



# Huntsville, Alabama

308 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 11/16/2023

**File ID:** TMP-3573

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**Department:** Urban Development

**Subject:**

**Type of Action:** Approval/Action

Resolution authorizing the Mayor to enter into a Project Development Agreement and a Ground Lease between the City of Huntsville, Alabama and BREG HSV, L.L.C., for the Joe Davis Hotel Development.

Resolution No.

**Finance Information:**

**Account Number:** N/A

**City Cost Amount:** N/A

**Total Cost:** N/A

**Special Circumstances:**

**Grant Funded:** N/A

**Grant Title - CFDA or granting Agency:** N/A

**Resolution #:** N/A

**Location: (list below)**

**Address:** N/A

**District:** District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

**Additional Comments:**

N/A

## RESOLUTION NO. 23-\_\_

**WHEREAS**, the City owns fee simple title to a 1980s-era public athletic stadium known as Joe Davis Stadium ("Joe Davis Stadium"), which the City has been working with Chapman Sisson Architects to redesign and convert from a single-use baseball facility into a modern, multisport venue for a Division III "MLS Next Pro" professional outdoor men's soccer team, as well as high school football, soccer, lacrosse, field hockey, and other field sports (as so renovated, the "Renovated Stadium"); and

**WHEREAS**, the City owns certain real property adjacent to the site for the Renovated Stadium as more particularly described on Exhibit A to the Project Development Agreement hereinafter authorized (the "Hotel Project Site"), and the City and BREG HSV, LLC, an Alabama limited liability company (the "Company") desire for the Company to cause to be developed on the Hotel Project Site a hotel project to include, at a minimum, a 200-room, limited-service hotel and meeting space for general meetings and conferences and events (collectively, the "Hotel Project"), all as more particularly described and set forth in the Project Development Agreement and the Ground Lease, each hereinafter defined and authorized; and

**WHEREAS**, the City and the Company have determined for the City to lease the Hotel Project Site to the Company in exchange for the payment of rent and other obligations of the Company for an initial term of twenty (25) years and with the tenant to have the right to extend the same for two (2) additional terms of twenty-five (25) years each, all pursuant to and as more particularly described in the Ground Lease; and

**WHEREAS**, the Company has also approached the City seeking potential use of an approximately 1.5 acre site in the vicinity of the Hotel Project Site located at the corner of Memorial Parkway and Don Mincher Drive as more particularly described on Exhibit B to the Project Development Agreement (the "Potential Commercial Site") for the development of a commercial project containing restaurants and retail developments (the "Potential Commercial Project"), and the City and the Company have determined that the City agree not transfer, encumber or otherwise dispose of the Potential Commercial Site for period specified in the Project Development Agreement while the Company examines viability of the same for the Potential Commercial Project; and

**WHEREAS**, the City has determined that the Hotel Project and the Potential Commercial Project are necessary and desirable in order to, among other things, (i) enhance the draw of the Renovated Stadium for spectators from outside the Huntsville area and promote and enhance tourism and commercial activities within the City, (ii) support and expand patronage, commercial, and entertainment activities within the Renovated Stadium, (iii) accommodate overnight lodging needs of the City and enhance lodging tax revenues and receipts of the City, (iv) foster and promote activities at the various entertainment, commercial and retail developments around the Hotel Project Site, (v) promote tourism, commerce and industry within Huntsville, and (vi) enhance the overall quality of life for the residents and citizens of the City; and

**WHEREAS**, the City intends that revenues derived from rent paid under the Ground Lease and, if undertaken, from the sale of the Potential Commercial Site as described in the Project Development Agreement, be budgeted in the 1990 Capital Improvement Plan (Fund 3020) and expended for the continued improvement, development, and maintenance of John Hunt Park; and

**WHEREAS**, the agreements and obligations of the City under each of the Project Development Agreement and the Ground Lease (together, the "Project Agreements") are hereby determined by the City to be in the public interest and are being made under and in furtherance of any power and authority authorized by Amendment 772 to the Constitution of Alabama of 1901 (recodified as Section 94.01, as amended, of the Recompiled Constitution of Alabama of 1901), and the City has determined that the expenditure of public funds for the purposes herein specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Huntsville, Alabama (the "Council"), that the Council hereby authorizes and approves the Project Development Agreement between the City and the Company, and that the Mayor be, and he is hereby, authorized to execute, by and on behalf of the City, the said Project Development Agreement in substantially the form attached hereto as Exhibit I and identified as "Project Development Agreement", with such changes thereto as shall be approved by the Mayor (the "Project Development Agreement"), along with such notices, certificates, instruments, amendments, agreements, and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, the Project Development Agreement; and

**FURTHER RESOLVED**, by the Council that the Council hereby authorizes and approves the Ground Lease between the City, as lessor, and the Company, as lessee, and that the Mayor be, and he is hereby, authorized to execute, by and on behalf of the City, the said Ground Lease in substantially the form attached as Exhibit II hereto and identified as "Ground Lease", with such changes thereto as shall be approved by the Mayor (the "Ground Lease"), along with such notices, certificates, instruments, amendments, agreements, and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, the Ground Lease; and

**FURTHER RESOLVED**, by the Council that the City Clerk be, and she is hereby, authorized to seal and attest the Project Development Agreement and the Ground Lease and such notices, certificates, instruments, amendments, agreements and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, the Project Development Agreement and the Ground Lease; and

**FURTHER RESOLVED**, by the Council that rent revenues derived by the City from the Ground Lease and, if undertaken, from the sale of the Potential Commercial Site as described in the Project Development Agreement, shall be budgeted in the 1990 Capital Improvement Plan (Fund 3020) and shall be expended for the continued improvement, development, and maintenance of John Hunt Park.

**ADOPTED** this the 16th day of November, 2023

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President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 16th day of November, 2023

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Mayor of the City of  
Huntsville, Alabama

Exhibit I  
Form of Project Development Agreement

Exhibit II  
Form of Ground Lease

## PROJECT DEVELOPMENT AGREEMENT

**THIS PROJECT DEVELOPMENT AGREEMENT** (the "**Agreement**") is hereby made and entered into on November 17, 2023 (the "**Effective Date**") by and between the **CITY OF HUNTSVILLE**, an Alabama municipal corporation (the "**City**" or "**Huntsville**"), and **BREG HSV, LLC**, an ALABAMA limited liability company (the "**Company**"). The Company and the City are herein together sometimes referred to collectively as the "**Parties**".

### RECITALS

**WHEREAS**, the City owns fee simple title to a 1980s-era public athletic stadium known as Joe Davis Stadium ("**Joe Davis Stadium**"), which the City has been working with Chapman Sisson Architects to redesign and convert from a single-use baseball facility into a modern, multisport venue for a Division III 'MLS Next Pro' professional outdoor men's soccer team, as well as high school football, soccer, lacrosse, field hockey, and other field sports (as so renovated, the "**Renovated Stadium**"), which the City anticipates will be completed by [Fall 2024]; and

**WHEREAS**, the City desires for the Renovated Stadium to advance the City's reputation as a regional and national destination for entertainment, tourism, and related commercial activities, and has determined that the development of modern overnight accommodations adjacent to the Renovated Stadium, similar to other regional and national sports venues, will advance said goals and interests of the City while also promoting commercial development and enhancement of the quality of life within the City; and

**WHEREAS**, the City owns certain real property aggregating approximately 4.09 acres adjacent to the Hotel Site for the Renovated Stadium and as more particularly described on **Exhibit A** hereto (the "**Hotel Project Site**"), and the City and the Company desire for the Company to cause to be developed a dual branded hotel to include, at a minimum: (i) a 200-room, limited-service hotel; and (ii) meeting space for general meetings and conferences and events. The hotel shall be a Hilton product or equivalently branded hotel property similar to those found in southeastern cities in the United States, such as Atlanta, Birmingham, Charlotte, Greenville or Nashville, all as shall be more particularly set forth and described in the Hotel Project Development Plan hereinafter defined (the "**Hotel Project**"); and

**WHEREAS**, the City and the Company have determined for the City to lease the Hotel Project Site to the Company in exchange for the payment of rent and other obligations of the Company to the City, for an initial term of twenty (25) years and with the Company to have the right to extend the same for two (2) additional terms of twenty-five (25) years each, all pursuant to and as more particularly described in the Hotel Project Lease hereinafter authorized and defined; and

**WHEREAS**, the Company has also approached the City seeking use of an approximately 1.5 acre site in the vicinity of the Hotel Project Site located at the corner of Memorial Parkway and Don Mincher Drive as more particularly described on **Exhibit B** hereto (the "**Commercial**

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President of the City Council of the City  
of Huntsville, AL  
Date: November 16, 2023

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*Site*") for the development of a commercial project containing restaurants and retail developments (the "**Commercial Project**"), all as more particularly described herein; and

**WHEREAS**, the Company has requested that the City agree not transfer, encumber or otherwise dispose of the Commercial Site for the period hereinafter defined as the "Commercial Site Non-Encumbrance Period", following which time the City and the Company may determine for the City to convey the Commercial Site to the Company for development of the Commercial Project; and

**WHEREAS**, the City has determined that the Hotel Project is necessary and desirable in order to, among other things, (i) enhance the draw of the Renovated Stadium for spectators from outside the Huntsville area and, by extension, promote and enhance tourism and commercial activities within the City, (ii) support and expand commercial and entertainment activities occurring within the Renovated Stadium, (iii) accommodate overnight lodging needs of the City and enhance lodging tax revenues and receipts of the City, (iv) foster and promote activities at the various entertainment, commercial and retail developments around the Hotel Project Site, (v) promote tourism, commerce and industry within Huntsville, and (vi) enhance the overall quality of life for the residents and citizens of the City; and

**WHEREAS**, the agreement of the City to lease the Hotel Project Site to the Company as herein provided and set forth in the form of Hotel Project Ground Lease is determined by the City to be in the public interest and is being made under and in furtherance of any power and authority authorized by Amendment 772 to the Constitution of Alabama of 1901 (the "**Alabama Constitution**"), and the City has determined that the expenditure of public funds for the purposes herein specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

**NOW, THEREFORE**, for and in consideration of the foregoing premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, agree and bind themselves as follows:

## **ARTICLE I**

### **REPRESENTATIONS AND WARRANTIES**

**Section 1.1 Representations and Warranties of the City.** The City makes the following representations, warranties and findings:

(a) The City is duly organized as a municipal corporation under the laws of the State of Alabama and by action of its governing body has duly authorized the execution, delivery and performance of this Agreement.

(b) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by City, violates, constitutes a default under or a breach of (i) any agreement, instrument, contract, mortgage, ordinance, resolution or indenture to which the City is a party or to which the City or its assets or properties are subject; or (ii) any law, judgment, decree, order,

ordinance, rule, regulation, consent or resolution applicable to the City or any of its assets or properties.

(c) There is not now pending nor, to the knowledge of the City, threatened, any litigation affecting the City which questions (i) the validity or organization of the City, (ii) the members, titles or positions of the members of the governing body or the manner in which the officers of the City are selected or (iii) the subject matter of this Agreement.

#### **Section 1.2    Representations and Warranties of the Company.**

The Company hereby makes the following representations, warranties and findings:

(a) The Company is duly organized and validly existing as a limited liability company under the laws of the State of Alabama, and has duly authorized its execution, delivery and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by the Company requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity (including, but not limited to, any governmental or quasi-governmental entity) except for such consents, filings, notices and hearings described herein or already held or maintained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the Company, violates, constitutes a default under or a breach of (i) the Company's certificate of formation, operating agreement or other organizational documents of the Company, (ii) any agreement, instrument, contract, mortgage or indenture to which the Company is a party or to which the Company or its assets are subject, or (iii) any law, judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the Company or any of its assets.

(d) There is not now pending nor, to the knowledge of the Company, threatened, any litigation affecting the Company which questions (i) the validity or organization of the Company, (ii) the titles or positions of the members of the Company or its officers or the manner in which they are elected or (iii) the subject matter of this Agreement.

### **ARTICLE II**

#### **DUE DILIGENCE; DEVELOPMENT PLAN**

**Section 2.1    Due Diligence.** (a) The Company shall have a period of ninety (90) days from the Effective Date (the "***Due Diligence Period***") to conduct its due diligence respecting the Hotel Project Site. The Company shall bear all costs of any environmental assessment, title examination or insurance, surveys and other diligence that the Company shall elect to conduct on or respecting the Hotel Project Site. The Company shall not interrupt existing City or other permitted activities on the Hotel Project Site as it conducts its due diligence of the Hotel Project Site. The Company shall have the right during the Due Diligence Period to elect not to proceed with the Hotel Project for any reason, including without limitation if due diligence of the Hotel Project Site by the Company reveals defects in the Hotel Project Site or other issues that in the

Company's sole judgment make the Hotel Project Site unsuitable for the Hotel Project. The Company shall have through the close of the Due Diligence Period to notify the City in writing whether it desires to proceed with the Hotel Project and the other transactions described in this Agreement. If the Company elects not to proceed with the Hotel Project as aforesaid, then this Agreement shall terminate and the Parties shall have no obligations to one another.

(b) The Hotel Site will be provided by the City on an "as-is" basis, and the City makes no representation or warrant concerning the Hotel Site, any conditions or other elements that may be on the Hotel Site, title to the Hotel Site, or the suitability of the Hotel Site for the Hotel Project, it being the understanding of the Parties that the Company shall be solely responsible for evaluating the condition, title, and suitability of the Hotel Site for the Hotel Project. The Company shall be solely responsible for obtaining any and all title insurance coverage desired by the Company with respect to the Hotel Site.

**Section 2.2 Proposed Development Plan; Development Plan.** (a) The Company shall cause to be prepared detailed plans, specifications, and drawings respecting the Hotel Project (the "**Proposed Development Plan**") for approval by the City as set forth herein. The Proposed Development Plan shall be based upon the initial rendering for the dual branded hotel and related parking as shown on **Exhibit C** hereto, containing:

- (i) plans and specifications, facade renderings of front portion, and renderings of the back and side portions of the Hotel Project;
- (ii) the number of overnight rooms for each of the two hotels within the Hotel Project;
- (iii) locations, square footage and related dimensions and physical attributes of each component of the Hotel Project (e.g., parking; meeting spaces; terrace-level restaurant; rooftop bar area; pool area);
- (iv) details for the common area improvements, including, without limitation, parking, landscaping, sitting walls, exterior lighting, common areas and fencing; and
- (v) the hotel flag/operator (each, a "**Flag**" and, collectively, the "**Flags**") for each of the two hotels within the Hotel Project.

The Company understands, acknowledges and agrees that the Proposed Development Plan shall provide such information as shall enable the City to ascertain the appearance, size, scale, look, composition and nature of the proposed Hotel Project, and to analyze intended uses therein.

(b) The City, acting by and through its Mayor or its Director of Urban Planning and Economic Development (the "**City Director**"), shall review the Proposed Development Plan in a reasonably timely manner and shall have a period of not more than 20 days from actual receipt of the Proposed Development Plan to either approve the same in writing or provide written comments

outlining the reasons for rejection of the Proposed Development Plan, including, but not limited to, such items as architectural finishes. If the Mayor or the City Director (acting by and on behalf of the City) rejects the Proposed Development Plan, the Company shall have a reasonable period of time to revise the Proposed Development Plan to be responsive to such written comments, and the process set forth herein for consideration of the Proposed Development Plan, as so revised, by the City (acting by and through the Mayor or the City Director) for approval shall also apply to any such revised Proposed Development Plan.

(c) If the Mayor or the City Director, acting by and on behalf of the City, approves the Proposed Development Plan within fifteen (15) days of the conclusion of the Due Diligence Period (said period, the "***Development Plan Approval Period***", then the same shall become the final development plan for the Hotel Project (the "***Development Plan***"). The Development Plan shall not be changed or modified without the prior written consent of the City (with the Mayor or the City Director acting by and on behalf of the City for such purpose).

(d) If the Proposed Development Plan is not approved as aforesaid by the close of the Development Plan Approval Period, then each of the Parties shall have the right to terminate this Agreement, upon which the Parties shall have no further obligation to one another hereunder and this Agreement shall terminate and be of no further force or effect.

### **ARTICLE III**

#### **THE HOTEL PROJECT GROUND LEASE; CITY TITLE TO THE HOTEL SITE**

**Section 3.1 Hotel Project Ground Lease.** Upon approval of the Development Plan by the Mayor or the City Director (acting by and on behalf of the City) pursuant to Article II hereof, the Parties shall enter into an absolute triple-net ground lease for the Hotel Site in the form set forth on ***Exhibit D*** hereto, with such changes thereto as the Mayor shall deem necessary or desirable and in furtherance of the terms and intentions of this Agreement (the "***Hotel Project Ground Lease***").

**Section 3.2 City to Forever Retain Title Ownership to the Hotel Site; Certificates Respecting Hotel Project Ground Lease.** (a) The Company understands, acknowledges and agrees that at no time shall the City lose fee simple title ownership to the Hotel Site or any portion thereof, and that the Hotel Site shall not become subject to any liens or rights of any person or entity other than a Leasehold Mortgage. The Company agrees that no lender, debt holder, partner, affiliate or other person or entity shall be given a mortgage, other than a Leasehold Mortgage, or foreclosable interest or right in or to any portion of the Hotel Site, nor shall the City be required to enter any agreement where its ownership interest would be subordinated to the rights of any lender, entity or person. As used herein, "***Leasehold Mortgage***" shall mean a mortgage on the rights of the Company under the Hotel Project Ground Lease that permits the beneficiary of such mortgage to assume the rights and obligations of the Company under the Hotel Project Ground Lease upon the occurrence of certain events, but that expressly provides that such mortgage does not permit such beneficiary to foreclose or otherwise obtain ownership of the Hotel Site.

(b) At all times while the Hotel Project Ground Lease is in effect, the Company shall from time to time execute, and/or cause its lenders, tenants, contractors and agents (as the case

may be) to execute, such documents or instruments as shall be reasonably required by the City to evidence the City's fee simple ownership in the Hotel Site should the City ever be required or desire to demonstrate the same.

(c) The City from time to time shall work in good faith with the Company to negotiate, execute and deliver to the holder of any Leasehold Mortgage such certificates of the City, in its capacity as Lessor under the Hotel Project Ground Lease, as shall be reasonably required confirming the term then in effect of the Hotel Project Ground Lease, the existence and conditions for any renewal of such term, the absence of any known defaults or events of default thereunder or hereunder, and the knowledge of the City as to its ownership of the Hotel Project Site, as well as to confirm and agree to provide such holder rights of notice and confirm the cure rights of such holder, as set forth in the Hotel Project Ground Lease, for any default or event of default hereunder or under the Hotel Project Ground Lease.

#### **ARTICLE IV** **THE HOTEL PROJECT**

**Section 4.1 Development of the Hotel Project.** (a) The Company hereby covenants and agrees to design, develop, and construct the Hotel Project in accordance with the Development Plan and consistent with the terms of Article II hereof. Any material deviation from the Development Plan must be submitted to the City in writing by the Company at such time as the Company determines to make such change. The Company shall be responsible for any and all costs incident to the development of the Hotel Project.

(b) The Company hereby covenants and agrees to have Commenced Construction of the Hotel Project within twelve (12) months of the effective date of the Hotel Project Ground Lease (the "**Commencement Deadline**"); provided, if due to the occurrence of a Force Majeure Event the Company is not able to Commence Construction of the Hotel Project by the Commencement Deadline, then for each day of the Force Majeure Event said deadline shall be extended by one day to address such condition before the Company shall be considered in default of such obligation; provided (i) at the time of the Force Majeure Event the Company is claiming or anticipating, the Company shall have first provided written notice to the City containing: (1) a description of the Force Majeure Event, (2) an explanation of how the Company anticipates such event will affect the Company's ability to timely perform such obligations, (3) the actions the Company plans to undertake in order to address the conditions caused by the Force Majeure Event, and (4) an estimate of how long the Company anticipates the Force Majeure Event will delay its ability to Commence Construction of the Hotel Project; and (ii) in no event shall the Company have more than eighteen (18) months from the effective date of the Hotel Project Ground Lease to have Commenced Construction of the Hotel Project.

(c) The Company hereby covenants and agrees to have Completed Construction of the Hotel Project by March 31, 2026 (the "**Completion Deadline**"); provided, if due to the occurrence of a Force Majeure Event the Company is not able to Complete Construction of the Hotel Project by the Completion Deadline, then for each day of the Force Majeure Event said deadline shall be extended by one day to address such condition before the Company shall be considered in default of such obligation; provided (i) at the time of the Force Majeure Event the Company is claiming

or anticipating, the Company shall have first provided written notice to the City containing: (1) a description of the Force Majeure Event, (2) an explanation of how the Company anticipates such event will affect the Company's ability to timely perform such obligations, (3) the actions the Company plans to undertake in order to address the conditions caused by the Force Majeure Event, and (4) an estimate of how long the Company anticipates the Force Majeure Event will delay its ability to have Completed Construction of the Hotel Project; and (ii) in no event shall the Company have more than five years from the Effective Date to have Completed Construction of the Hotel Project.

(d) As used in this Agreement (1) "***Commence Construction***" or "***Commenced Construction***" shall be deemed to have occurred at such time as the Company shall have obtained a building permit for the Hotel Project and shall have poured and completed all foundations and footings for the Hotel Project, (2) "***Completed Construction***" or "***Complete Construction***" shall be deemed to have occurred at such time as a certificate of occupancy shall have been delivered for the Hotel Project; and (3) "***Force Majeure Event***" shall mean and include a material matter beyond the reasonable control of the Company (excluding unfavorable economic conditions), including acts of God, including without limitation earthquakes, fire, floods, tornadoes, hurricanes, and extreme weather conditions (but not including normal seasonal inclement weather); acts of terrorism, epidemics, pandemics, quarantine restrictions, freight embargos, and national financial crises that limit normal extensions of credit to the Company for the Hotel Project.

**Section 4.2 Additional Obligations Respecting Overall Construction.** All construction activities regarding any portion of the Hotel Site shall be conducted in compliance with all applicable laws, ordinances, rules and regulations of any governmental authority, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster and environmental protection laws. The Company shall cause any architect, general contractor, subcontractor or other business performing any work in connection with the construction of the Hotel Project or any other improvements on the Hotel Site to obtain all necessary permits, licenses and approvals to construct the same. It is understood and acknowledged that the City will not waive any fees, access fees, or related expenses for any permits, licenses or approvals that must be obtained from the City or any other governmental authority in connection with construction or operation of the Hotel Project. The City's approval of the Development Plan shall not be deemed an approval or waiver of any compliance by the Company or the Hotel Project with any such applicable laws.

**Section 4.3 Good Standing.** The Company, and any affiliate thereof, shall maintain its good standing within the City and shall at all times during the term of this Agreement and the Hotel Project Ground Lease be in compliance with all applicable laws, ordinances, rules and regulations of the City and, further, shall be current in payment of any and all taxes, fees, and other charges imposed by the City.

**Section 4.4 Casualty Event.** (a) Upon the occurrence of a Casualty Event, the Company shall have the right, but be under no obligation, to rebuild, reconstruct, repair, reconfigure or otherwise restore the Hotel Project as more particularly set forth in the Hotel Project Ground Lease.

(b) As used herein, "*Casualty Event*" shall mean an event whereby the Hotel Project is destroyed or materially damaged in whole or part by fire, windstorm, flooding, or any other cause whatsoever.

**Section 4.5 Exemption from City Liability.** In addition to the other provisions contained herein relieving the City from responsibility with respect to the Hotel Project, the Company hereby agrees that the City shall not be liable for injury to the Company's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of the Company, the Company's employees, tenants, customers, invitees, guests, contractors, visitors, or any other person in or about the Hotel Project, nor shall the City be liable for injury to the person of the Company, the Company's agents, employees, tenants, customers, invitees, guests, contractors, or visitors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wire, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, where the said damage or injury results from conditions arising upon the Hotel Project or upon other portions of the Hotel Site and which are not the result of the actions of the City. In addition to, and not in limitation of, the foregoing, the Company hereby acknowledges and agrees, for itself and on behalf of its agents, employees, tenants, customers, invitees, guests, contractors, and visitors, that the use of the Hotel Project or any other portions of the Hotel Site by any person is done at his, her or its own risk, and that the City shall not be responsible for any loss, damage or expense incurred by any user of the Hotel Project or any other portions of the Hotel Site. The foregoing shall in no event, however, be deemed to constitute a release of the City from claims due to the actions, willful misconduct, or inaction of the City in violation of this Agreement.

**Section 4.6 Indemnity.** (a) The Parties hereto understand, acknowledge and agree that the City's sole involvement with the Hotel Project shall be as landlord under the Hotel Project Ground Lease, and that the City shall incur no cost, expense, obligation, or liability as a result of the construction, development or operation of the Hotel Project or from any other activities occurring on the Hotel Site.

(b) The Company shall indemnify and hold harmless the City from and against any and all claims arising from the Company's, or any employee, agent, or invitee of the Company, negligence or misconduct in the operation or use of the Hotel Project, or arising from any negligence or willful misconduct of any of the tenants of the Hotel Project, and from and against all costs, attorney's fees, expenses and liabilities reasonably incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against the City by reason of any such claim, the Company upon notice from the City shall defend the same at Company's sole expense by counsel chosen by the Company and reasonable acceptable to the City, unless the City shall have a reasonable objection to same. The provisions of this Section 4.6 shall survive the termination of this Agreement.

## **ARTICLE V**

### **THE COMMERCIAL SITE; THE COMMERCIAL PROJECT**

**Section 5.1 Commercial Site Non-Encumbrance Period.** The City covenants and agrees not to transfer, encumber, or otherwise dispose of the Commercial Site while this

Agreement is in effect for a period commencing on the Effective Date hereof and running through, (provided that the Company shall have Commenced Construction of the Hotel Project in accordance with the terms of this Agreement) eighteen (18) months from the Effective Date (such period, the "***Commercial Site Non-Encumbrance Period***"). The Commercial Site Non-Encumbrance period may be extended for an additional period of twelve (12) months upon the written request of the Company and the written approval of such request issued by the Mayor (acting by and on behalf of the City) on or before the expiration of the original Commercial Site Non-Encumbrance Period. Anything in the Agreement to the contrary notwithstanding, whether express or implied, if the Company fails to have Commenced Construction of the Hotel Project by the Commencement Deadline, as the same may be extended as set forth in Article IV hereof, the agreements, restrictions and obligations respecting the Commercial Site agreed to or imposed upon the City set forth in this Section 5.1 and elsewhere in this Article V shall be of no further force or effect, and nothing in this Agreement or the Hotel Project Ground Lease shall limit or be deemed to limit the rights of the City to use the Commercial Site in the full discretion of the City and without regard to the provisions of this Agreement and the Hotel Project Ground Lease.

**Section 5.2 Presentation of Commercial Site Development Concept; Commercial Site Sale.** (a) The Company shall have through the close of the Commercial Site Non-Encumbrance Period to present a conceptual design for a restaurant, retail or hospitality development for the Commercial Site, including preliminary renderings, development parameters (the "***Conceptual Plan***"). If the City (with the Mayor or the City Director herein authorized to act on behalf of the City) approves the Conceptual Plan, then the Commercial Site Non-Encumbrance Period shall be extended for a period of sixty (60) days to permit time for the Company and the City to negotiate terms of and enter into one or more agreements (collectively, the "***Commercial Site Development and Sale Agreement***") for the sale of the Commercial Site to the Company for development of the commercial facility or facilities described in and based on the Conceptual Plan. All terms and provisions for the sale of the Commercial Site, including, without limitation, details for development of improvements on the Commercial Site, the purchase price for the Commercial Site, representations, warranties, and covenants of the two parties shall be contained and set forth in the Commercial Site Development and Sale Agreement; provided, the purchase price shall equal \$5.00/square foot and the earnest money deposit shall be equal to 10% of the purchase price of the Commercial Site.

(b) If the Parties are unable to reach definitive terms and finalize the Commercial Site Development and Sale Agreement within the aforesaid Commercial Site Non-Encumbrance Period, as the same may be extended by Section 5.2, then the restrictions and obligations respecting the Commercial Site imposed upon the City set forth in this Section 5.2 and elsewhere in this Article V shall be of no further force or effect, and nothing in this Agreement or the Hotel Project Ground Lease shall limit or be deemed to limit the rights of the City to use the Commercial Site in the full discretion of the City and without regard to the provisions of this Agreement and the Hotel Project Ground Lease.

## **ARTICLE VI**

### **CONDITIONS PRECEDENT**

**Section 6.1    Condition Precedent to City's Obligations.**

The City shall not be obligated to enter the Hotel Project Ground Lease or to undertake any of its other obligations hereunder until:

(i)      The Development Plan shall have been approved pursuant to Article II hereof; and

(ii)     The City shall have received the Company's executed counterpart of this Agreement, executed by a duly authorized officer of the Company; and

(iii)    The Company shall have provided the City a copy of its duly-executed (or to be executed contemporaneously with the Hotel Project Ground Lease) and enforceable franchise agreement with each Flag for the Hotel Project.

**Section 6.2    Conditions Precedent to Company's Obligation.**

The Company shall not be obligated to enter the Hotel Project Ground Lease or to develop and construct the Hotel Project until:

(i)      The Company shall have received the City's executed counterpart of this Agreement, executed by a duly authorized officer of the City; and

(ii)     The Development Plan shall have been approved pursuant to Article II hereof.

**ARTICLE VII  
EVENTS OF DEFAULT AND REMEDIES**

**Section 7.1    Events of Default by the City.**

(a)      Any one or more of the following shall constitute an event of default under this Agreement by the City (herein called a "*City Event of Default*") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i)      A petition or answer is filed by the City proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

(ii)     Failure by the City to perform or observe any of its agreements or covenants contained in this Agreement, which failure

shall have continued for a period of thirty (30) calendar days after written notice thereof from the Company, unless (A) the Company shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action; or

(iii) a default, following expiration of any applicable cure period, by the City under the Hotel Project Ground Lease.

(b) If a City Event of Default exists, the sole and exclusive remedy of the Company shall be mandamus for performance of the City obligation. The Company shall not be entitled to any other damages whatsoever, including, without limitation, compensatory damages, business interruption damages, incidental damages, punitive damages, consequential damages, or similar damages, whether arising at law, in equity or otherwise.

#### **Section 7.2 Events of Default by the Company.**

(a) Any one or more of the following shall constitute an event of default under this Agreement by the Company (herein called a "***Company Event of Default***") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) at any time prior to the completion by Company of its obligations hereunder, the Company is dissolved or liquidated, or the filing by the Company of a voluntary petition in bankruptcy, or the Company seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the Company as a bankrupt, or any assignment by the Company for the benefit of its creditors, or the entry by the Company into an agreement of composition with its creditors, or if a petition or answer is filed by the Company proposing the adjudication of the Company as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within sixty (60) days; or

(ii) failure by the Company to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of thirty (30) calendar days after written notice thereof from the City, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof,

the Company has commenced and is diligently pursuing appropriate corrective action; or

(iii) a default, following expiration of any applicable cure period, by the Company under the Hotel Project Ground Lease.

(b) During any period after the City has provided written notice to the Company specifying the existence of a Company Event of Default and during which the Company has failed to cure said Company Event of Default to the reasonable satisfaction of the City, the City may proceed to protect its rights hereunder by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of the Company herein contained; provided the City shall not be entitled to any other damages whatsoever, including, without limitation, punitive, incidental, or consequential damages, whether arising at law or in equity.

(c) If a City Event of Default exists, the sole and exclusive remedy of the Company shall be mandamus for performance of the City obligation. The Company shall not be entitled to any other damages whatsoever, including, without limitation, compensatory damages, business interruption damages, incidental damages, punitive damages, consequential damages, or similar damages, whether arising at law, in equity or otherwise.

**Section 7.3 Remedies Subject to Applicable Law.** All rights, remedies and powers provided in this Article VI may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article VI are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

## **ARTICLE VIII**

### **MISCELLANEOUS PROVISIONS**

**Section 8.1 Term.** Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force and effect at all times during the term of the Hotel Project Ground Lease.

**Section 8.2 Restrictions on Assignment.** The Company shall not have the right to assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the City prior to having Completed Construction (as defined in the Hotel Project Ground Lease) of the Hotel Project, and any purported assignment, transfer, encumbrance or hypothecation of this Agreement or any of the rights or obligations hereunder in violation of this Section 8.2 shall be null and void and of no force or effect. At any time following Completed Construction of the Hotel Project, the Company shall have the right to transfer and assign this Agreement at its sole discretion and without any consent or approval of the City.

**Section 8.3 Negation of Partnership.** The Parties specifically acknowledge that no Party is acting as the agent of the other Party in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in

this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between or among the Parties, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any person who is not a party or a permitted transferee pursuant to this Agreement; and nothing in this Agreement shall limit or waive any rights any one or more of the Parties may have or acquire against any third person with respect to the terms, covenants or conditions of this Agreement.

**Section 8.4 Severability.** Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

**Section 8.5 Exhibits.** The Exhibits, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto.

**Section 8.6 Amendment.** Except as expressly provided in this Agreement, this Agreement may be modified or amended only by a written instrument, executed by each of the parties to this Agreement.

**Section 8.7 Entire Agreement; Conflict with Hotel Project Ground Lease.** (a) This Agreement and the exhibits hereto contain all the representations and the entire agreement among the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and exhibits hereto. Neither the conduct nor actions of the Parties, nor the course of dealing or other custom or practice between or among the Parties or any of them, shall constitute a waiver or modification of any term or provision of this Agreement

(b) In the event of a conflict between this Agreement and the Hotel Project Ground Lease, the terms of the Hotel Project Ground Lease shall control.

**Section 8.8 Ambiguity.** The terms, conditions and provisions of this Agreement were agreed to in arm's length negotiations in which each Party was represented by independent counsel of its own choosing. Accordingly, in the event of any ambiguity in this Agreement, such ambiguity shall not be resolved against any Party deemed the principal draftsman of this Agreement or the provision of this Agreement at issue.

**Section 8.9 Further Assurances; Covenant to Sign Documents.** Each party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any

and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

**Section 8.10 Counterpart Execution.** For convenience, this Agreement may be executed by the Parties in multiple counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same Agreement.

**Section 8.11 Liabilities of the City.** The Company understands, acknowledges and agrees that the obligations of the City as set forth herein are limited by the limitations imposed on public bodies, municipalities and public corporations by the Constitution of the State of Alabama and under other applicable Alabama law.

**Section 8.12 No Waiver.** No consent or waiver, express or implied, by any Party hereto or to any breach or default by any other Party in the performance by such other Party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare such other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any Party hereto shall be construed to waive or limit the need for such consent in any other or subsequent instance.

**Section 8.13 Notices.**

(a) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

(1) If to the City:

The City of Huntsville  
308 Fountain Circle  
Huntsville, AL 35801  
Attn: Mayor

(2) If to the Company:

BREG HSV, LLC  
4011 80<sup>th</sup> Street  
Kenosha, WI 53142  
Attention: Stephen R. Mills

With a copy to:  
Bear Development, LLC

4011 80<sup>th</sup> Street  
Kenosha, WI 53142  
Attention: John E. Hotvedt, Vice President – General Counsel

(b) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

(c) Notices may be either: (i) delivered by hand; (ii) delivered by a nationally recognized overnight courier which maintains evidence of receipt; or (iii) sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of receipt. Notices shall be effective on the date of receipt. If any Notice is not received or cannot be delivered due to a change in address of the receiving party, of which notice was not properly given to the sending party, or due to a refusal to accept by the receiving party, such Notice shall be effective on the date delivery is attempted.

**Section 8.14 Survival of Covenants.** The covenants in this Agreement shall not terminate until they have been fully performed or have expired by their terms.

**Section 8.15 Venue.** Each of the City and Company irrevocably submits to the jurisdiction of the Alabama state courts sitting in Madison County, Alabama (collectively, the "**Courts**") over any suit, action or proceeding arising out of or relating to this Agreement, the Hotel Project Ground Lease, or any of the transaction undertaken in connection therewith (an "**Agreement Action**"); (b) waives, to the fullest extent permitted by law, any objection or defense that such party may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts; and (c) agrees that final judgment in any Agreement Action brought in any of the Courts shall be conclusive and binding upon such party and may be enforced in any other court to the jurisdiction of which the City or the Company is subject, by a suit upon such judgment.

**Section 8.16 No Third-Party Beneficiaries.** This Agreement is intended only for the benefit of the signing Parties hereto, and neither this Agreement, nor any of the rights, interest or obligations hereunder, is intended for the benefit of any other person or third-party.

**IN WITNESS WHEREOF**, the City and Company have each caused this Agreement to be duly executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and have caused this Agreement to be dated the date and year first above written.

**"CITY":**

**CITY OF HUNTSVILLE**

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

(SEAL)

**"COMPANY":**

BREG HSV, LLC,  
an Alabama limited liability company

By:  \_\_\_\_\_

Its: Authorized Member \_\_\_\_\_

**EXHIBIT A  
THE HOTEL SITE**

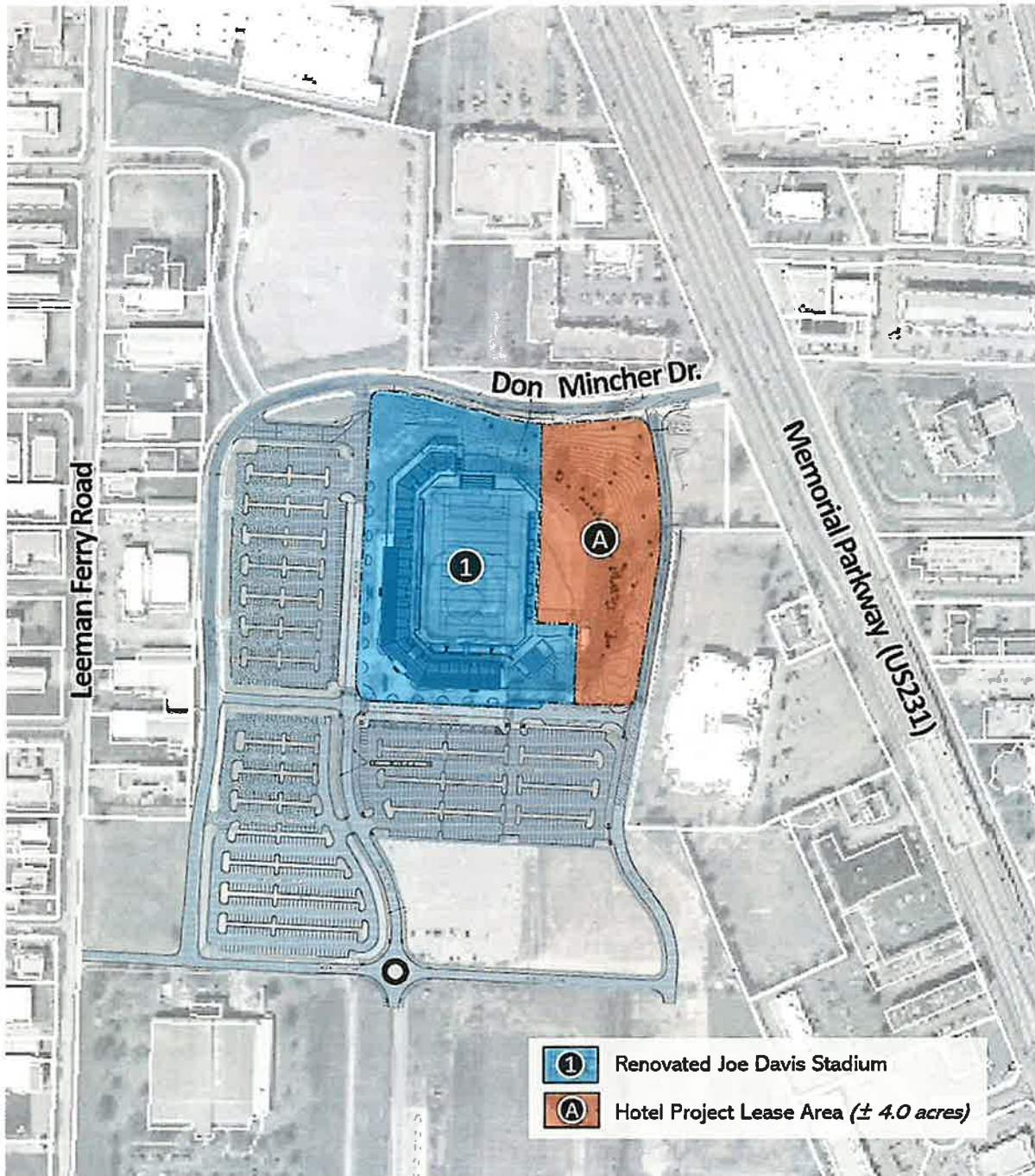


Exhibit A

**EXHIBIT B  
THE COMMERCIAL SITE**

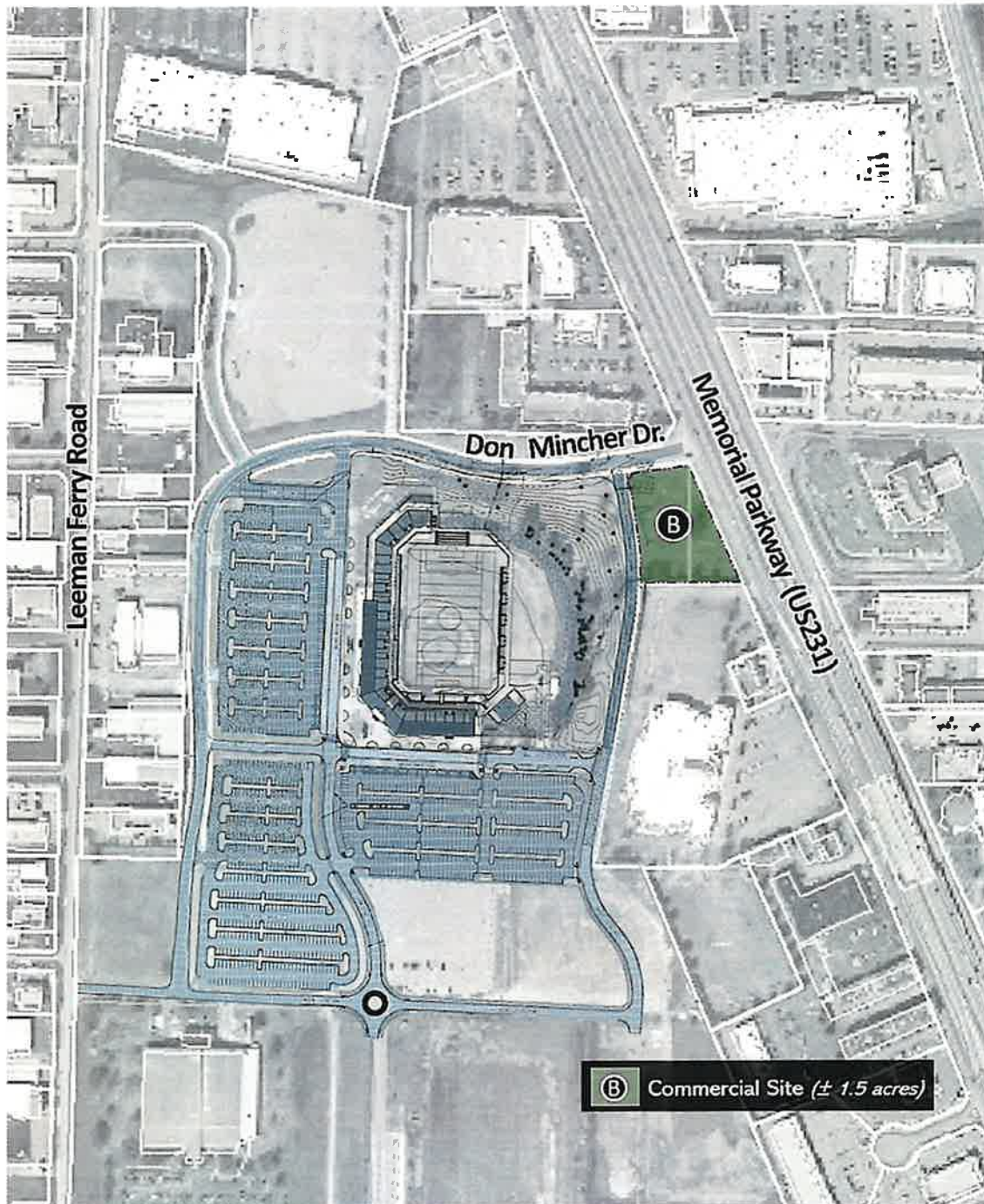


Exhibit C

# **EXHIBIT C** **INITIAL HOTEL PROJECT SITE LAYOUT AND RENDERINGS**

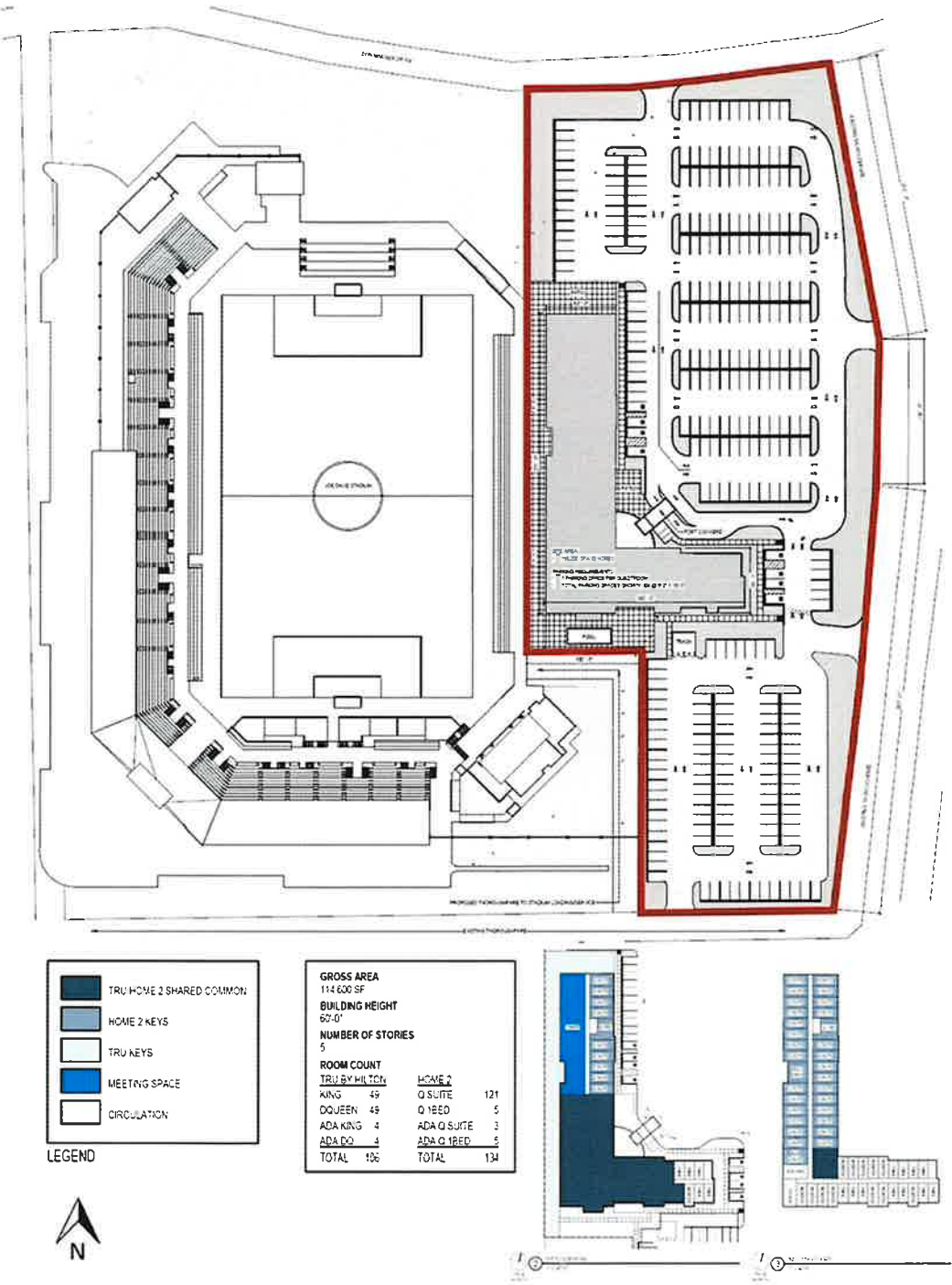


Exhibit C



Exhibit C

**EXHIBIT D**  
**FORM OF HOTEL PROJECT GROUND LEASE**

**[To be attached]**

**GROUND LEASE**

**DATED NOVEMBER 17, 2023**

**BY AND BETWEEN**

**CITY OF HUNTSVILLE, ALABAMA, AS LESSOR,**

**AND**

**BREG HSV, LLC, AS LESSEE**

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## **GROUND LEASE**

**THIS GROUND LEASE** (this "Lease") is made and entered into as of the 17<sup>th</sup> day of November, 2023 (the "Commencement Date") by and between **CITY OF HUNTSVILLE, ALABAMA**, an Alabama municipal corporation ("Lessor"), and **BREG HSV, LLC**, an Alabama limited liability company ("Lessee").

## **R E C I T A L S:**

Lessor is the owner of fee simple title to the Land, as hereinafter defined.

Lessor desires to lease the Land to Lessee for the construction and operation of the Project, as hereinafter defined, and Lessee desires to lease the Land from Lessor and construct and operate the Project on the Land, subject to and in accordance with the terms, provisions, and covenants contained in this Lease.

Lessor has determined that the leasing of the Land to Lessee as herein provided is in the public interest.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, Lessor and Lessee hereby agree as follows:

## **ARTICLE I** **DEFINITIONS; RULES OF CONSTRUCTION**

1.01 Definitions. In addition to the other definitions set forth in this Lease, as used throughout this Lease, the following initially capitalized terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

(a) Additional Rent. The term "Additional Rent" shall have the meaning given to such term in Section 3.02 below.

(b) Adjacent Land. The term "Adjacent Land" shall mean the approximately 1.5 acres more or less located at the corner of Memorial Parkway and Don Mincher Drive which will be purchased by Lessee from Lessor around the time of the Commencement Date. The Adjacent Land shall be used for restaurants, entertainment venues, hotels or related services to support John Hunt Park and surrounding areas.

(c) Affiliate. The term "Affiliate" shall mean, as to any Person, any other Person which, directly or indirectly, is in common control of, is controlled by, or is under direct or indirect common control with, such Person, and, if such Person is an individual, any member of the immediate family of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person which is controlled by any such member or trust. As used herein, the term "control" (and like terms) when used with respect to any Person, means the direct or indirect beneficial ownership of more than five percent (5%) of the outstanding voting securities or voting equity of such Person or possession, directly or

indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities or by contract or otherwise.

(d) Applicable Rate. The term “Applicable Rate” shall mean a per annum interest rate equal to the lesser of eighteen percent (18%) per annum or the maximum interest rate permitted to be charged by law to Lessee.

(e) Alterations. The term “Alterations” shall have the meaning given to such term in Section 5.01(a) below.

(f) Base Rent. The term “Base Rent” shall mean the total amount paid annually in connection with this Lease transaction. For purposes of this Lease, the Base Rent will initially be One Hundred Thousand Dollars (\$100,000.00) per year. The Base Rent shall be increased three percent (3%) every fifth year of the Lease.

(g) Casualty Event. The term “Casualty Event” means any damage or destruction to the Premises caused by or resulting, in whole or in part, by any fire, windstorm, flooding, or any other cause whatsoever, including acts of God.

(h) Commencement Date. The term “Commencement Date” shall mean the date of this Lease.

(i) Completed Construction. The term “Completed Construction” shall mean that the construction of the Initial Construction (or any Alterations or Restoration, as applicable) has been completed by all of the following requirements being satisfied: (i) Lessee’s architect delivers to Lessor a certification that the Initial Construction has been completed with the exception of minor punch list items and insubstantial details of construction, mechanical adjustment or decoration, in substantial accordance with the Development Plan, (ii) Lessee shall have obtained a Certificate of Occupancy for the Initial Construction, any Alterations or Restoration, as applicable, and (iii) Lessee delivers to Lessor a final (subject to release of retainage) release and waiver of mechanic’s and materialmen’s liens covered by the Initial Construction, any Alterations or Restoration, as applicable, executed by the general contractor for the Initial Construction, any Alterations or Restoration, as applicable.

(j) Completion Deadline. The term “Completion Deadline” shall have the meaning given to such term in Section 4.02 below.

(k) Condemnation. The term “Condemnation” shall mean and refer to a taking during the Term of all or any part of the Premises, or any interest therein or right accruing thereto, including any right of access, by or on behalf of any Governmental Authority or by any entity granted the authority to take property through the exercise of the power of eminent domain granted by statute or by, under or as a result of any agreement that conveys to the condemning authority all or any part of the Premises as a result of, or in lieu of, or in anticipation of, the exercise of the right of condemnation or eminent domain.

(l) CPI Fraction. The term “CPI Fraction” means a fraction (which shall never be less than one), the numerator of which is the Price Index (hereinafter defined) most recently published prior to the applicable date and the denominator of which is the Price Index most recently

published prior to the Commencement Date. The term “Price Index” means the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor (or any successor thereto), for All Urban Consumers, U.S. City Average, All Items (1982-1984). If such Consumer Price Index is terminated, a successor or substitute index, appropriately adjusted, shall be reasonably selected by Lessor. If such Consumer Price Index is converted to a different standard reference base or is otherwise revised, the Price Index shall be determined with the use of such conversion factor, formula or conversion table as may be published by the Bureau of Labor Statistics or, if such Bureau shall not publish same, then with the use of such conversion factor, formula or table as may be reasonably selected by Lessor.

(m) Default. The term “Default” shall mean the occurrence or existence of any event which, but for the giving of notice or the expiration of time or both, would constitute an Event of Default.

(n) Development Agreement. The term “Development Agreement” shall mean that certain Project Development Agreement dated November 17, 2023, between Lessor and Lessee.

(o) Development Plan. The term “Development Plan” shall have the meaning given to such term in the Development Agreement.

(p) Event of Default. The term “Event of Default” shall have the meaning given to such term in Section 15.01(a) below.

(q) Expiration Date. The term “Expiration Date” shall mean 25 years from the Commencement Date, unless this Lease is sooner terminated in accordance with the terms and provisions hereof or unless this Lease is extended by Lessee in accordance with, and subject to, the terms and provisions of Sections 16.01 and 16.02 hereof.

(r) Fiscal Year. The term “Fiscal Year” means the period of time commencing on October 1 each year and continuing through and including September 30 of the immediately succeeding year.

(s) Foreclosure Action. The term “Foreclosure Action” means the foreclosure of a Permitted Mortgage, the granting of any deed in lieu of foreclosure or the taking of any other action by the Permitted Mortgagee which results in the Permitted Mortgagee or any purchaser at such foreclosure sale acquiring title to or any interest in the Premises.

(t) Force Majeure Event. The term “Force Majeure Event” shall mean any material matter beyond the reasonable control of Lessee (excluding unfavorable economic conditions), including, without limitation, acts of God, earthquakes, fire, floods, tornadoes, hurricanes, and extreme weather conditions (but not including normal seasonal inclement weather), acts of terrorism, epidemics, quarantine restrictions, freight embargos, and national financial crises that limit normal extensions of credit to Lessee for the Project.

(u) Governmental Authority. The term “Governmental Authority” shall mean and refer to any and all city, county, state and federal governmental or quasi-governmental

agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Premises.

(v) Intentionally Omitted.

(w) Hospitality Operator. The term “Hospitality Operator” shall mean and refer to that person or entity chosen by Lessee to operate the Hotel Properties, which name shall be given to the City for its approval before signing this Lease. It is understood that said approval shall not be unreasonably withheld or delayed.

(x) Hotel Properties. The term “Hotel Properties” shall mean that portion of the Project occupied by a dual branded hotel to include, at a minimum: (i) a 200-room, limited-service hotel; and (ii) meeting space for general meetings and conferences and events. The hotel shall be a Hilton product or equivalently branded hotel property similar to those found in southeastern cities in the United States, such as Atlanta, Birmingham, Charlotte, Greenville or Nashville.

(y) Improvements. The term “Improvements” shall mean and refer collectively to (i) the Project, (ii) any Alterations and any other buildings, structures and other improvements hereafter installed or erected on the Land, and (iii) all fixtures owned by Lessee hereafter installed or erected in or upon the Land (including equipment, elevators, escalators, stairwells, machinery, pipes, conduit, wiring, heating ventilation and air conditioning systems).

(z) Initial Construction. The term “Initial Construction” shall mean the completion of the hotel project and related parking and infrastructure by Lessee in accordance with the Development Plan.

(aa) Insolvency Event. The term “Insolvency Event” means the occurrence of any of the following:

(i) Lessee makes an assignment for the benefit of its creditors; or

(ii) An involuntary petition is filed against Lessee under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import, and such petition is not dismissed within one hundred twenty (120) days after the date filed; or

(iii) Lessee shall file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by Lessee under the reorganization provisions of the United States Bankruptcy Code or under the provisions of any law of like import, or whenever a petition shall be filed by Lessee under the arrangement provisions of the United States Bankruptcy Code or under the provisions of any law of like import.

(bb) Institutional Lender. The term “Institutional Lender” means a savings and loan association, savings bank, commercial bank or trust company, insurance company, private mortgage company, real estate investment trust, investment bank, or any other lender generally considered an “institutional” real estate lender and which makes loans secured by real estate as an

ordinary part of its business. An entity meeting the foregoing requirements shall be deemed an “Institutional Lender” whether acting individually or in a fiduciary capacity

(cc) Land. The term “Land” shall mean, initially, that certain approximately 4.09 acres, more or less, parcel of real property situated in the City of Huntsville, Madison County, Alabama which is more particularly described in Exhibit A hereto.

(dd) Liabilities. The term “Liabilities” means any and all liabilities, losses, damages, penalties, fines, claims, actions, causes of action, suits, costs, expenses, and disbursements, including, without limitation, reasonable attorneys’ fees and expenses, of any kind or nature.

(ee) Legal Requirements. The term “Legal Requirements” shall mean and refer to all laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of any applicable Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, or arising from any restrictions or agreements of record, which now or at any time hereafter are applicable to the Premises or any portion thereof, or any use, condition, maintenance, repair or operation thereof.

(ff) Outside Completion Date. The term “Outside Completion Date” shall have the meaning given to such term in Section 4.02 below.

(gg) Outside Restoration Date. The term “Outside Restoration Date” shall have the meaning given to such term in Section 12.01(b) below.

(hh) Person. The term “Person” with an initial capital letter, shall mean and refer to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization.

(ii) Permitted Loan. The term “Permitted Loan” shall mean any loan obtained by Lessee from an Institutional Lender or an affiliate of Lessee and secured by a Permitted Mortgage; provided, however, that a Permitted Loan shall not be (i) secured by any other property or (i) cross-defaulted or cross-collateralized with any other loans owing by Lessee or any Affiliates thereof to the Permitted Mortgagee or any Affiliates thereof.

(jj) Permitted Mortgagee. The term “Permitted Mortgagee” shall mean and refer to any Institutional Lender which is the holder of the Permitted Mortgage.

(kk) Permitted Mortgage. The term “Permitted Mortgage” shall mean any mortgage encumbering all of the leasehold interest of Lessee under this Lease (subject to all the terms and provisions of this Lease) which secures a Permitted Loan.

(ll) Permitted Sublease. The term “Permitted Sublease” means any sublease between Lessee and a Subtenant which does not involve or allow any Prohibited Uses.

(mm) Permitted Use. The term “Permitted Use” shall have the meaning set forth in Section 17.01 hereof.

(nn) Personal Property. The term “Personal Property” shall mean and refer to all furniture, furnishings, fixtures, appliances, and other personal property owned by Lessee or any Subtenants situated on any portion of the Premises.

(oo) Premises. The term “Premises” means and refers to the Land and the Improvements to be constructed by Lessee on the Land in accordance with the terms and conditions of this Lease and the Development Agreement, together with all and singular the appurtenances, rights, privileges and easements unto the Land belonging or in anywise thereto appertaining. References in this Lease to the Premises shall be construed as if following by the phrase “or any part thereof” unless the context otherwise requires.

(pp) Prohibited Uses. The term “Prohibited Uses” means any of the uses prohibited in Schedule 1 hereto.

(qq) Project. The term “Project” shall mean and refer collectively to the dual branded hotel(s) and parking lots associated therewith, as described in the Development Plan to be constructed on the Land by Lessee as part of the Initial Construction in accordance with the terms and provisions of Article IV below, together with any Alterations and all appurtenances and fixtures thereto.

(rr) Rent. The term “Rent” shall mean, collectively, the Base Rent and the Additional Rent.

(ss) Restoration. The term “Restoration” shall mean the repair, restoration and reconstruction of the Premises to at least the condition existing immediately prior to any Casualty Event or Condemnation to a standard and quality no less than the construction of the Initial Construction, or to such other condition as shall be otherwise mutually agreed to in writing by Lessor and Lessee.

(tt) Restoration Deadline. The term “Restoration Deadline” shall have the meaning given to such term in Section 12.01(b) below.

(uu) Restoration Notice. The term “Restoration Notice” shall have the meaning given to such term in Section 12.01(a) below.

(vv) Stadium. The term “stadium” shall mean or refer to Joe Davis Stadium, as that Stadium is renovated for use for high sports and an MLS NextPro Soccer team.

(ww) Subtenants. The term “Subtenants” shall mean, collectively any sublessees of Lessee occupying any portion of the Project under a Permitted Sublease.

(xx) Taxes. The term “Taxes” shall mean, refer to and include the amount of all (i) real property taxes of every kind or nature, (ii) real property assessments (whether general, special, business improvement district or otherwise), (iii) personal property taxes, (iv) occupancy and rent taxes, (v) water and sewer rents and charges, (vi) excises, (vii) levies, (viii) license and permit fees, (ix) service charges with respect to fire, police and trash services, (x) street and highway construction, maintenance and lighting, (xi) fines, penalties and other similar or like governmental charges and interest and costs with respect thereto, and (xii) other impositions and

charges of any Governmental Authority of every kind and nature whatsoever, extraordinary as well as ordinary, including gross receipts, rent, occupancy and privilege or use taxes assessed to or payable with respect to the Premises, the Improvements, any Alterations, any Personal Property and any other improvements or additions thereto, this Lease. Taxes shall also mean and include all impositions charged, laid, levied, assessed or imposed in lieu of or in addition to the foregoing under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules or regulations of applicable federal, state, county or municipal governments; provided, however, that in no event shall Lessee be obligated to pay income, franchise or other similar taxes payable by Lessor.

(yy) Term. The term "Term" shall mean a term commencing on the Commencement Date and expiring on the Expiration Date, subject to earlier termination as provided in this Lease, or to extension as provided in this Lease.

1.02 Rules of Construction. For the purposes of this Lease, except as otherwise expressly provided herein to the contrary or unless the context otherwise requires:

(a) The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to".

(b) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or other subdivision or Exhibit.

(c) All Recitals set forth in, and all Exhibits and Schedules referred to in, this Agreement are hereby incorporated in this Agreement by reference.

(d) In the event of any conflict between the terms and provisions of the Development Agreement and this Lease, the terms and provisions of this Lease shall at all times control.

## **ARTICLE II**

### **LEASE OF PREMISES, TERM AND USE**

2.01 Lease of Premises. Lessor hereby leases and demises to Lessee, and Lessee hereby takes and hires from Lessor, the Premises for and during the Term, subject to and upon the terms and conditions hereinafter set forth. Lessee confirms and acknowledges that, subject to Lessee's full, complete and timely compliance with all of the terms and provisions of this Lease, Lessor's interest in the Improvements to be constructed by Lessee on the Land shall be limited to a reversionary interest in the same upon termination of this Lease on the Expiration Date.

2.02 Term. The Premises are leased for the Term, commencing on the Commencement Date and expiring on the Expiration Date, subject to earlier termination as hereinafter provided.

2.03 Options. Lessee shall have the right to extend the Term of this Lease subject to, and in accordance with, the terms and provisions of Sections 16.01 and 16.02 below.

2.04 “AS IS” Condition. Lessee has examined the Premises and accepts possession of the Premises in its “AS IS” condition on the Commencement Date. Lessee has full responsibility for the condition, alteration, maintenance, management, repair and replacement of the Premises, and (a) except as otherwise expressly provided in this Lease, Lessor has no obligation whatsoever to perform any work or make any repairs with respect to the Premises, to furnish any services with respect to the Premises (other than municipal services customarily provided by the City of Huntsville as a municipality, such as fire and police protection), or to incur any expenses with respect to the Premises, (b) Lessor does not represent or warrant title to the Premises (it being the sole responsibility of Lessee to satisfy itself as to the City’s title to the Premises), (c) the Premises are leased subject to all easements, restrictions, reservations, rights-of-way, and other matters of record, and (d) Lessor has no responsibility with respect to the condition of the Premises (including any latent defects). Lessee expressly acknowledges and agrees that Lessor has not made and is not making, and Lessee, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises or statements of, by or on behalf of Lessor, except to the extent that the same are expressly set forth in this Lease. Without limiting the generality of the preceding provisions, Lessee, by taking possession of the Premises shall conclusively be deemed to have agreed that the Premises were in satisfactory condition as of the Commencement Date.

2.05 Use. During the Term of this Lease, Lessee shall use the Premises solely for the Permitted Use. In addition, Lessee shall not at any time use or occupy the Premises or suffer or permit its tenants or Subtenants to use or occupy the Premises (a) in any manner that violates any of the terms or provisions of this Lease, (b) so as to cause waste, (c) so as to violate any insurance policy then issued with respect to the Premises or (d) so as to create a nuisance. Lessee shall at all times during the Term of this Lease comply, and cause all of its Subtenants to comply, with all Legal Requirements from time to time applicable to the Premises.

### **ARTICLE III**

#### **RENT**

3.01 Base Rent. On or before the earlier of Lessee’s Completed Construction or the Completion Deadline Date and on each anniversary date of the Commencement Date throughout the Term, Lessee shall pay to Lessor, in advance, as rental for the use and occupancy of the Premises, the Base Rent for the ensuing year, without notice or demand.

3.02 Additional Rent. In addition to the Base Rent, Lessee shall also pay and discharge throughout the Term, as additional rent (collectively, “Additional Rent”), all amounts, Liabilities, obligations and expenses, of every kind or nature, relating to or arising from the development, construction, leasing, operation, management, maintenance, repair or use of the Premises, including, without limitation, (a) all Taxes with respect to the Premises (as provided in Section 6.01 below), (c) all utilities with respect to the Premises (as provided in Section 7.01 below), (d) compliance with all Legal Requirements (as provided in Sections 8.01 and 8.02 below), (e) all costs of maintaining, operating and repairing all of the Improvements and Lessee’s Personal Property on or within the Premises (as provided in Section 9.01 below), and (f) all insurance costs and expenses (as provided in Article X below). This Lease is an absolute net lease and all Rent payable hereunder shall be paid without notice or demand and without setoff, counterclaim, abatement, suspension, deduction and defense, so that this Lease shall yield to Lessor the full

amount of the Base Rent throughout the Term of this Lease. In no event shall Lessor have any obligation to pay or undertake any obligations relating to Additional Rent.

**3.03 Payment of Rent, Late Fees and Cure Rights.**

(a) All Rent shall be due and payable by Lessee in all events and Lessee agrees to pay said Rent without notice, demand, offset, counterclaim or deduction and without abatement, suspension, deferment, diminution or reduction, subject only to Lessee's rights to contest Taxes as set forth in Section 6.02, to contest Legal Requirements as set forth in Section 8.01(b), and to contest liens as set forth in Section 13.03.

(b) To the extent Lessee fails to promptly pay all Additional Rent when due, Lessor shall have the right, but not the obligation, to pay any such Additional Rent and all amounts of Additional Rent paid by Lessor, together with interest thereon at the Applicable Rate from and after the date on which Lessor pays any such Additional Rent, shall be due and payable by Lessee to Lessor on demand.

(c) If Lessee fails or refuses to perform any of its obligations under this Lease (following thirty (30) days written notice from Lessor to Lessee), then Lessor shall have the right, but not the obligation, to perform such obligations of Lessee without waiving or releasing any other rights or remedies of Lessor provided herein or otherwise affecting Lessee's obligations hereunder. Any amounts paid or incurred by Lessor in performing any of the obligations of Lessee shall constitute Rent and shall be due and payable by Lessee upon written notice, together with interest thereon at the Applicable Rate from and after the date on which Lessor incurs any such costs or expenses.

**ARTICLE IV**  
**CONSTRUCTION OF INITIAL IMPROVEMENTS**

**4.01 Initial Construction.**

(a) Lessee shall, at its sole cost and expense, construct and complete the Initial Construction in a good and workmanlike manner substantially in accordance with the Development Plan, the terms of the Development Agreement, this Lease, and all Legal Requirements.

(b) Lessee shall not commence the Initial Construction until all of the following conditions have been satisfied:

(i) All conditions precedent set forth in the Development Agreement have been satisfied; and

(ii) The City has cleared and removed all above-ground structures within the Land; and

(iii) The City has completed general site grading of the Land in preparation for the Project; and

(iv) The City has provided access to utilities (water, gas, electric, sewer and stormwater) at the Land; and

(v) Lessee has obtained the insurance required under the provisions of Article X below and has delivered to Lessor certified copies thereof, together with certificates (in form reasonably acceptable to Lessor) evidencing such insurance.

(c) Lessor's prior written approval will be required for any changes in the Development Plan.

(d) Lessor shall, at no out-of-pocket expense to Lessor, cooperate with Lessee in Lessee's efforts to obtain the required permits, approvals, and authorizations for the operation of the Improvements in accordance with the provisions of this Lease, including, if required, and as may be reasonably approved, by Lessor, (i) joining in applications for subdivision plat approvals, certificates of dedication, public works or other agreements, (ii) the execution of utility easements, permits for sewer, water and other utility services, and (iii) the dedication to the applicable Governmental Authorities of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are reasonably necessary or desirable.

(e) Lessor and its architects, engineers and representatives shall have the right to inspect the Premises from time to time and at any time during the Initial Construction.

4.02 Completion of Initial Construction. Lessee covenants and agrees to promptly commence construction of the Initial Construction and cause the Initial Construction to achieve Completed Construction no later than March 31, 2026 (the "Completion Deadline"); provided, however, that if due to the occurrence of a Force Majeure Event Lessee is not able to cause the Initial Construction to achieve Completed Construction by the Completion Deadline, then for each day of the Force Majeure Event the Completion Deadline shall be extended by one day to address such condition before Lessee shall be considered in default of such obligation, subject to the following: (i) at the time of the Force Majeure Event which Lessee is claiming or anticipating, Lessee shall have first provided written notice to Lessor, which notice shall contain (1) a description of the Force Majeure Event, (2) an explanation of how Lessee anticipates such Force Majeure Event will affect Lessee's ability to timely cause the Initial Construction to achieve Completed Construction no later than the Completion Deadline, (3) the actions Lessee plans to undertake in order to address the conditions caused by the Force Majeure Event, and (4) an estimate of how long Lessee anticipates the Force Majeure Event will delay its ability to commence construction and/or cause the Initial Construction to achieve Completed Construction by the Completion Deadline; and (ii) in no event shall Lessee have more than three (3) years from the Effective Date of the Development Agreement (the "Outside Completion Date") to cause the Initial Construction to achieve Completed Construction.

4.03 Ownership of Improvements. All Improvements constructed on the Premises, including any and all Alterations, shall, subject to the terms and provisions of this Lease, be and remain the property of Lessee (or any successor to Lessee) during the Term and shall be considered part of Lessee's leasehold interest for all purposes of this Lease. Subject to the remaining terms and provisions of this Lease, upon expiration or termination of this Lease, title to all Improvements, including any and all Alterations approved by Lessor (excluding any Personal Property which may

be removed without material injury to the Premises), shall automatically vest in and become the Property of Lessor.

## **ARTICLE V** **ALTERATIONS**

### **5.01 Alterations.**

(a) Following Completed Construction of the Initial Construction, Lessee shall not make any material alterations, additions, or improvements to the exterior of the Premises, including any major structural exterior components of any of the Improvements, construct additional material exterior improvements on the Land, or demolish any exterior elements of the Improvements (collectively, the “Alterations”); provided, however, that Lessee (i) shall at all times satisfy all of its maintenance obligations set forth in Section 9.01 below and (ii) may, at its sole cost and expense, make any Alterations as may be required by Lessee’s hotel franchisor or any non-material Alterations to the Premises which Lessee, in its reasonable discretion, deems necessary or appropriate; provided, further, however, that Lessee shall not, without the prior written consent of Lessor, which may be granted or denied in the sole and absolute discretion of any of Lessor: (1) demolish all or substantially all of the Improvements, (2) alter the Improvements so as to reduce the aggregate rentable square footage of the Improvements, (3) reduce or increase the height of the Improvements, (4) alter the Improvements so as to adversely affect the structural integrity of the Improvements, (5) alter the nature of the Premises which would result in any portion of the Premises not being a Permitted Use, (6) alter the Improvements so as to limit or restrict ingress to or egress from the Project, or (7) make any Alterations to the exterior of the Premises. Notwithstanding the foregoing, the consent and approval of Lessor shall not be unreasonably withheld or delayed with respect to any of the Alterations described in clauses (1)-(7) if such Alterations result from a material Casualty Event or from a Condemnation (subject to the provisions of Article XII below). All Alterations shall be performed in accordance with the remaining terms and provisions of this Section 5.01.

(b) All Alterations shall be made in a good and workmanlike manner, in substantial compliance with all applicable Legal Requirements and shall conform in all material respects with the plans and specifications approved by Lessor. Lessee shall complete all Alterations with reasonable diligence and shall, promptly after completion of such Alterations, obtain all certificates, signoffs, licenses, permits, and approvals required by applicable Legal Requirements to be obtained with respect to the Alterations and with respect to all equipment, machinery and fixtures installed in connection with the Alterations. All materials, fixtures, machinery and equipment to be installed in the Improvements shall be of good quality and new.

(c) Lessee shall design and plan the staging of all Alterations and perform all construction involving any Alterations with the degree of care and skill ordinarily exercised by designers and contractors on similar projects in the same geographical area as the Premises. Lessee shall take appropriate action to ensure that all improvements owned by adjacent property owners shall not be damaged or disturbed by Lessee or its contractors in connection with the making of any Alterations and shall not unreasonably interfere with vehicular and pedestrian access to and from (i) the Project or (ii) any adjacent properties.

(d) Lessee shall not commence any Alterations until Lessee has met all of the following conditions:

(i) Lessee has obtained all permits, approvals, and authorizations required by all Governmental Authorities for the Alterations;

(ii) Lessee has obtained the insurance required by Section 5.02 below and has delivered to Lessor certificates (in form reasonably acceptable to Lessor) evidencing such insurance; and

(iii) If such Alterations require the consent of Lessor, the final plans and specifications for such Alterations shall have been approved by Lessor.

5.02 Insurance for Alterations. Lessee shall maintain the insurance coverages set forth in Article X below during any period that Lessee is engaged in performing any Alterations.

5.03 Cooperation. To the extent reasonably necessary, and without violating applicable Legal Requirements, Lessor shall, at no out-of-pocket expense to Lessor, cooperate with Lessee in Lessee's efforts to obtain the required permits, approvals, and authorizations for the construction of the Alterations and the operation of the Improvements in accordance with the provisions of this Lease, including, if acquired and as may be reasonably approved by Lessor, (a) joining in applications for building permits, subdivision plat approvals, certificates of dedication, public works or other agreements, (b) the execution of utility easements, permits for sewer, water and other utility services, and (c) the dedication to the applicable Governmental Authorities of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are reasonably necessary or desirable.

## **ARTICLE VI**

### **TAXES**

6.01 Payment of Taxes. Throughout the Term, Lessee shall pay and assume liability for all Taxes which may be levied or assessed against (a) the Premises, (excepting therefrom any interest in the Land which shall be exempt from such Taxes); (b) the interests of Lessor and Lessee therein and all other Improvements and Personal Property thereon, whether belonging to Lessor or Lessee, or to which either of them may become liable; (c) this Lease; and (d) the Rent payable hereunder. Lessee does hereby, indemnify, defend and hold Lessor and the Premises harmless from all Liabilities for any and all such Taxes, together with any interest, penalties or other sums thereby imposed and from any sale or other proceeding to enforce payment thereof. During the Term, Lessee shall cause all taxes levied or imposed upon any Personal Property situated in, on or about the Premises to be assessed separately from the Premises and not allow such Taxes to become a lien on or against the Premises.

6.02 Contest of Taxes. Notwithstanding anything provided herein to the contrary, Lessee shall have the right to contest in good faith and by appropriate and timely legal proceedings the legality, assessed valuation or amount of any Taxes. Lessor shall reasonably cooperate with Lessee in the prosecution of any such contest and such proceedings may be brought in the name of Lessor, if necessary, provided that all costs and expenses paid or incurred by Lessor in connection therewith (including, without limitation, all reasonable attorneys' fees, court and other

costs) shall be paid solely by Lessee. Notwithstanding the foregoing, Lessee shall pay without contest all Taxes unless (a) Lessor shall consent in writing to the appropriate contest or (b) all of the following requirements are satisfied by Lessee:

- (i) Such contest shall suspend the collection of such Taxes;
- (ii) No part of the Premises or any Rent therefrom would be subject to loss, sale or forfeiture before final determination of any such contest;
- (iii) Lessor would not be subject to any civil or criminal liability as a result of such non-payment or contest;
- (iv) Such proceedings shall not affect the payment of Rent hereunder or prevent Lessee from using the Premises for their intended purpose; and
- (v) Lessee notifies Lessor of such proceedings within ten (10) days after the commencement thereof and describes such proceedings in reasonable detail in such notice.

Lessee, in addition to conducting all contests in good faith and with due diligence, shall pay and discharge all amounts which shall be determined to be payable promptly after the final determination of any such contest.

6.03 Prorata Obligation to Pay Taxes Assessed After Expiration of Term. Any Taxes relating to any period of time which are within the Term but which may not be assessed, levied, confirmed, imposed upon or become a lien upon the Premises until after the Expiration Date, shall be apportioned between Lessor and Lessee as of the Expiration Date (other than an Expiration Date arising by reason of Lessee's Default), so that Lessee shall pay any portion of such Taxes for the fiscal period included in the period of time before the Expiration Date. To the extent required by Lessor, any such Taxes which are attributable to any period of time prior to the Expiration Date but which may be payable after the Expiration Date shall be paid by Lessee to Lessor on or prior to the Expiration Date.

## **ARTICLE VII**

### **UTILITIES, SECURITY AND PERSONNEL**

7.01 Utilities. Commencing on the Commencement Date and continuing thereafter throughout the remainder of the Term, Lessee agrees to obtain and pay for all charges and expenses (including posting all necessary bonds or deposits) for all public or private utility services (including, without limitation, electricity, gas, water, telephone, sanitary sewer, cable, internet, storm sewer and drainage and any other similar utility services) and any and all fire protection and trash removal services for the Premises and to indemnify, defend and hold harmless Lessor and the Premises from any Liabilities resulting from Lessee's failure to timely and completely pay the same.

7.02 Security. Lessee shall be solely responsible for providing all security for the Premises.

7.03 Personnel. Lessee shall, at its sole cost and expense, hire, employ, and pay for any security personnel for the operation, security and safety of the Project in such number and during such hours as is customarily found in other class-A mixed-use developments similar to the Project within the southeastern United States. Such personnel may not hold themselves out to be personnel or employees of Lessor or to have enforcement authority on behalf of the Lessor or any other Governmental Authority.

## **ARTICLE VIII**

### **COMPLIANCE WITH LEGAL REQUIREMENTS**

#### **8.01 Compliance with Legal Requirements.**

(a) Lessee, at Lessee's expense, shall comply, and shall cause its agents, employees, independent contractors, and all Subtenants to comply at all times with all Legal Requirements applicable to the Premises, the occupancy of the Premises, any Alterations, any Personal Property, or any activities at the Premises or in or upon any streets, roadways and alleys adjacent to the Premises. Without limiting the foregoing, but subject to the provisions of Section 8.01(b) below, Lessee shall promptly (i) cure all violations of any Legal Requirement caused by Lessee, its agents, employees, independent contractors, and all Subtenants as to which a notice of violation has been issued or as to which a directive or order has been issued by any Governmental Authority, (ii) discharge of record any such notice of violation and promptly comply with any such order or directive, and (iii) pay all fines, penalties, interest and other costs imposed by any Governmental Authority in connection with any violation of any Legal Requirements by Lessee, its agents, employees, independent contractors or any Subtenants.

(b) Notwithstanding the provisions of Section 8.01(a) above, Lessee shall have the right to contest in good faith any alleged violations of Lessee of any Legal Requirements, as long as (i) no part of the Premises or any Rent therefrom would be subject to loss, sale, forfeiture, fine, penalty, judgment or lien before final determination of any such contest; (ii) Lessor would not be subject to any civil or criminal liability as a result of such non-payment or contest; (iii) such proceedings shall not affect the payment of Rent hereunder or prevent Lessee from using the Premises for their intended purpose; and (iv) Lessee notifies Lessor of such proceedings within ten (10) days after the commencement thereof and describes such proceedings in reasonable detail in such notice. Lessee, in addition to conducting all contests in good faith and with due diligence, shall pay and discharge all amounts which shall be determined to be payable promptly after the final determination of any such contest.

#### **8.02 Environmental Compliance.**

(a) In addition to the provisions of Section 8.01 above, Lessee, at Lessee's expense, shall comply, and shall cause its agents, employees, independent contractors and Subtenants to comply, with all Environmental Laws. Such compliance includes Lessee's obligation, at its expense, to take Remedial Action when required by any Governmental Authority (in accordance with applicable Legal Requirements and this Lease) and to pay all fines, penalties, interest and other costs imposed by any Governmental Authority in connection with any violation of any Legal Requirements or the compliance with any Legal Requirements.

(b) As used herein, the following terms shall have the meanings set forth below:

(i) “Environmental Laws” shall mean all Legal Requirements: (1) relating to the environment, human health or natural resources; (2) regulating, controlling or imposing liability or standards of conduct concerning Hazardous Substances; (3) relating to the remediation of the Premises for Hazardous Substances, including investigation, response, clean-up, remediation, prevention, mitigation or removal of any Hazardous Substance; or (4) requiring notification or disclosure of releases of Hazardous Substances or of the existence of any environmental conditions on or at the Premises, as any of the foregoing may be amended, supplemented, or supplanted from time to time;

(ii) “Hazardous Substances” shall mean any and all substances, materials, chemicals and/or wastes which now or hereafter are classified or considered to be hazardous or toxic, or that are or become regulated by any Governmental Authority because of toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity under any Environmental Law applicable to the Premises, and shall also include (1) gasoline, diesel fuel, and other petroleum hydrocarbons; (2) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (3) polychlorinated biphenyls; (4) radon gas; and (5) flammable liquids and explosives;

(iii) “Remedial Action” shall mean the investigation, response, clean up, remediation, prevention, mitigation or removal of contamination, environmental degradation or damage caused by, related to or arising from the existence, generation, use, handling, treatment, storage, transportation, disposal, discharge, Release (including a continuous Release) or emission of any Hazardous Substance, including the investigation, removal or closure of any underground storage tanks and any soil or groundwater investigation, remediation or other action required under or necessary to comply with any Environmental Laws; and

(iv) “Release” shall mean the release or threatened release of any Hazardous Substances into or upon or under any land, water or air, or otherwise into the environment, including by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, powering, escaping, emptying, placement and the like.

(c) Lessee shall notify Lessor promptly if (i) Lessee becomes aware of the presence or Release of any Hazardous Substance at, on, under, within, emanating from or migrating to the Premises in any quantity or manner, which could reasonably be expected to violate in any material respect any Environmental Law or give rise to any liability or the obligation to take Remedial Action or other material obligations under any Environmental Law, or (ii) Lessee receives any written notice, claim, demand, request for information or other communication from a Governmental Authority, or a third party, regarding the presence or Release of any Hazardous Substance at, on, under, within, emanating from or migrating to the Premises or related to the Premises which could reasonably be expected to violate in any material respect any Environmental Law or give rise to any material liability or obligation to take Remedial Action or other material obligations under any Environmental Law.

(d) Lessee shall take and complete any Remedial Action in compliance with all Legal Requirements due to Lessee's violation of any Environmental Law with respect to the Premises and shall, when such Remedial Action is completed, submit to Lessor written confirmation from the applicable Governmental Authorities that no further Remedial Action is required to be taken ("Final Governmental Approval"). In connection with any Remedial Action, Lessee shall, (i) use an environmental consultant reasonably acceptable to Lessor, (ii) promptly submit to Lessor the plan of Remedial Action prepared by Lessee's environmental consultant (as approved by Lessor) and all material modifications thereof, and (iii) apprise Lessor, on a quarterly basis (or more frequently if reasonably requested by Lessor), of the status of such remediation plan and provide Lessor with copies of all correspondence, plans, proposals, contracts and other documents relating to such plan or proposed plan. If Lessee's environmental consultant determines that there is not a reasonable likelihood of obtaining Final Governmental Approval prior to the third anniversary of the date on which the remediation plan is first submitted to Lessor, a certificate to that effect shall be provided to Lessor by such environmental consultant on behalf of Lessee, which certificate shall also state, to the reasonable satisfaction of Lessor, the status of the Remedial Action and the schedule for completion of the Remedial Action, the reasons why such Final Governmental Approval is not likely to be obtained within such time period and that all Remedial Actions to date have been completed in accordance with all Environmental Laws.

## **ARTICLE IX**

### **REPAIRS AND MAINTENANCE; PERSONAL PROPERTY**

#### **9.01 Lessee to Maintain and Repair.**

(a) At all times throughout the Term, Lessee shall, at its sole cost and expense, keep and maintain the Premises, all Improvements thereon, and all Personal Property in good order and repair and safe condition, and in a manner consistent with the standards of operation and maintenance of a dual branded Hotel Property. Lessee shall make any and all replacements, additions to, and all Alterations or repairs in and about, the Premises and the other Improvements thereon that may be required by, and shall otherwise observe and comply with, all Legal Requirements from time to time applicable to the Premises. Lessee's obligations under this Section 9.01(a) shall include, without limitation, maintenance, repair and replacement, if necessary, of all structural and non-structural portions of the Premises, ordinary or extraordinary, foreseen and unforeseen, necessary or appropriate to keep the Premises in good and safe order and condition, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise. Lessee shall keep the entire Premises, including sidewalks in front of the Premises, substantially free of any accumulations of trash, dirt, rubbish, water, snow and ice. All repairs, replacements and renewals shall be at least equal in quality, utility and class to the original work. Nothing contained in this Lease shall constitute any consent or request by Lessor, express or implied, for the performance of any labor or services or the furnishing of any materials or other property with respect to the Premises, nor as giving Lessee any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the filing of any lien or the making of any claim against Lessor with respect thereof. Notice is hereby given that Lessor shall not be liable for any labor services performed or any materials or other property furnished with respect to the Premises and that no mechanic's, materialmen's or other liens for any such labor, services or materials or other property shall attach to or affect the interest of Lessor in the Premises.

(b) Although Lessor is not obligated to make any repairs or replacements to the Premises, Lessor reserves the right, following the giving of any notices required by the terms and provisions of Section 3.03(c) above, to enter upon the Premises at reasonable times during normal business hours, and to make the foregoing repairs if Lessee has not done so. In the event such repairs are made by Lessor, Lessee shall reimburse Lessor upon written notice for the full cost and expense thereof, together with interest thereon at the Applicable Rate from and after the date on which Lessor incurs or pays any such costs or expenses. Lessor shall not be required to furnish any services or facilities or to make any repair or Alteration in or to the Premises and Lessee hereby assumes the full, sole and absolute responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises.

9.02 Lessor's Liability. Lessor shall not be required or obligated to make any changes, Alterations, additions, improvements or repairs in, on or about the Premises during the Term. Lessor shall not be liable for any Liabilities of any kind or character or any injury or damage of any kind or character (a) to any person or property arising from any use of the Premises, (b) caused by any defect in the Premises or any other Improvements thereto or in any equipment or other facility therein, (c) caused by or arising from any act or omission of Lessee, or of any of its members, agents, employees, Subtenants, licensees or invitees, (d) caused by or from any accident on the Premises, (e) caused by any Casualty Event or Condemnation, (f) occasioned by the failure of Lessee to maintain the Premises in accordance with all Legal Requirements or the terms of this Lease or (g) arising from any other cause whatsoever. Lessee, as a material part of the consideration of this Lease, hereby waives all claims and demands against Lessor for any such Liabilities or any injury or damage of any kind or character and does hereby indemnify, agree to defend and hold Lessor entirely free and harmless from all liability for any such Liabilities or any injury or damage of any kind, whether to Lessee and to other Persons, and from all costs and expenses arising therefrom.

## **ARTICLE X** **INSURANCE**

10.01 Insurance Policies Required. Beginning on the Commencement Date and at all times thereafter throughout the Term of this Lease, Lessee shall, at Lessee's sole cost and expense, keep and maintain the following insurance:

(a) Property Insurance. Effective on and after Completed Construction of the Initial Construction and continuing thereafter throughout the remainder of the Term, Lessee shall maintain property and Casualty Event insurance covering all Improvements against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are included in Special Form (also known as "all-risk") coverage and against any and all acts of terrorism and such other insurable hazards as Lessor may require and that are ordinarily insured against by similar businesses, in an amount not less than 100% of the full replacement cost of the Project and all Improvements thereto, including the cost of debris removal, without deduction for depreciation, and such coverage shall be, in any event, at least sufficient to avoid the effect of the co-insurance provisions of any applicable policy. Lessor shall be named as an additional insured and loss payee on the foregoing property and casualty insurance coverage.

(b) Liability Insurance. Lessee shall maintain a policy of commercial general liability insurance for the joint benefit of Lessor, Lessee, and Permitted Mortgagee, under which Lessor and Lessee shall be named as co-insureds insuring against liability for damage to property or bodily injury or death occurring on, in or about the Premises or any Improvements thereto. Such insurance shall (i) include coverage for liability arising from premises and operations, elevators, independent contractors, contractual liability (including, without limitation, Lessee's indemnity obligations hereunder) and products and completed operations, (ii) be maintained on an "occurrence" form and (iii) provide coverage of at least \$2,000,000.00 per occurrence and \$5,000,000.00 in the aggregate, with an excess umbrella liability policy for bodily injury and property damage in the amount of at least \$5,000,000.00; provided, however, that commencing on the tenth anniversary of the Commencement Date, and on each 10-year anniversary thereafter, the amount of coverage covered by such commercial general liability insurance policy and excess umbrella liability policy shall be increased to such amounts then customarily obtained for similar properties in similar markets as mutually agreed to by Lessor and Lessee; provided, however, that if Lessor and Lessee do not reach a mutual agreement as to the increased amount of coverage at least thirty (30) days prior to each adjustment date, then such commercial general liability insurance coverage shall be increased by the CPI Fraction.

(c) Subrogation. Lessee does hereby waive and release Lessor from any and all liability or responsibility or for any other claim by, through or under Lessee, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) the insurance policies required to be maintained hereunder by Lessee, even if such loss or damage shall have been caused by the fault or negligence of Lessor or any one for whom Lessor may be responsible. Lessee shall obtain from its respective insurance carriers waiver of subrogation endorsements to all such policies in form reasonably acceptable to Lessor.

#### 10.02 Policy Provisions and Other Requirements.

(a) All insurance to be maintained hereunder by Lessee shall be issued by companies qualified to do business in the State of Alabama having an A.M. Best Company rating of A, Class VII or higher and shall be issued on the then current ISO form. Certified copies of, and certificates of insurance, evidencing all insurance coverage required hereunder (and certified copies of the annual renewal of such policies) shall be delivered to Lessor on the Commencement Date and an annual basis thereafter throughout the remainder of the Term in accordance with the remaining terms and provisions of this Section 10.02.

(b) The insurance policies required to be carried hereunder by Lessee may be carried under a blanket policy covering the Premises and other locations of Lessee and Lessee's Affiliates if such blanket policy contains an endorsement that guarantees a minimum limit available for the Premises equal to the minimum limits required by Section 10.01 above and the minimum limits shall not be reduced for claims made with respect any other properties, and such policies shall otherwise comply with all the other terms and provisions of the Article X.

(c) All insurance policies required by this Article X shall (i) contain endorsements that such insurance may not be cancelled or amended except upon not less than thirty (30) days prior written notice to the certificate holders, (ii) be written as primary policies (i.e., any insurance or self-insured maintained by Lessor shall not contribute with Lessee's

insurance or benefit Lessee in any way), and (iii) contain a waiver of subrogation endorsement in favor of Lessee.

(d) Lessee shall, within ten (10) days of payment, furnish to Lessor duplicate receipts or other evidence satisfactory to Lessor evidencing the payment of all premiums on any and all insurance required to be carried by Lessee in accordance with the terms and provisions of this Lease. The insurance carrier shall give Lessor at least thirty (30) days prior written notice with respect to nonpayment of premiums, cancellation, modification or non-renewal.

(e) If Lessee fails to maintain the insurance required by the foregoing provisions of this Article X or to timely furnish to Lessor the required evidence of such insurance, Lessee shall be responsible for all Liabilities incurred by Lessor with respect to such Default, including any Liabilities that would have been covered by insurance Lessee is required to maintain. If Lessee fails to maintain any of the insurance required by this Article X, Lessor may, at its option (but without any obligation to do so), in addition to exercising any other rights or remedies available under this Lease, obtain the insurance described in this Article X, in which event Lessee shall reimburse Lessor, as Additional Rent, within ten (10) days of being billed therefor, for the costs incurred by Lessor to obtain such insurance.

## **ARTICLE XI** **INDEMNITY**

11.01 Indemnity. Lessee does hereby indemnify, agree to defend and hold Lessor harmless from and against any and all Liabilities suffered, paid or incurred by Lessor arising from or in connection with any of the following: (a) the Premises and/or any operations or activities thereon during the Term and after the Term for so long as Lessee, or any Person holding through or under Lessee, remains in possession of the Premises, except to the extent such Liabilities arise out of the negligence or willful misconduct of Lessor; (b) any act, omission, negligence, gross negligence or willful misconduct of Lessee and/or any of Lessee's officers, directors, employees, partners, members, managers, agents, contractors, invitees, Subtenants, and any employees, agents, contractors, invitees or customers of any Subtenants (collectively, the "Lessee Parties"); (c) any accident, injury or damage (including death) occurring in, at or about the Premises during the Term and after the Term for so long as Lessee, or any Person holding through or under Lessee, remains in possession of the Premises, except to the extent such Liabilities arise out of the negligence or willful misconduct of Lessor; (d) any breach, Default or Event of Default by Lessee under this Lease; (e) any claims made by Subtenants or any of the other Lessee Parties against Lessor during or after the Term, except to the extent such claims arise out of the negligence or willful misconduct of Lessor; (f) any violation of any Governmental Requirements by Lessee or any other Lessee Parties; and (g) any holdover by Lessee, or by any Person(s) holding through Lessee, after the Expiration Date. If any action or proceeding is brought against Lessor by reason of any such claim(s), Lessee, upon notice from Lessor, shall resist and defend such action or proceeding by counsel reasonably satisfactory to Lessor. As used in this Section 11.01, the term "Lessor" shall mean and include Lessor, the Governing Body of Lessor, the Mayor and City Council of Lessor, all departments of Lessor and their respective agents, employees, and representatives. The indemnification provisions set forth in this Section 11.01 are in addition to and shall not be deemed a substitute for any of the insurance requirements set forth in Article X above and shall survive the termination of this Lease.

**ARTICLE XII**  
**CASUALTY EVENT AND CONDEMNATION**

**12.01 Casualty Event.**

(a) Upon the occurrence of a Casualty Event, Lessee shall have the right, but shall be under no obligation, to undertake the Restoration of the Premises. Lessee shall have a period of 180 days following a Casualty Event to provide written notice (the “Restoration Notice”) to Lessor of its decision to undertake the Restoration of the Premises. If Lessee does not timely deliver a Restoration Notice to Lessor electing to undertake the Restoration of the Premises within said 180-day period or if Lessee elects not to undertake Restoration of the Premises, then (i) Lessee shall be deemed to have irrevocably elected not to undertake Restoration, (ii) all insurance proceeds shall be paid to Lessor and disbursed as follows: (1) an amount equal to the costs, as determined in the reasonable judgment of Lessor (but in no event more than \$1,000,000), to be incurred by Lessor to remove any and all debris and other damaged Improvements from the Land and restore the Land back to the same condition as it existed as of the Commencement Date shall be retained by Lessor, and (2) the balance of the insurance proceeds shall be paid to either (x) Lessee, to the extent there is no Permitted Mortgage encumbering the Premises or (y) the Permitted Mortgagee, to the extent the Premises is encumbered by a Permitted Mortgage and (iii) following the payment of the insurance proceeds to Lessor, this Lease shall automatically terminate, without any further notice to Lessee, any Subtenants or any Permitted Mortgagee. Following Lessor’s removal and restoration work respecting the Site, Lessor shall return to Lessee any amount withheld by the Lessor pursuant to this Section 12.01(a) and not used for those purposes, along with an accounting of all costs incurred by the Lessor for such work.

(b) If Lessee timely delivers a Restoration Notice to Lessor in accordance with the terms and requirements of Section 12.01(a) above electing to undertake the Restoration of the Premises, then Lessee shall promptly commence such Restoration in accordance with the terms and provisions of this Article XII and cause such Restoration to achieve Completed Construction no later than two (2) years from the date of such Restoration Notice (the “Restoration Deadline”); provided, however, that if due to the occurrence of a Force Majeure Event Lessee is not able to cause Restoration to achieve Completed Construction by the Restoration Deadline, then for each day of the Force Majeure Event said Restoration Deadline shall be extended by one day to address such condition before Lessee shall be considered in default of such obligation, subject to the following: (i) at the time of the Force Majeure Event Lessee is claiming or anticipating, Lessee shall have first provided written notice to Lessor containing: (1) a description of the Force Majeure Event, (2) an explanation of how Lessee anticipates such Force Majeure Event will affect Lessee’s ability to timely cause the Restoration to achieve Completed Construction by the Restoration Deadline, (3) the actions Lessee plans to undertake in order to address the conditions caused by the Force Majeure Event, and (4) an estimate of how long Lessee anticipates the Force Majeure Event will delay its ability to commence construction and/or cause the Restoration to achieve Completed Construction by the Restoration Deadline; and (ii) in no event shall Lessee have more than three (3) years from the date of the Restoration Notice (the “Outside Restoration Date”) to cause the Restoration to achieve Completed Construction.

(c) To the extent Lessee timely gives the Restoration Notice electing to undertake the Restoration of the Premises, then the insurance proceeds shall be paid to Lessee or

its Permitted Mortgagee as the case may be to begin the work needed for Restoration of the Premises.

#### 12.02 Eminent Domain.

(a) If all or substantially all of the Premises is taken by Condemnation or any Condemnation renders the remainder of the Premises not reasonably fit or suitable for the purposes for which the same have been leased to Lessee, then this Lease shall automatically terminate as of the date that possession of the Premises is taken. If this Lease is terminated as a result of any Condemnation, Rent shall be adjusted to the day of such Condemnation and neither party thereafter shall have any further rights or liabilities hereunder; provided, however, that any prepaid Base Rent shall not be refundable to Lessee.

(b) In the event of any Condemnation resulting in the termination of this Lease pursuant to the provisions of Section 12.02(a) above, the parties hereto shall cooperate in applying for and prosecuting any claim for any award for such Condemnation. The aggregate award payable to both Lessor and Lessee shall be distributed as follows:

(i) First, to the payment of all reasonable costs and expenses, including attorneys' fees, incurred by Lessor and Lessee in connection with such Condemnation;

(ii) Second, to the payment to Lessor of an amount equal to the then fair market value of the Land, exclusive of any Improvements and unencumbered by the terms and provisions of this Lease;

(iii) Third, to the payment to Lessor of an amount equal to the costs, as reasonably determined by Lessor, to remove all debris and any existing Improvements from the Land; and

(iv) The remainder, if any, shall be distributed to Lessee.

(c) Upon any Condemnation of the Premises which does not result in the termination of this Lease pursuant to Section 12.02(a) above, then this Lease shall remain in full force and effect; provided, however, that on the date of such Condemnation, this Lease shall terminate as to the portion of the Premises subject to such Condemnation, which shall no longer constitute part of the Premises and Lessee shall, to the extent that it may lawfully do so, at its sole cost and expense, undertake the Restoration of the remaining portions of the Premises taking into consideration the amount of the Land remaining after any such Condemnation. To the extent this Lease is not terminated as a result of any Condemnation, then the aggregate award payable to both Lessor and Lessee shall be distributed as follows:

(i) First, to the payment of all reasonable costs and expenses, including attorneys' fees, incurred by Lessor and Lessee in connection with such Condemnation;

(ii) Second, to the payment to Lessor of an amount equal to the then fair market value of the Land taken in such Condemnation, exclusive of any Improvements and unencumbered by the terms and provisions of this Lease; and

(iii) Third, the balance of the award shall be paid to Lessor and disbursed by Lessor in the same manner as insurance proceeds are disbursed with respect to a Casualty Event in accordance with the terms of Section 12.01(c) above.

**12.03 No Abatement of Rent.**

(a) Upon the occurrence of any Condemnation which results in the termination of this Lease, Lessee shall continue to be obligated to pay all Rent payable to the date on which this Lease is terminated. In no event shall Lessor have any obligation to refund any Base Rent prepaid by Lessee.

(b) Upon the occurrence of any damage to the Premises resulting from any Casualty Event or any Condemnation which does not result in the termination of this Lease, all Rent payable pursuant to the terms and provisions of this Lease shall continue to be due and payable in full by Lessee without abatement, diminution, offset or reduction on account of any such Casualty Event or Condemnation. In no event shall Lessor be liable to Lessee by reason of any injury to or interference with Lessee's business or property arising from any Casualty Event or Condemnation, other than resulting from a Condemnation initiated by the Lessor.

**ARTICLE XIII**  
**ASSIGNMENT, SUBLEASES, ENCUMBRANCES AND LIENS**

**13.01 Assignment, Subletting and Encumbrances Prohibited.**

(a) Except as expressly provided in Sections 13.01(c), 13.02 and 13.04 below, Lessee shall not encumber, assign or otherwise transfer this Lease, or any right or interest in this Lease, the Premises, the Improvements or any Alterations which may be hereafter constructed or installed on the Land. Except for the Permitted Subleases, Lessee shall not sublease or grant licenses or use rights to any portion of the Premises.

(b) If Lessee is a corporation, partnership, limited liability company, or other entity, the transfer (whether by a single transfer or by a series of related or unrelated transfers) of 50% or more of the stock, partnership interests, membership interests, or other interests of Lessee, or of any Parent Entity (hereinafter defined), however accomplished and whether effected voluntarily or by operation of law (collectively, an "Interest Transfer"), shall, subject to the remaining terms and provisions of this Section 13.01(b), be deemed an assignment of this Lease, whether such transfer(s) shall involve a transfer or transfers of outstanding interests of Lessee or any Parent Entity and/or the issuance of interests in Lessee or any Parent Entity (whether stock, partnership, membership interests or other interests). A "Parent Entity" is any entity that owns 50% or more of the stock, partnership interests, general partnership interests, membership interests, or other interests of Lessee.

(c) Notwithstanding anything provided herein to the contrary, at any time following Completed Construction, Lessee shall have the right to transfer and assign this Lease, subject to the approval of Lessor, which approval shall not be unreasonably withheld.

(d) Subject to the provisions of Sections 13.01(c), 13.02 and 13.04 of this Lease, no encumbrance, assignment, sublease or other transfer, whether voluntary or involuntary,

by operation of law, under legal process, through receivership or bankruptcy, or otherwise shall be valid or effective without the prior written consent and approval of Lessor, which consent and approval may be withheld by Lessor in its sole and absolute discretion. Should Lessee make or suffer to be made any such encumbrance, assignment, sublease or transfer in violation of the terms of this Lease, then Lessor may, at its option, terminate this Lease, subject to the provisions of Article XIV of this Lease. Should Lessor consent to any such encumbrance, assignment, sublease or transfer, none of the restrictions of this Section 13.01 shall be thereby waived except with respect to such specific consent, and such restrictions shall apply to each successive encumbrance, assignment, sublease or transfer, if any, and shall be severally binding upon each and every encumbrance, assignee or transferee and other successor in interest of Lessee.

(e) Lessee shall have the right, with the prior written consent and approval of Lessor, to execute customary utility easements and rights-of-way agreements affecting the Premises.

13.02 Permitted Leasehold Mortgage. Notwithstanding anything provided to the contrary in Section 13.01 above, Lessee shall have the right at any time and from time to time during the Term of this Lease to subject its leasehold interest in the Premises to a Permitted Mortgage and to renew, modify, consolidate, replace, extend and refinance the amount of indebtedness secured by such Permitted Mortgage (any and all of the foregoing being hereinafter included in the term “Refinance” or “Refinancing” as used herein and such term should also include the replacement of the Permitted Mortgage). Any such Permitted Mortgage may also include an assignment of leases and rents, a security interest in any Personal Property owned by Lessee and an assignment of Lessee’s interest in this Lease in order to secure the repayment of a Permitted Loan, including interest thereon, and the performance of all of the terms, covenants and agreements on the Lessee’s part to be performed or observed under all agreements executed in connection with such Permitted Loan. Lessor shall not be obligated to pay any indebtedness secured by a Permitted Mortgage. Lessee, without contribution by or other payment obligation of Lessor, shall make all payments of interest and principal amortization under any Permitted Loan and pay all of the costs and expenses incurred in connection therewith as and when the same shall be due and payable. Lessee alone shall be entitled to all proceeds from any such Permitted Loan or Refinancing. The holder of a Permitted Mortgage shall be deemed to have irrevocably and unconditionally agreed to all of the terms and provisions of this Lease, including, without limitation, all of the terms and provisions of Article XIII, Article XIV, and Article XVI of this Lease.

13.03 Liens and Claims. Lessee shall not suffer or permit to be enforced against the Premises, or any part thereof, any mechanics’, materialmen’s, contractors’ or subcontractors’ liens arising from, or any claim for damage growing out of, the work of any construction, repair, restoration, replacement or improvement of the Project, or the Premises, including, without limitation, the Initial Construction and any Alterations, or any other claim or demand howsoever the same may arise. Lessee shall pay or cause to be paid all such liens, claims or demands before any action is brought to enforce the same against the Premises, and Lessee does hereby indemnify, agree to defend and hold Lessor harmless from and against any and all such liens, claims, and demands, together with reasonable attorneys’ fees and all costs and expenses incurred by Lessor in connection therewith. Notwithstanding anything to the contrary contained in this Section 13.03 or in Section 13.01 above, if Lessee shall in good faith contest the validity of any such lien, claim or demand, then Lessee shall, at its sole cost and expense, defend itself and Lessor against the

same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Lessor or the Premises, upon the condition that, if Lessor shall require it, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to such contested lien, claim or demand indemnifying Lessor against liability for the same and holding the Premises free from the effect of such lien or claim or, if Lessor shall request, Lessee shall procure and record a bond or other security as may be provided for in any statute of the state in which the Premises are situated, or any comparable statute hereafter enacted providing for a bond or other security freeing the Premises from the effect of such lien, claim or action thereon.

13.04 Permitted Subleases. Lessee shall have the right to enter into Permitted Subleases so long as the same are subject and subordinate to this Lease.

#### **ARTICLE XIV** **PERMITTED MORTGAGEE PROTECTIONS**

##### 14.01 Notice of Permitted Mortgage.

(a) Lessee shall give Lessor prompt notice of a Permitted Mortgage, together with contact information for notices to the Permitted Mortgagee (the "Lender Notice"). Lessee shall promptly furnish Lessor with a complete copy of each Permitted Mortgage and, to the extent Lessor executes a confidentiality agreement in favor of Lessee, all documents and instruments comprising and securing the Permitted Loan for any Permitted Mortgage and all amendments, extensions, modifications and consolidations thereof, certified as such by Lessee.

(b) Subject to the provisions of Section 14.02(b) below, after receipt of a Lender Notice, Lessor shall give such Permitted Mortgagee, in the manner provided by the notice provisions of this Lease, a copy of each notice of Default given by Lessor to Lessee, at the same time that Lessor gives such notice of Default to Lessee or promptly thereafter. No such notice of Default given by Lessor to Lessee shall be effective unless and until a copy of such notice shall have been so given to such Permitted Mortgagee at the last address furnished to Lessor. The Permitted Mortgagee shall have the right, but not the obligation (except as provided in the next section), to cure such Default by Lessee or to cause such Default by Lessee to be cured, within the time periods set out in Section 14.02 below.

##### 14.02 Exercise of Rights by Lessor Following Event of Default.

(a) Subject to the provisions of Section 14.02(b) below, Lessor shall not exercise its right to terminate this Lease following any Event of Default by Lessee if:

(i) As to any Default by Lessee under this Lease with respect to obtaining and providing the insurance coverages required in Section 5.02 and Article X hereof, the Permitted Mortgagee cures such Default at least ten (10) days prior to the lapse of such coverage;

(ii) As to any Default by Lessee under this Lease which can be cured by the payment of a fixed monetary amount (other than as set forth in Section 14.02(a)(i) above), the Permitted Mortgagee or the Lessee cures such Default on or before the date that is the later of (1) thirty (30) days after the date such Default is required to be cured by

Lessee under the terms of this Lease or (2) thirty (30) days after the date Permitted Mortgagee is given written notice of Lessee's Default; and

(iii) Except as provided to the contrary in Section 14.02(b) below, as to a non-monetary Default by Lessee under this Lease, (1) Lessor receives written notice from the Permitted Mortgagee (the "Lender Cure Notice"), within thirty (30) days after Permitted Mortgagee is given Lessor's written notice of Lessee's Default, that Permitted Mortgagee agrees to remedy the Default, and (2) Permitted Mortgagee or the Lessee cures such Default on or before the date that is the later of (x) ninety (90) days after the date such Default is required to be cured by Lessee under the terms of this Lease, or (y) ninety (90) days after the date Permitted Mortgagee is given written notice of Lessee's Default; provided, however, that if any non-monetary Default is not capable of being remedied by the Permitted Mortgagee within such time period, Permitted Mortgagee shall have such greater period of time as is reasonably necessary to cure such Default (not to exceed one hundred twenty (120) days from the date the Lender Cure Notice is given to Lessor) if Permitted Mortgagee shall:

(A) commence to remedy the Default within such period and shall diligently continue to prosecute such cure to completion, or

(B) if possession of the Premises is required in order to cure such Default, institutes judicial or non-judicial foreclosure proceedings within such ninety (90) days following the giving of the Lender Cure Notice and diligently prosecutes such proceedings in order to obtain possession directly or through a receiver, and, upon obtaining such possession, commences promptly to cure the Default and diligently prosecutes the same to completion, provided that, during the period in which such action is being taken and any foreclosure proceedings are pending, all of the other obligations of Lessee under this Lease, to the extent they are reasonably susceptible to being performed by Permitted Mortgagee, shall be performed.

(b) Notwithstanding anything provided in this Lease to the contrary, no notice of Default or cure rights shall be provided to the Permitted Mortgagee to the extent of any Event of Default by Lessee under Sections 15.01(a)(iii) or 15.01(a)(v) below. Each Permitted Mortgagee, by acceptance of a Permitted Mortgage encumbering any portion of the Premises, shall be deemed to acknowledge and agree that no cure rights exist and no notice of Default is required to be given by Lessor to such Permitted Mortgagee with respect to any Event of Default by Lessee under Section 15.01(a)(iii) or 15.01(a)(v) below.

(c) The Permitted Mortgagee shall, to the extent Permitted Mortgagee elects to cure any Default by Lessee pursuant to Section 14.02(a) above (except as otherwise provided in Section 14.02(b) above), (i) either (1) assume in writing all of Lessee's obligations under this Lease pursuant to a written assumption agreement in form reasonably required by Lessor or (2) execute a New Lease pursuant to the terms and provisions of Section 14.05(a) below and (ii) be obligated to promptly pay to Lessor all reasonable costs and expenses paid or incurred by Lessor in connection with such Default, including all reasonable costs and expenses incurred in enforcing

Lessor's rights and in instituting, prosecuting or defending any legal action by or against Lessee, including summary proceedings, or in connection with any dispute under this Lease. Such amounts shall be paid to Lessor within thirty (30) days after such Permitted Mortgagee is billed for such costs and expenses.

14.03 Abandonment of Cure Rights by Permitted Mortgagee. At any time after the delivery of the Lender Cure Notice, Permitted Mortgagee may notify Lessor, in writing, that it has relinquished possession of the Premises, or that it will not institute foreclosure proceedings, or, if such proceedings have been commenced, that it has discontinued or will discontinue such proceedings (the "Abandonment Notice"). In such event, Permitted Mortgagee shall have no further obligation to cure any Default of Lessee and the provisions of Section 14.02 and 14.05 hereof shall be null and void. Lessor may, at any time after receipt of such Abandonment Notice or upon Permitted Mortgagee's failure to comply with the requirements of Section 14.02 above, terminate this Lease in accordance with the terms hereof.

14.04 No Liability of Permitted Mortgagee. Subject to the preceding sections, a Permitted Mortgagee shall not become liable to Lessor under the provisions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the Lessee under the leasehold estate created by this Lease. No Permitted Mortgagee shall have any personal liability under this Lease except to the extent of its interest in this Lease, even if it becomes Lessee or assumes the obligations of Lessee under this Lease. Subject to Section 14.02, a Permitted Mortgagee has no obligation to cure any Default or Event of Default by Lessee under the Lease.

#### 14.05 New Lease.

(a) Subject to the provisions of Section 14.05(d) below, Lessor agrees that in the event of a termination of this Lease by reason of either any Event of Default by Lessee or as a result of Lessee's rejection of this Lease in any receivership or as a result of any Insolvency Event (subject to the cure rights granted to the Permitted Mortgagee in Section 14.02 above), Lessor will enter into a new lease (the "New Lease") of the Premises with such Permitted Mortgagee (or its nominee) for the remainder of the Term effective as of the date of such termination, at the same Rent and upon the same terms, covenants, agreements and provision set forth in this Lease, provided that:

(i) Permitted Mortgagee shall make written request to Lessee for the execution of a New Lease within thirty (30) days after the date of termination, which written request shall be accompanied by payment to Lessor of all Rent and other amounts then due to Lessor of which Lessor shall have given Permitted Mortgagee prior written notice;

(ii) Permitted Mortgagee shall pay to Lessor at the time of execution of the New Lease any and all additional sums which, at the time of execution of the New Lease would be due under this Lease but for such termination, including, without limitation, all reasonable costs and expenses paid or incurred by Lessor as a result of such Event of Default by Lessee or such termination of this Lease, including reasonable attorneys' fees and expenses paid or incurred by Lessor as a result of such Event of Default

by Lessee, the termination of this Lease or in connection with the execution of the New Lease;

(iii) Permitted Mortgagee (or its nominee) shall assume all of the Permitted Subleases pursuant to written assumption agreements reasonably acceptable to Lessor;

(iv) Permitted Mortgagee shall cure, on or before the execution of the New Lease, all uncured Events of Default by Lessee for which Lessor has given Permitted Mortgagee written notice (except any such Event of Default which is not capable of being cured by Permitted Mortgagee); and

(v) Permitted Mortgagee (or its nominee) and Lessor must enter into and execute the New Lease no more than sixty (60) days after the giving of written request by Permitted Mortgagee to Lessor pursuant to Section 14.05(a)(i) above.

(b) Subject to the provisions of Section 14.05(d) below, Lessor further agrees that in the event of a Foreclosure Action which results in Permitted Mortgagee or any other Person acquiring the leasehold interest of Lessee in the Premises, Lessor will enter into a New Lease with such Permitted Mortgagee or any other Person occupying the leasehold interest in the Premises of Lessee on the same terms and conditions set forth in Section 14.05(a) and 14.05(c) hereof.

(c) Subject to the provisions of Section 14.05(d) below, Any New Lease shall (i) have the same relative priority in time and in right as this Lease, (ii) have the benefit of the right, title, powers and privileges of Lessee hereunder in and to the Premises, and (iii) provide that the Permitted Mortgagee (but not any other Person acquiring the leasehold interest of Lessee in the Premises) shall not be personally liable under the New Lease and its liability shall be limited to its interest in the New Lease.

(d) Notwithstanding anything provided herein to the contrary, Lessor shall have no obligation, and a Permitted Mortgagee shall have no right, to enter into a New Lease as a result of any Event of Default by Lessee under Sections 15.01(a)(iii) or 15.01(a)(v) below.

**14.06 No Merger of Title.** There shall be no merger of this Lease or the leasehold estate created by this Lease with a fee interest in the Premises by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, this Lease or the leasehold estate created by this Lease and the fee estate in the Premises, unless and until such Person and the Permitted Mortgagee and Fee Lender shall join in a written instrument expressly providing for such merger and such instrument is recorded.

## **ARTICLE XV**

### **DEFAULT AND REMEDIES**

#### **15.01 Default by Lessee.**

(a) Each of the following shall constitute an event of default (each, an “Event of Default”) by Lessee:

- (i) Lessee fails to timely pay Base Rent to Lessor; or
- (ii) Lessee fails to obtain and provide to Lessor the insurance coverages and certificates required in Section 5.02 and Article X hereof and such failure continues for a period of ten (10) days after written notice thereof is given to Lessee; or
- (iii) Lessee fails to pay Additional Rent to Lessor or to any other party to whom Additional Rent is payable when the same is due and payable under the terms of this Lease and such failure continues for a period of thirty (30) days after written notice thereof is given to Lessee; or
- (iv) Lessee fails to cause the (1) Initial Construction to achieve Completed Construction by the Outside Completion Date or (2) Restoration to achieve Completed Construction by the Outside Restoration Date; or
- (v) Lessee fails to timely deliver to Lessor the assignment of insurance proceeds (or Condemnation award) as provided in Sections 12.01(c) or 12.02(c) above; or
- (vi) Lessee encumbers, assigns, sublets or otherwise transfers this Lease, or any right or interest in this Lease, the Premises, the Improvements or any Alterations in violation of Section 13.01 above;
- (vii) Any liens are filed against the Premises which are not timely satisfied or bonded as required under Section 13.03 above;
- (viii) Lessee vacates or abandons the Premises for thirty (30) or more consecutive days (other than a temporary vacation or abandonment as a result of any Casualty Event, Condemnation or Alteration); or
- (ix) A default by Lessee occurs under the Development Agreement which default is not timely cured by Lessee following the giving of any applicable notices and the expiration of any applicable cure periods set forth in the Development Agreement; or
- (x) A receiver is appointed for Lessee or any property of Lessee in any action, suit, or proceeding by or against Lessee and such appointment is not vacated or annulled within 120 days, or
- (xi) The interest of Lessee in this Lease is sold under execution or other legal process; or
- (xii) An Insolvency Event occurs; or
- (xiii) Lessee fails to be a single-purpose entity whose assets consist solely of its interest in the Premises; provided, however, that the provisions of this Section 15.01(a)(xi) shall not be applicable to a Permitted Mortgagee (or its nominee) which succeeds to the interest of Lessee under this Lease; or

(xiv) Lessee, whether by action or inaction, fails to timely perform or observe any of the other terms, covenants or conditions of this Lease and such failure is not remedied within thirty (30) days after written notice thereof is given to Lessee, provided that if such failure cannot, with reasonable diligence, be fully remedied within such 30-day period, Lessee shall have as long as is reasonably necessary to cure such failure (but in no event longer than sixty (60) days from the date written notice of Default is given to Lessee) provided Lessee commences compliance within such 30-day period (or as promptly as reasonably possible in an emergency) and thereafter pursues compliance to completion with reasonable diligence).

(b) Upon the occurrence and at any time during the continuance of any Event of Default (following the expiration of any cure periods granted to the Permitted Mortgagee pursuant to Article XIV above), Lessor shall give written notice to Lessee of the Event of Default giving rise to a right of termination and 10 days opportunity to cure any such default, then Lessor may, in addition to its rights and remedies set forth in Section 15.02 below, give Lessee and Permitted Mortgagee written notice of termination of this Lease, in which event this Lease and the term and estate thereof of Lessee in the Lease and the Premises shall terminate and end with the same force and effect as if that day were the day specified herein as the Expiration Date, but Lessee shall remain liable for damages as provided in this Lease and Lessor may resort to and enforce any of the other remedies provided in this Article XV.

#### 15.02 Lessor's Remedies.

(a) If an Event of Default occurs (and following the expiration of any cure periods granted to the Permitted Mortgagee pursuant to Article XIV above), Lessor shall give written notice to Lessee of the Event of Default and 10 days opportunity to cure any such default, then, in addition to all of the rights and remedies available to Lessor at law or in equity and its rights to terminate this Lease as provided in Section 15.01(b) above, Lessor shall also have the right, at its option, to (i) re-enter or obtain possession of the Premises by summary proceedings or any other action or proceeding or (ii) re-enter or obtain possession of the Premises by any other legal act (which Lessor may do without further notice and without liability or obligation to Lessee or any occupant of the Premises if this Lease is terminated pursuant to this Article XV), and, in any event, all of the following provisions shall apply (in addition to any other applicable provisions of this Lease):

(1) Lessee shall immediately vacate the Premises and surrender the Premises to Lessor in good order, condition and repair, excepting reasonable wear and tear and damage that is not Lessee's obligation to repair; and, if Lessee fails to surrender the Premises in such condition, Lessee shall reimburse Lessor for all costs incurred by Lessor to restore the Premises to such condition; and

(2) Lessor, at Lessor's option, may (x) relet the Premises, or any portion of the Premises, from time to time, in the name of Lessor, Lessee or otherwise, as determined by Lessor, to any person and on any terms, but Lessor shall have no obligation to relet the Premises, or any portion of the Premises, or to collect any rent (and the failure to relet the Premises, or any portion of the Premises, or to collect any rent shall not impose any liability or obligation on Lessor or relieve

Lessee of any obligation or liability under this Lease), and (y) make any changes to the Premises as Lessor, in Lessor's judgment, considers necessary in connection with a reletting, without imposing any liability or obligation on Lessor or relieving Lessee of any obligation or liability under this Lease.

(b) Upon the occurrence of any Event of Default (subject to the cure rights of the Permitted Mortgagee set forth in Article XIV above) and the termination of this Lease by Lessor or the reentry onto the Premises by Lessor, Lessee shall pay Lessor, on demand, (i) all Additional Rent payable to the date on which this Lease is terminated or Lessor reenters or obtains possession of the Premises, (ii) any and all costs and expenses incurred by Lessor in connection with the termination, reentry or obtaining of possession, and the reletting of the Premises, including, without limitation, all repossession costs, brokerage commissions, reasonable attorneys' fees and expenses, Alteration costs and other expenses of preparing the Premises for reletting and (iii) Lessor shall have no obligation to refund any Base Rent prepaid by Lessee.

(c) Subject to the expiration of any cure rights granted to the Permitted Mortgagee pursuant to Article XIV above, Lessee hereby waives (i) the service of any notice of intention to re-enter or obtain possession of the Premises or to institute any legal action in connection therewith and (ii) on its own behalf and on behalf of all persons claiming under Lessee, including all creditors, any rights Lessee and all such persons might otherwise have to redeem the Premises, to re-enter or repossess the Premises, or to restore this Lease, after (1) Lessor reenters or obtains possession of the Premises pursuant to any legal act, action or proceeding or (2) the date of termination of this Lease, whether by operation of law or pursuant to this Lease.

(d) Notwithstanding anything provided herein to the contrary, the rights and remedies set forth in this Section 15.02 shall not be exclusive of any other rights and remedies of Lessor set forth in this Lease or otherwise available to Lessor at law or in equity.

(e) All rights, options, and remedies of Lessor contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief that may be provided by law, whether or not stated in this Lease. The failure by Lessor to insist in any instance on strict performance of any covenant or condition hereof or to exercise any right or remedy contained herein shall not be construed as a waiver of such covenant, condition or remedy in any other instance.

(f) If Lessor commences any summary proceeding against Lessee, Lessee shall not interpose any counterclaim in that proceeding (unless the failure to impose the counterclaim would preclude Lessee from asserting in a separate legal action the claim which is the subject of the counterclaim) and shall not seek to consolidate the proceeding with any other legal action.

(g) If (i) an Event of Default has occurred and is continuing, or (ii) if Lessee fails to comply with any obligation under this Lease which in Lessor's reasonable opinion creates an emergency, Lessor may, but is not obligated to, cure the Event of Default or otherwise take such action as may be reasonably necessary in such emergency situation. Lessee shall reimburse Lessor, as Additional Rent, for all Liabilities incurred by Lessor in connection therewith within ten (10) days after Lessee is billed for such Liabilities.

(h) Notwithstanding the exercise of any of the foregoing remedies by Lessor, including, without limitation, the termination of the Lease following the occurrence of any Event of Default, Lessee shall reimburse Lessor, as Additional Rent, for all costs and expenses paid or incurred by Lessor in connection with such Event of Default by Lessee, including all costs and reasonable expenses incurred in interpreting and enforcing Lessor's rights and in instituting, prosecuting or defending any legal action by or against Lessee, including summary proceedings, or in connection with any dispute under this Lease. Such amounts shall be paid to Lessor within ten (10) days after Lessee is billed for such costs and expenses.

## **ARTICLE XVI**

### **OPTION TO RENEW**

16.01 Renewal Options. Subject to the terms and provisions of Section 16.02 below, Lessor grants to Lessee the option (individually a "Renewal Option" and collectively, the "Renewal Options") to extend the Term of this Lease for two (2) additional terms of twenty-five (25) years each (individually a "Renewal Term" and collectively, the "Renewal Terms"), commencing on the day immediately following the expiration of the Term (as the same may be extended pursuant to exercise of any previous Renewal Options), subject to and upon the same terms and conditions set forth in the Lease. Notice (the "Renewal Notice") of the exercise of any of the Renewal Options must be given by Lessee to Lessor in writing no earlier than fourteen (14) months, and no later than eight (8) months, prior to the expiration of the Term (as the same may be extended pursuant to exercise of any previous Renewal Options).

16.02 Conditions to Exercise and Effectiveness of Renewal Options. Notwithstanding any provided in this Lease to the contrary, the exercise of any Renewal Option by Lessee shall be subject to all of the following:

(a) At the time of the giving of any Renewal Notice, the Project shall have been maintained by Lessee in strict accordance with the terms and provisions of this Lease; and

(b) At the time of the giving of any Renewal Notice, the Land and Project remain in good standing with the hotel flag as set forth in the Development Agreement;

(c) At the time of the giving of any Renewal Notice the Hotel Properties are in good repair, normal wear and tear excepted; and

(d) At the time of the giving of any Renewal Notice the Hotel Properties located within the Project shall have averaged Fifty Percent (50%) occupancy during at least one (1) of the two (2) previous quarters which immediately precede the issuance of the Renewal Notice, unless Lessee's failure to achieve such required occupancy is the result of a Force Majeure Event; and

(e) The exercise of any Renewal Option shall be ineffective and null and void if, at the time of the giving of any Renewal Notice, Lessee is in Default, Lessor has issued a written Notice of Default pursuant to Section 19 hereof and any such Event of Default has occurred and is continuing.

**ARTICLE XVII**  
**PERMITTED USE**

17.01 Permitted Use. The Premises are hereby restricted to those uses described in the definition of the Project; provided, however, that in no event shall any portion of the Premises be used for any Prohibited Uses.

**ARTICLE XVIII**  
**NO IMPAIRMENT OF LESSOR'S TITLE**

18.01 No Impairment by Lessee. Nothing contained in this Lease or any action or inaction by Lessor, shall be deemed or construed to mean that Lessor has granted to Lessee any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance upon the estate of Lessor in the Premises.

18.02 No Impairment by Subtenants. Lessee shall not cause, or permit any Subtenant to cause, Lessor's fee estate in the Premises to be encumbered by any lien or other encumbrance, including any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect, or engineer with respect to work, material or services alleged to have been performed at or with respect to the Premises. If any such lien or encumbrance is filed or recorded, Lessee shall discharge any such lien or encumbrance by bond or otherwise within thirty (30) days after Lessee receives notice of such lien or encumbrance. If Lessee fails to discharge such lien or encumbrance within such 30-day period, Lessor may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as Lessor deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by Lessee. The amount so paid and costs incurred by Lessor shall be deemed Additional Rent under this Lease payable within ten (10) days after Lessee is billed therefor. Nothing in this Lease shall be deemed in any way to: (i) constitute Lessor's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any Alteration, addition, improvement or repair of the Premises; or (ii) evidence Lessor's agreement to subject its fee estate to any such lien.

**ARTICLE XIX**  
**MISCELLANEOUS PROVISIONS**

19.01 Agents and Brokers. Lessor and Lessee warrant and represent to each other that no broker, finder, real estate agent or other person is entitled to any commission, fee or other payment in connection with or as a result of this Lease or any of the transactions contemplated hereby or hereunder. Lessor, to the greatest extent allowed by law, and Lessee agree to indemnify and hold the other harmless from and against any and all Liabilities arising out of or in connection with the foregoing.

19.02 Estoppel Certificates. Lessor and Lessee each agree to execute and deliver to the other, upon reasonable request thereof, estoppel certificates stating that this Lease is in full force

and effect, that there are no Defaults hereunder (provided that such statements, at the time of request, are true), and concerning such other matters as the other party may reasonably request.

19.03 Waiver. No waiver of any condition or legal right or remedy shall be implied by the failure of either party to declare a forfeiture, or for any other reason, and no waiver of any condition or covenant shall be valid unless it be in writing signed by both parties, nor shall the waiver of a breach of any condition be claimed or pleaded to excuse the future breach of the same condition or covenant.

19.04 Surrender of Possession by Lessee. Upon the expiration of the Term or any earlier termination thereof, Lessee shall surrender to Lessor possession of the Premises and all Improvements constructed and installed on the Land in good condition and repair, substantially similar to the condition of the Initial Construction as of the date of Completed Construction, reasonable wear and tear excepted, unless this Lease is terminated as a result of any Casualty Event or Condemnation. Any Personal Property that is not removed from the Premises after the termination of the Lease shall be deemed conclusively abandoned by Lessee and shall belong to Lessor without the payment of any consideration therefore; provided, however, that Lessor may, in its sole and absolute discretion, require Lessee, at Lessee's sole cost and expense, to remove any Personal Property or any Alterations made to the Premises by Lessee which have not been approved in writing by Lessor and, should Lessee fail to promptly remove the same by the expiration of the Term or any earlier termination of this Lease, then all costs and expenses incurred by Lessor in connection with the removal of such Personal Property and any Alterations, together with interest thereon at the Applicable Rate from the date any such costs and expenses were incurred by Lessor, shall be due and payable by Lessee to Lessor on demand. The provisions of this Section 19.04 shall survive the expiration or earlier termination of this Lease.

19.05 Reversion of Title to Lessor. Upon the expiration of the Term or any earlier termination of this Lease, title to the Improvements shall automatically revert to Lessor (or its successors and assigns) without the necessity or requirement that any further instruments of conveyance be executed or delivered by Lessee to Lessor. Notwithstanding the foregoing, Lessee agrees to execute, acknowledge, and deliver to Lessor a proper instrument in writing, releasing and quitclaiming to Lessor all right, title, and interest of Lessee in and to the Premises and all other Improvements thereon.

19.06 Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties hereto at the following addresses:

<u>If to Lessor:</u>	City of Huntsville, 308 Fountain Circle Huntsville, Alabama 35801 Attention: Mayor
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With copies to:

Bradley Arant Boult Cummings LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203  
Attention: Rod Kanter, Esq.  
Facsimile: (205) 488-6517

If to Lessee:

BREG HSV, LLC  
4011 80<sup>th</sup> Street  
Kenosha, WI 53142  
Attention: Stephen R. Mills

With a copy to:

Bear Development, LLC  
4011 80<sup>th</sup> Street  
Kenosha, WI 53142  
Attention: John E. Hotvedt, Vice President – General Counsel

Any such notices shall be deemed to have been sufficiently given or served upon any party hereto when either (a) deposited with a nationally recognized overnight courier delivery service for next day delivery, or (b) delivered by personal delivery to any of the parties hereto at the addresses stated above. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

19.07 Holding Over. This Lease shall terminate and become void without further notice upon the expiration of the Term (or any earlier termination as herein provided), and any holding over by Lessee after the expiration of the Term shall not constitute a renewal thereof or give Lessee any rights hereunder or in or to the Premises. This Lease cannot be renewed, extended, or in any manner modified except in a writing executed by both parties hereto.

19.08 Time of Essence. Time is of the essence of this Lease.

19.09 Successors and Assigns. Subject to the provisions of Article XIII and Article XIV above, hereof, this Lease and the covenants and conditions set forth herein shall inure to the benefit of, and be binding upon, Lessor and Lessee and their respective successors and permitted assigns.

19.10 Invalidity. If any portion of this Lease or the application thereof to any person or circumstance shall, for any reason and to any extent, be held or determined to be invalid or unenforceable, the remainder of this Lease and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

19.11 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto, it being understood and agreed

that no provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of lessor and lessee.

19.12 Memorandum of Lease. Lessor and Lessee agree to execute, acknowledge and deliver a memorandum of lease in such form as may be mutually agreed upon by Lessor and Lessee. The recordation of any such memorandum of lease shall be at Lessee's sole cost and expense.

19.13 Limitation of Liability. Notwithstanding anything to the contrary provided in this Lease or by law, it is specifically agreed and understood between the parties hereto that the sole and exclusive remedy of Lessee against Lessor under this Lease, the Development Agreement or any other documents, instruments or agreements executed by Lessor in favor of Lessee or any of its permitted assigns shall be mandamus and specific performance. Lessee or any of its permitted assigns shall not be entitled to any other damages whatsoever, including, without limitation, incidental, consequential or punitive damages, whether arising at law, in equity or otherwise.

19.14 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Alabama.

19.15 Gender. In this Lease, the neuter gender includes the feminine and masculine, and the singular number includes the plural and vice versa wherever the context so requires.

19.16 Headings. The section headings in the Lease are used only for the purpose of convenience and shall not be deemed to limit the subject of the clause or to be considered in the construction thereof. References to a whole section number shall mean and refer to all sections bearing that number or as the context requires one or more subsections of the section.

19.17 Quiet Enjoyment. Lessee, so long as it shall faithfully perform the agreements, conditions, covenants, and provisions contained in this Lease, shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term hereby granted, without disturbance by or from Lessor, and free from any encumbrance created or suffered by Lessor, except those to which this Lease is made subject as above provided.

19.18 Amendments and Lessor Approvals. This Lease may not be modified, amended, changed or altered in any respect except by a written instrument executed (and approved) by Lessee and Lessor.

19.19 Waiver of Jury Trial. **LESSEE HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS LEASE, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS BETWEEN LESSOR AND LESSEE WITH RESPECT TO THIS LEASE OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. LESSEE AGREES THAT LESSOR MAY FILE A COPY OF THIS LEASE WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF**

**LESSEE IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF LESSOR TO ENTER INTO THIS LEASE AND THAT, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN LESSEE AND LESSOR SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

19.20 Consent to Jurisdiction. Lessee irrevocably (a) acknowledges that this Lease will be accepted by Lessor and performed by Lessee in the State of Alabama; (b) submits to the jurisdiction of each state or federal court sitting in Madison County, Alabama (collectively, the “Courts”) over any suit, action or proceeding arising out of or relating to this Lease or the Development Agreement (individually, an “Agreement Action”); (c) waives, to the fullest extent permitted by law, any objection or defense that Lessee may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts; (d) agrees that final judgment in any Agreement Action brought in any of the Courts shall be conclusive and binding upon Lessee and may be enforced in any other court to the jurisdiction of which Lessee is subject, by a suit upon such judgment; (e) consents to the service of process on Lessee in any Agreement Action by the mailing of a copy thereof by registered or certified mail, postage prepaid, to Lessee at Lessee’s address designated in or pursuant to Section 19.06; (f) agrees that service in accordance with this Section 19.20 shall in every respect be effective and binding on Lessee to the same extent as though served on Lessee personally by a person duly authorized to serve such process; and (g) **AGREES THAT THE PROVISIONS OF THIS SECTION, EVEN IF FOUND NOT TO BE STRICTLY ENFORCEABLE BY ANY COURT, SHALL CONSTITUTE "FAIR WARNING" TO LESSEE THAT THE EXECUTION OF THIS LEASE MAY SUBJECT LESSEE TO THE JURISDICTION OF EACH STATE OR FEDERAL COURT SITTING IN MADISON COUNTY, ALABAMA WITH RESPECT TO ANY AGREEMENT ACTION, AND THAT IT IS FORESEEABLE BY LESSEE THAT LESSEE MAY BE SUBJECTED TO THE JURISDICTION OF SUCH COURTS AND MAY BE SUED IN THE STATE OF ALABAMA IN ANY AGREEMENT ACTION.** Nothing in this Section 19.20 shall limit or restrict Lessor’s right to serve process or bring any Agreement Action in manners and in courts otherwise than as herein provided.

*[The remainder of this page has been left intentionally blank]*

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the day and year first above written.

**LESSOR:**

**CITY OF HUNTSVILLE, ALABAMA,** an  
Alabama municipal corporation

By: \_\_\_\_\_

Printed Name: Tommy Battle

Title: Mayor

**LESSEE:**

**BREG HSV, LLC,** an Alabama limited liability  
company

By:  \_\_\_\_\_

Printed Name: Stephen R. Mills

Title: Authorized Member

STATE OF ALABAMA )  
:  
COUNTY OF MADISON )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Tommy Battle, whose name as Mayor of **CITY OF HUNTSVILLE, ALABAMA**, an Alabama municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

STATE OF WI )  
:  
COUNTY OF Kenosha )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Stephen R. Mills, whose name as Authorized Member of **BREG HSV, LLC**, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Authorized Member, executed the same voluntarily for and on behalf of the aforesaid limited liability company.

Given under my hand and official seal this 1<sup>st</sup> day of November, 2023.

[NOTARIAL SEAL]

Sara Tronseau  
Notary Public  
My commission expires: 8/25/25



**EXHIBIT A**

**Legal Description of Land**

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A tract of land lying and being in Section 12, Township 4 South, Range 1 West of the Huntsville Meridian.

Commencing at a #5 rebar found marking the southeast corner of Lot 2 of R.C. Cobb Hollywood Sixteen Theatre as recorded in the Office of the Judge of Probate for Madison County, Alabama in Plat Book 30, Page 10, said point marking the west right-of-way of Memorial Parkway – US Highway 231; thence along the east boundary of said Lot 2 and said right-of-way North 23 Degrees 16 Minutes 51 Seconds West a distance of 345.60 feet to a #5 rebar found; thence leaving said right-of-way South 66 Degrees 52 Minutes 57 Seconds West a distance of 118.23 feet to a #5 rebar found; thence North 24 Degrees 57 Minutes 40 Seconds West a distance of 130.26 feet to a #5 rebar found; thence North 64 Degrees 44 Minutes 07 Seconds East a distance of 121.55 feet to said west right-of-way; thence along said right-of-way North 25 Degrees 02 Minutes 38 Seconds West a distance of 172.16 feet to a #5 rebar with a cap stamped "GARVER LLC CA-445-LS" (typical) set on the north boundary of said Lot 2; thence leaving said east boundary and right-of-way and along the north boundary of said Lot 2 South 89 Degrees 11 Minutes 50 Seconds West a distance of 281.71 feet to a #5 rebar set on the east right-of-way of an existing access street; thence leaving said right-of-way North 88 Degrees 46 Minutes 07 Seconds West a distance of 50.00 feet to a #5 rebar set on the proposed west right-of-way of said access street, said point being the Point of Beginning of herein described tract having established grid coordinates of (N) 1528878.55, (E) 429590.11 of the Alabama State Plane Coordinate System Zone East of the North American Datum of 1983 (NAD83);

Thence along said right of way South 4 Degrees 57 Minutes 19 Seconds West a distance of 75.30 feet to a #5 rebar set; thence South 9 Degrees 27 Minutes 12 Seconds West a distance of 338.74 feet to a #5 rebar set at the point of curvature of a curve to the right, having a radius of 25.00 feet, the chord of which is South 48 Degrees 32 Minutes 36 Seconds West for a distance of 30.36 feet, thence along the arc of said curve 32.62 feet to a #5 rebar set at the point of tangency of said curve, said point being on the north right-of-way of said access street; thence leaving said west right-of-way and along said north right-of-way North 88 Degrees 13 Minutes 06 Seconds West a distance of 106.14 feet to a #5 rebar set; thence leaving said right-of-way North 43 Degrees 28 Minutes 21 Seconds West a distance of 16.14 feet to a #5 rebar set; thence North 1 Degrees 43 Minutes 53 Seconds East a distance of 25.36 feet to an existing chain link fence; thence along said fence North 1 Degrees 43 Minutes 52 Seconds East a distance of 195.86 feet; thence North 88 Degrees 10 Minutes 08 Seconds West a distance of 27.63 feet; thence South 5 Degrees 33 Minutes 29 Seconds West a distance of 23.12 feet; thence South 21 Degrees 54 Minutes 30 Seconds West a distance of 4.58 feet; thence North 88 Degrees 10 Minutes 50 Seconds West a distance of 67.12 feet; thence North 1 Degrees 47 Minutes 27 Seconds East a distance of 311.75 feet; thence leaving said fence; North 1 Degrees 47 Minutes 27 Seconds East a distance of 182.03 feet to a #5 rebar set on the south right-of-way of Don Mincher Drive, said point being on a curve to the left, having a radius of 858.45 feet, the chord of which is North 89 Degrees 18 Minutes 40 Seconds East for a distance of 136.31 feet; thence along said right-of-way and the arc of said curve 136.45 feet to a #5 rebar set at the point of tangency of said curve; thence North 83 Degrees 50 Minutes 52 Seconds East a distance of 71.04 feet to a #5 rebar set; thence South 69 Degrees 18 Minutes 01 Seconds East a distance of 46.11 feet to a #5 rebar set on the proposed west right-of-way of said access street; thence leaving said south right-of-way and along said proposed west right-of-way South 8 Degrees 52 Minutes 59 Seconds East a distance of 157.13 feet to a #5 rebar set at the point of curvature of a curve to the right, having a radius of 785.15 feet, the chord of which is South 3 Degrees 02 Minutes 04 Seconds East for a distance of 88.17 feet; thence along the arc of said curve 88.22 feet to a #5 rebar set at the point of tangency of said curve; thence South 0 Degrees 48 Minutes 58 Seconds West a distance of 25.83 feet to the POINT OF BEGINNING.

The above-described tract contains 3.83 acres (167010.605 sq. ft.) more or less and is subject to any existing easements and rights-of-way whether or not recorded in the public records.

### Project Site Layout



## **Schedule 1**

### **Prohibited Uses**

The following uses are prohibited within any of the Premises:

(a) Any unlawful purpose, or in any way which would constitute a legal nuisance to surrounding occupants/owners; dry cleaning plant; adult entertainment facility or facilities devoted primarily to the sale of pornographic books, films, tapes or similar audio or video products (provided, however, that the foregoing shall not prohibit or limit the operation of a national, regional or local, reputable, general interest book or video store); massage parlor; adult book store; a so-called "head shop"; any business involving the sale of paraphernalia for use with illicit drugs or for the sale of medicinal or legalized marijuana or marijuana derivatives; tattoo or piercing parlor; a gaming, gambling, betting or game of chance business (exclusive of the sale of lottery tickets); any federal, state or municipal tenant, or agency, affiliate or related entity thereof; business whose primary service is check cashing (such as Amscot, Advance America, Cash Advance Centers, Moneytree, etc.).

(b) Any warehouse or industrial use; any self-storage facility; a venture whose primary business is the operation of video or arcade games; labor camps, prisons, jails, honor farms or other correctional institutions; landfills or garbage disposal areas or areas for the dumping, processing, incineration or reduction of garbage, sewage, dead animals, refuse or waste (other than on-site underground sanitary sewage disposal facilities which are specifically allowed as authorized uses); smelting of iron, tin, zinc or other ores, refining of petroleum or its products or mining activities; the sale of fireworks.