant:

***“Operating Standard”*** shall mean the standard consistent with the maintenance and operational standards applicable to Selected Hotel Brand initially or if the Hotel is no longer operated as Selected Hotel Brand then the maintenance and operational standards of a Permitted Franchisor or other brand approved by the City.

***“Other Equity Investment”*** shall mean either (i) cash invested in the Hotel under government programs, such as the Federal New Market Tax Credit Program or (ii) any cash contributed to the Hotel that does not qualify as a Declarant Equity Investment.

***“Permitted Franchisor”*** shall mean a Person who is not a Prohibited Person and is a Selected Hotel Brand or other comparable hotel brand approved by the City in accordance with Section 5.1 of this Covenant.

***“Permitted Operator”*** shall mean a Person who (i) has substantial experience in operating consistent with the Operating Standard; (ii) is not a Prohibited Person; and (iii) shall not be a party to material litigation which, if adversely determined, would have a material adverse impact on the ability of the Hotel Manager to operate the Hotel.

***“Person”*** shall mean an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity, including Declarant; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

***“Private Development Parcels”*** mean each of the Development Parcels excluding Parcel A-1 (Arena) and Parcel F2 (Armory) and any portion of the Project including the Road Projects.



“**Private Development Project**” means the portion of the Project developed on the Private Development Parcels.

“**Project Plans**” means the Concept Plans, the Schematic Plans and the Construction Plans and Specifications.

“**Prohibited Person**” shall mean any of the following Persons:

(a) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to applicable Requirements concerning organized crime; or

(b) Any Person organized in or controlled from a country, the effects of the activities with respect to which, are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or

(c) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or

(d) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or

(e) Any Affiliate of any of the Persons described in paragraphs (a) through (d) above. “Prohibited Uses” shall have the meaning set forth in Article II.

“**Project**” shall have the meaning provided in the Development Agreement.

“**Project Segment**” means each of the individual segments of the Project identified in the Master Plan attached as Exhibit L (Master Plan), including each individual Road Project.

“**Property**” is defined in the Recitals.

“**PSA**” is defined in the Recitals.

**“Public Company”** shall mean a Person that is required to comply with the reporting requirements under the Securities Exchange Act of 1934, as amended, or any successor statute, or is otherwise publicly listed on a recognized stock exchange.

**“Selected Hotel Brand”** means, initially, a reputable, full-service hotel brand selected by the Declarant that is designated as an Upper-Upscale or a Luxury Chain for the Richmond Region Tourism, Richmond-Petersburg, VA region, in the hotel chain scale published by STR, Inc., and, any time after the 20th year of the completion of the construction of the Hotel, **“Selected Hotel Brand”** shall mean a reputable, full-service hotel brand selected by the Declarant that is designated as an Upscale, Upper-Upscale or a Luxury Chain for the Richmond Region Tourism, Richmond-Petersburg, VA region, in the hotel chain scale published by STR, Inc.

**“Stabilization”** means that the Hotel has achieved percent ([●]%) of occupancy over a [●] period.

**“Substantial Controlling Interest”** shall mean such ownership of Declarant or a Transferee as to give day-to-day control over Declarant or ownership or control of the votes necessary to elect a majority of the board of directors or other governing body, or appoint the managing member or manager, or such Person.

**“Transfer”** shall mean (A) any change, by operation of law or otherwise, in ownership of an Equity Interest in Declarant, where such change in ownership directly or indirectly produces any change in the Substantial Controlling Interest of Declarant, or (B) any transaction or series of transactions, by operation of law or otherwise, including, without limitation, the issuance of additional Equity Interests or the direct or indirect revision of the beneficial ownership or control structure of the management or operation of Declarant or any direct or indirect constituent entity of Declarant, which, in either case, produces any change, by operation of law or otherwise, in the Substantial Controlling Interest in Declarant. With respect to the Property, term “Transfer” shall mean any sale, assignment, conveyance, lease, deed of trust or encumbrance on the Property or of any portion of or any interest in the Property; provided, however, “Transfer” shall not include hypothecations or other security arrangements that are required to secure the Debt Financing or Other Equity Investment.

**“Transferee”** shall mean any Person to which the ownership of the Hotel has been transferred.

1.2 GOVERNING LAW. This Covenant shall be governed by and construed in accordance with the laws of the City (without reference to conflicts of law principles).

1.3 CAPTIONS, NUMBERINGS, AND HEADINGS. Captions, numberings, and headings of Articles, Sections, Schedules, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

1.4 NUMBER; GENDER. Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

1.5 BUSINESS DAY. In the event that the date for performance of any obligation under this Covenant falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

1.6 COUNTERPARTS. This Covenant may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

1.7 SEVERABILITY. In the event that one or more of the provisions of this Covenant shall be held to be illegal, invalid, or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Covenant shall continue in full force and effect, unless this construction would operate as an undue hardship on City or Declarant or would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

1.8 SCHEDULES AND EXHIBITS. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant.

1.9 INCLUDING. The word “including,” and variations thereof, shall mean “including without limitation.”

1.10 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by City and Declarant and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

1.11 CONFLICTS. In the event of a conflict between this Covenant and the Memorandum of Development Agreement prior to the release of the Memorandum of Development Agreement, the terms of the Memorandum of Development Agreement shall govern.

## ARTICLE II

### USE COVENANTS

2.1 OPERATION. Subject to the provisions of this Covenant, the Declarant will continue to operate the Property as a Hotel consistent with the Master Plan, the Operating Standard and the other provisions of this Covenant.

2.2 GENERAL USES. Prior to the full repayment or defeasance of the Bonds, the Property shall only be utilized in a manner consistent with Section 2.1 hereof and shall not be used, in whole or in part, for any of the following “Prohibited Uses”: laundromat, check-cashing establishment, adult entertainment, pawn shop and drive thru services. In addition, subject to the provisions of Section 2.3 below, the Property shall not be used in a manner that would alter the Master Plan.

2.3 REQUEST FOR CHANGES. In the event that the Hotel is no longer operationally economically feasible after Completion of Construction (as defined in the

Memorandum of Development Agreement), but prior to the full repayment or defeasance of the Bonds, and if as the result of such event, the Declarant desires to change the use of the Property, the Declarant shall submit a request to change the use of the Property as originally contemplated by the Master Plan for the City's approval, which shall not be unreasonably denied or delayed.

#### 2.4 MAINTENANCE OF HOTEL PROJECT SITE.

(a) *Maintenance and Repair.* Declarant shall take good care of, and keep and maintain, the Hotel in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Hotel in good and safe order and condition consistent with the Operating Standard, however the necessity or desirability therefor may arise, and shall make all such repairs in an expedient manner that is reasonably consistent with prudent hotel operations, so that the Hotel is maintained in prime working condition.

1. Declarant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Hotel.

2. All repairs made by Declarant to the Hotel shall be made in compliance with Law and consistent with the Operating Standard.

(b) *Cleaning of Hotel.* Declarant shall keep clean and free from dirt, mud, standing water, snow, ice, vermin, rodents, pests, rubbish, obstructions and physical encumbrances all areas of the Hotel in compliance with Law.

2.5 MAINTENANCE OF BUILDING EQUIPMENT AND FF&E. Declarant hereby covenants and agrees to maintain the Building Equipment and the FF&E during the term of this Covenant in accordance with the Operating Standard.

2.6 FINANCIAL REPORTING. For so long as the Bonds remain outstanding, the Declarant shall, and shall cause any tenants and subtenants and the Hotel's operator to, make the following reports to the City's Director of Finance, with a copy to the City:

(a) once each month, at a time during each month prescribed by the City's Director of Finance which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (i) the sales taxes remitted to the Commonwealth of Virginia attributable to the Hotel, and (ii) the Person who collected and remitted those sales taxes;

(b) once each month, at a time during each month prescribed by the City's Director of Finance which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (i) the amount of admission taxes remitted to the City attributable to the Hotel, (ii) the name of the Person who collected and remitted those admission taxes to the City, and (iii) the event for which those admission taxes were collected and remitted;

(c) once each month, at a time during each month prescribed by the City's Director of Finance which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable law, a report setting forth (i) the amount of any lodging taxes remitted to the City attributable to the Hotel and (ii) the name of the Person who collected and remitted those lodging taxes to the City;

(d) once each month, at a time during each month prescribed by the City's Director of Finance which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable law, a report setting forth (i) the amount of meals taxes remitted to the City attributable to the Hotel and (ii) the name of the Person who collected and remitted those meals taxes to the City; and

(e) once each calendar year, at a time during the year prescribed by the City's Director of Finance which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable law, a report setting forth, for business, professional, and occupational license taxes, (i) the amount of such license taxes paid to the City attributable to the Hotel, (ii) the name of the Person who paid those license taxes, (iii) the type of business, as classified by the City's Director of Finance, for which the Person paid those license taxes.

### **ARTICLE III**

#### **TERM**

3.1 TERM. All other obligations, liabilities, terms, and conditions set forth herein shall run with the land, binding Declarant and its successors and assigns until the repayment or defeasance of the Bonds in accordance with the Indenture.

### **ARTICLE IV**

#### **HOTEL MANAGER AND MANAGEMENT AGREEMENT**

##### **4.1 MANAGEMENT AGREEMENT.**

(a) Declarant shall cause the Hotel to be operated and managed exclusively by a hotel management company that is a Permitted Operator or a hotel management company approved pursuant to Section 4.2 (a "*Hotel Manager*") pursuant to a written Management Agreement providing for services, and containing terms and conditions, reasonable and customary for the operation of a hotel in accordance with the terms of this Covenant.

(b) Declarant hereby agrees to incorporate this Covenant in the Management Agreement.

(c) As between the City and Declarant, in the event of any conflict between the obligations of Declarant under the terms of this Covenant and the terms of the Management Agreement, the terms of this Covenant shall govern, and Declarant shall remain responsible for performing all of its obligations hereunder notwithstanding the fact that the Hotel is being managed by the Hotel Manager.

#### 4.2 HOTEL MANAGER.

(a) Declarant shall, at least thirty (30) days prior to (or at such time as the City may agree) each Management Transfer or engagement of a new Hotel Manager for the Hotel (a "Management Engagement") other than with a Permitted Operator submit to the City (in accordance with the notice provisions hereof but subject to Section 4.2(b)) the following information:

1. the name, address and a description of the nature and character of the business operations of the proposed Management Transferee or new Hotel Manager;

2. a certificate of an authorized officer, managing general partner, managing member, trustee or other authorized Person, whichever shall be applicable, of the Management Transferee or new Hotel Manager certifying that the proposed Management Transferee or new Hotel Manager is a Prohibited Person;

(b) In the event of any purported Management Transfer or Management Engagement that does not comply with the provisions of this Covenant, the City shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin such Management Transfer to or Management Engagement with a Person other than a Permitted Operator or to cause the manager to comply with such applicable provisions, it being understood that monetary damages will be inadequate to compensate the City for harm resulting from such noncompliance.

(c) Declarant shall deliver to City, or shall cause to be delivered to City, within thirty (30) business days after the execution thereof, a true and correct copy of the instrument of transfer or engagement and a true and correct copy of (i) in the case of a Management Transfer, the instrument of assumption by the assignee or transferee of Hotel Manager's obligations under the Management Agreement accruing from and after the date of such assignment or transfer and any modifications to the Management Agreement and (ii) in the case of a Management Engagement, the new Management Agreement.

(d) In the event of a Management Transfer to a Permitted Operator, the Declarant shall deliver to the City such of the information specified in Section 4.2(a) with respect to the new Permitted Operator as the City shall request, but the City shall have no right of approval of the new Permitted Operator.

#### 4.3 DECLARANT'S RESPONSIBILITIES.

(a) Declarant will (i) perform or cause to be performed Declarant's material obligations under the Management Agreement, (ii) enforce the performance by Hotel Manager of all of Hotel Manager's material obligations under the Management Agreement, (iii) give the City prompt written notice and a copy of (A) any notice of default, event of default, termination or cancellation sent or received by Declarant in respect of the Management Agreement and (B) any written notice sent or received by Declarant regarding any disagreements as to the funding



of capital improvements to the Hotel or dissatisfaction with the performance of either Declarant or Hotel Manager under the Management Agreement and (iv) promptly deliver to the City executed copies of any amendment or modification of the Management Agreement, or if applicable, any new Management Agreement.

(b) Neither Declarant nor Hotel Manager may terminate the Hotel Management Agreement without providing the City at least thirty (30) days prior notice thereof (or such shorter notice period as may be provided in the Hotel Management Agreement) and the reasons for such termination. If Declarant provides a notice of default to Hotel Manager under the Hotel Management Agreement, Declarant shall simultaneously provide a copy of such notice to the City. If Declarant receives a notice of default from Hotel Manager under the Hotel Management Agreement, Declarant shall promptly provide a copy of such notice to the City.

## ARTICLE V

### FRANCHISOR; CHAIN AFFILIATION

#### 5.1 FRANCHISOR; CHAIN AFFILIATION.

(a) Declarant shall cause the Hotel to be affiliated with a Selected Hotel Brand that is a Permitted Franchisor (provided that there has been no material adverse change in the financial condition of such Permitted Franchisor since the date of this Covenant) or a chain or “flag” approved by the City pursuant to Section 5.1(c) (a “Franchisor”) in accordance with the terms and conditions of this Covenant pursuant to a written Franchise Agreement providing for a national or international reservation and marketing system to which the Hotel has access and in which the Hotel is included, the use of trademarks, service marks, logos, the “flag” and other identifying items provided to other hotels in such reservation and marketing system of the Franchisor and providing for such other services, and containing terms and conditions, reasonable and customary for license agreements for hotels.

(b) As between City and Declarant, in the event of any conflict between the obligations of Declarant under the terms of this Covenant and the terms of the Franchise Agreement, the terms of this Covenant shall govern and Declarant shall remain responsible for performing all of its obligations hereunder notwithstanding the fact that the Hotel is affiliated with the Franchisor.

(c) Developer shall, at least thirty (30) days prior to engagement of the initial or a new Franchisor for the Hotel (a “Franchisor Engagement”) **other than with a Permitted Franchisor**, submit to the City the following information, for the City approval (which approval shall not be unreasonably withheld, denied or delayed):

1. The application to the Franchisor;
2. the name, address and a description of the nature and character of the business operations of the proposed Franchisor;
3. disclosure of ownership of the Controlling Interest of such proposed Franchisor,



4. a certificate of an authorized officer, managing general partner, managing member, trustee or other authorized Person, whichever shall be applicable, of Owner or the proposed Franchisor stating whether the proposed Franchisor is a Prohibited Person;

5. a proposed form of the instrument effectuating such transaction;

6. a copy of the proposed Franchise Agreement with all exhibits thereto or any modifications thereto then existing Franchise Agreement (in either case, with the economic terms thereof redacted);

7. if the Franchisor Engagement is being proposed because the prior Franchisor has terminated its Franchise Agreement with Developer, the reasons for such termination and copies of all documents pertaining to such termination;

8. a certificate of an authorized officer, managing general partner, managing member, trustee or other authorized Person, whichever shall be applicable, of the proposed Franchisor, setting forth a true, complete and correct list of all properties in the United States in respect of which Franchisor or any Affiliate of Franchisor currently has, or within the past three years had, a franchise, operating or management agreement;

9. such other additional information as the City shall reasonably request, which information may include information regarding ownership, banking and financial matters, in connection with its evaluation of such transaction to the extent reasonably available to Developer, provided the City shall make such request within twenty (20) business days after receipt of the initial information; provided, however, that where a change in any Franchisor Engagement occurs in connection with a Foreclosure Transfer such information shall be submitted the City as soon as practicable but in no event later than thirty (30) days after the Foreclosure Transfer; and

10. if the Hotel is to be managed by the Franchisor, the management agreement with the Franchisor.

(d) If the City approves the Franchisor Engagement, the City shall deliver written confirmation of such approval within twenty (20) days after receipt of the materials provided to the City under Section 5.1(c). If the City disapproves the Franchisor Engagement pursuant to the provisions of Section 5.1(c), then within the aforementioned twenty (20) day period the City shall specify in writing to Developer the reasons for its disapproval. Franchisor Engagements that have not been act upon by the City within sixty (60) days of the request shall be deemed approved.

(e) Owner shall deliver to the City, or shall cause to be delivered to the City, within ten (10) business days after the execution thereof, a true and correct copy of the instrument of transfer or engagement and a true and correct copy of Franchise Agreement.

(f) In the event of any Franchisor Engagement that does not comply with the provisions of this Covenant, the City shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin such Franchisor Agreement or to cause the licensor to comply with such applicable provisions, or, if necessary, to transfer the Covenant Franchise Agreement to another Person in accordance with such applicable provisions, it being understood that monetary damages will be inadequate to compensate the City for harm resulting from such noncompliance. Compliance with the delivery requirements of this Section shall be evidenced by either (i) a written acknowledgment signed by the City, or (ii) proof of delivery of the items required by this Section to the Notice Address for the City (including but not limited to time-stamped copies of the items transmitted or return receipts for certified mail or electronic verification by a reputable courier company), without the necessity for a signature by any City official.

(g) In the event of a Franchise Engagement with a new Permitted Franchisor, the Developer shall deliver to the City such of the information specified in Section 5.1(c) with respect to the new Permitted Franchisor as the City shall request, but the City shall have no right of approval of the new Permitted Franchisor.

5.2 DECLARANT'S RESPONSIBILITIES. Declarant will (a) perform or cause to be performed Declarant's material obligations under the Franchise Agreement, (b) enforce the performance by Franchisor of all of Franchisor's material obligations under the Franchise Agreement, (c) give the City prompt written notice and a copy of any notice of default, event of default, termination or cancellation sent or received by Declarant and (d) promptly deliver to the City executed copies of any amendment or modification of the Franchise Agreement, or if applicable, any new Franchise Agreement.

5.3 HOTEL MANAGER SERVING AS FRANCHISOR. Notwithstanding any other provision of this Covenant, a Person and its Closely Held Affiliate may serve as the Hotel Manager and the Franchisor; provided, however, that (i) such Person shall be subject to and meet the requirements of the provisions of this Covenant applicable to Hotel Manager and the Closely Held Affiliate shall meet the provisions of this Covenant applicable to Franchisor, and (ii) the agreements entered into between such Person and Owner and its Closely Held Affiliate and Declarant shall be subject to and meet the requirements of both the provisions of this Covenant applicable to the Management Agreement and the provisions of this Covenant applicable to the Franchise Agreement, respectively.

5.4 HOTEL MANAGER AS A CLOSELY HELD AFFILIATE OF FRANCHISOR. Notwithstanding any other provisions of this Covenant, if the Hotel Manager is a Closely Held Affiliate of the Franchisor, then the national or international reservation and marketing system required of Franchisor under Section 5.1(a) may instead be provided by the Hotel Manager under the Management Agreement.

## ARTICLE VI

### DEFAULT AND REMEDIES

#### 6.1 DECLARANT DEFAULT

6.1.1 Events of Default by Declarant. Upon the occurrence of one of the events enumerated in Sections 6.1.1(a)-(g) below and such default shall continue uncured for sixty (60) days after written notice of such default from City, such event shall constitute an “Event of Default” by the Declarant, provided that such sixty (60) day period may be extended for an additional period of time, at the reasonable discretion of City, if the Declarant has timely commenced and is diligently pursuing the cure of the default, but in no event shall any cure period be extended beyond one-hundred twenty (180 days):

(a) Declarant fails to perform any covenant, obligation, term, or provision under this Covenant;

(b) if a Transfer occurs in violation of the conditions stated in this Covenant;

(c) if Declarant admits, in writing, that it is generally unable to pay its debts as such become due;

(d) until the Memorandum of Development Agreement is released, a default under the Memorandum of Development Agreement relating to the Hotel.

6.1.2 City Remedies to Events of Default by Declarant. If any Event of Default by Declarant occurs and is continuing the City may take any one or more of the following remedial steps as determined in the City's sole and absolute discretion:

(a) seek any available remedy at law (subject to any limitations set forth in the Development Agreement); or

(b) seek enforcement of Declarant's obligations hereunder by any and all remedies available in equity, including without limitation, specific performance and injunctive relief.

6.2 RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies of the City under this Covenant, whether provided by law, in equity, or by this Covenant, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

## **ARTICLE VII COVENANTS BINDING ON SUCCESSORS AND ASSIGNS**

This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of City, Declarant, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors and assigns; provided, however, that all rights of City pertaining to the monitoring or enforcement of the obligations of Declarant hereunder shall not convey with the transfer of title or any lesser interest in the Property, but shall be retained by City, or such other designee of City as City may so determine.

**ARTICLE VIII  
AMENDMENT OF COVENANT**

This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of City on behalf of City and approved by City Attorney for legal sufficiency. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

**ARTICLE IX  
COVENANTS OF DECLARANT**

Declarant covenants that, by execution and delivery of this Covenant, the performance of its obligations under this Covenant, including the development and operation of the Hotel, have been duly authorized by all requisite corporate action. Declarant has the authorization from Ground Lessor and the fee owner of the Property to develop the Hotel in accordance with the Master Plan and this Covenant. Upon execution and delivery hereof by Declarant, this Covenant will, assuming enforceability against the City, constitute the legal, valid and binding obligation of Declarant, enforceable in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or other similar laws of general application or equitable principles relating to or affecting the enforcement of contracts generally against persons similarly situated.

**ARTICLE X  
NOTICES AND REPRESENTATIVES**

Notices served upon Declarant or City at the respective party's Notice Address shall be deemed to have been received for all purposes hereunder: (i) if hand delivered to the other party at the Notice Address, when the copy of the notice is received; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited to the Notice Address with the overnight courier service; (iii) if given by certified mail to the Notice Address, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof at the Notice Address. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.

**ARTICLE XI  
MISCELLANEOUS**

11.1 RISK OF LOSS. Except as otherwise provided herein, the risk of loss with respect to any and all existing and new improvements on the Property shall be borne by the Declarant.

11.2 INDEPENDENT CONTRACTOR. Declarant is and shall remain an independent contractor and not the agent or employee of the City. The City shall not be responsible for making payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Declarant.

*(Signatures on following page)*

IN TESTIMONY WHEREOF, Declarant has caused these presents to be signed, acknowledged and delivered in its name by \_\_\_\_\_, its duly authorized \_\_\_\_\_ and witnessed by \_\_\_\_\_ its \_\_\_\_\_.

WITNESS

DECLARANT [SEAL]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY OF RICHMOND, to-wit:

\_\_\_\_\_, a Notary Public in and for the Commonwealth of Virginia, DO HEREBY CERTIFY THAT who is personally known to be (or approved by oaths of credible witnesses to be) the person named as \_\_\_\_\_ for in the foregoing and annexed Hotel Use Covenant, bearing the date of the personally appeared before me \_\_\_\_\_ and as \_\_\_\_\_ acting on behalf of \_\_\_\_\_, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

APPROVED AND ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 :

CITY OF RICHMOND,

By: \_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

By: \_\_\_\_\_  
City Attorney

EXHIBIT 1-A

Legal Description of Property



EXHIBIT 1-B

Legal Description of Property

EXHIBIT 2

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