

SUMMARY OF AGENDA ITEM

DATE: November 8, 2007 (for November 15, 2007 Council Meeting)
TO: Mayor and Council
FROM: Legal Department
SUBJECT: Payson Event Center Hotel, Restaurant and Conference Center Land and Improvements Lease (Resolution No. 2345)

PURPOSE:

Resolution Number 2345 contains an amended Payson Event Center Hotel, Restaurant and Conference Center Land and Improvements Lease ("Lease") containing the amendments requested by the Town Council on November 1, 2007.

Summary of Amendments

1. Section 3.1.1(d) has been modified:
 - a. To provide that a Statement of Hotel Revenue (including revenue from the hotel, conference center and restaurant) must be supplied by the tenant yearly.
 - b. To provide that the Statements of Hotel Revenue must be accompanied by and provided with payment of the annual rent due from and after the sixteenth year of the Lease.
2. Section 3.1.1(e) has been modified to provide that the tenant must pay the cost of any audit which the Town causes to be made of any annual Statements of Hotel Revenue.
3. Exhibit C (Insurance Requirements) has been modified as follows:
 - a. Insurance against fire damage has been increased from \$50,000 to \$5,000,000 or cost of replacement, whichever is greater;
 - b. Liquor liability insurance has been increased from \$50,000 to \$1,000,000.

These amendments are presented in redline/strikeout format.

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Summary of Other Lease Provisions

This section is devoted to a brief summary of the provisions in the Lease.

Article 1: Lease of Premises

- Establishes a Lease with the tenant.
- Requires a hotel and conference center to be built.
- The hotel must have at least 150 guest rooms.
- The conference center must have at least 10,000 square feet.
- The hotel restaurant must contain at least 4,800 square feet and seat at least 150 people.

Article 2: Term

- The term of the Lease is 35 years.
- The tenant has the option to extend the term for two successive ten year periods.

Article 3: Rent

- No rent is charged for the first fifteen years of the Lease.
- The tenant pays 3% of hotel revenue for years 16 through 20.
- The tenant pays 4% of hotel revenue for years 21 through 25.
- The tenant pays 5% of hotel revenue for years 26 through 26.
- Rent for the two ten year extension periods is subject to negotiation between the parties, based on the then current value of the hotel and conference center and restaurant and other improvements made up to that time.
- The term "Hotel Revenue" is defined in detail in Section 3.1.1 (page 10).
- Each year the tenant must provide a written statement, which is to be certified by an independent certified public accountant, verifying hotel revenue.
- The Town may cause an audit to be made each year in order to verify the accuracy of the annual Statements of Hotel Revenue (tenant pays for the audit required by the Town).
- In addition to annual rent (due from year 16 to the end of the Lease), tenant must pay a municipal service fee which is the difference between what property taxes for the premises would be if it were privately owned and the government property lease excise tax imposed on the premises under A.R.S. § 42-6201, *et seq.* This additional rent is charged from year 9 of the Lease through the end of the Lease. The amount of the municipal service fee is computed by the Town.

Article 4: Utilities

- The tenant must pay all utilities for the premises, including utility use charges, and any impact fees assessed by governmental entities.

Article 5: Taxes and Assessments

- The tenant must pay all taxes levied against the premises or operations on the premises.

Article 6: Uses; Legal and Environmental Compliance

- The premises are to be used only for a first class hotel, conference center and hotel restaurant.
- The hotel, conference center and restaurant must be continuously occupied and operated in a manner calculated to produce maximum profitable and practical volume of hotel room revenue.
- The tenant promises to finance, construct, operate and maintain the premises
- If the restaurant or conference center is unavailable for use by the general public for more than ten days in any calendar year, the failure to be open constitutes a material event of default (see Article 15, below, for default remedies).
- The tenant must comply with all environmental laws.

Article 7: Development of the premises and construction of improvements

- Development of the premises must proceed in accordance with the tenant performance schedule shown on Exhibit F.
- Construction must commence within 365 days following the commencement date of the Lease.
- The tenant must provide payment, performance and completion bonds for the construction (see Exhibit B).
- All construction work must be done in accordance with plans, drawings and specifications prepared by licensed and reputable architects and engineers and by duly licensed and reputable contractors, approved in writing by the Town.
- The Town receives a deed and bill of sale to all the improvements constructed by the tenant on the premises and all of the improvements remain the property of the Town through and after the expiration of the Lease.
- The Town and the tenant designate representatives to help expedite decisions and to discuss problems arising under the Lease.

Article 8: Repairs and Maintenance

- The tenant is required to maintain the leased premises at its sole cost and expense.
- The hotel is to be renovated, including furniture, fixtures and equipment, every five years to maintain its condition.
- The tenant must create and maintain a reserve account, which will contain a percentage of hotel room revenues, to provide funds for renovation.

Article 9: Indemnity and Insurance

- The tenant must maintain insurance for the improvements (with the Town as an additional insured) against loss or damage by fire or other risks (winds, hail, smoke damage, water damage, etc.) equal to 100% of the full replacement cost at the time of replacement.

Article 10: Damage and destruction

- If the improvements are damaged by fire, earthquake, flood or other casualty, they shall be repaired by the tenant to lease standards.

Article 11: Condemnation

- Provides for termination of the Lease if the whole property is taken by condemnation.
- Provides for continuing lease operations and division of any condemnation award in the event of a partial taking.

Article 12: Net Lease

- Lease payments are due and payable in total without any setoff and regardless of virtually any situation which causes the tenant to be unable to operate.
- The tenant is to pay all taxes, insurance premiums, utility expenses, repair and maintenance expenses, and all other costs relating to the premises.

Article 13: Assignment; Subletting

- The tenant may not sublet or assign the premises (including mortgage assignments) without prior written consent from the Town, except that the tenant may assign or sublet all or a portion of the Lease to an entity that controls or is controlled by the tenant.
- The tenant may, without the Town's consent, sublet spaces within the hotel, conference center and restaurant for restaurant uses provided that:
 - a. The sublet premises do not exceed 10,000 square feet;
 - b. The term of the sublease does not exceed ten years;
 - c. The rents payable under the sublease will not be less than 5% below current market rates for comparable space; and
 - d. The tenant complies with other provisions of Article 13 and the Lease.

Article 14: Leasehold Mortgage of Premises

- Except during the last three years of the lease term, the tenant may obtain a leasehold mortgage, with the following stipulations:
 - a. The Town must be provided a true and complete copy of the leasehold mortgage;
 - b. The leasehold mortgage must be only for financing to be utilized for the development and construction of the improvements on the premises and must not exceed the cost to the tenant of building such improvements;
 - c. The leasehold mortgage may not affect the interest of the Town in the premises;

and

- d. That notice of any default by the tenant must be delivered to the Town and the Town shall have the same time frame as the tenant within which to cure a default of the tenant, without assumption by the Town of liability under the leasehold mortgage.
- The entity giving the mortgage may cure a default of the tenant in meeting the obligations of the Lease.
 - The leasehold mortgagee may enter into ownership of the tenant's interest under the Lease by a foreclosure of the leasehold mortgage and while it is such an owner of the tenant's leasehold interest, the leasehold mortgagee becomes liable for the obligations of the tenant under the Lease.
 - The tenant must fully pay any leasehold mortgage (and all principal and interest due thereunder) prior to the last day of the term of the Lease.

Article 15: Events of Default; Remedies

- This paragraph sets out events of default under the Lease, which include:
 - a. Failure to pay rent;
 - b. Failure to pay any taxes or charges other than rent;
 - c. Failure to perform or comply with any obligation under the Lease;
 - d. Making a general assignment for the benefit of creditors or filing a petition in bankruptcy;
 - e. Allowing a conservator or receiver to be appointed for the premises; and
 - f. Not strictly adhering to the hotel and conference center development plan or the tenant performance schedule.
- Various remedies are set forth for the Town to exercise in the event of a default under the Lease by the tenant, including termination of the Lease, recovering from the tenant all rent and other sums due, and retaking the premises and reletting the same to a new tenant (in which case the tenant remains liable to the Town for all sums due under the Lease)

Article 16: Notices

- Sets forth the persons to whom notice is to be delivered in the event of any situation requiring a notice.

Article 17: No Merger

- Provides that the tenant's interest and the landlord's interest in the premises are separate.

Article 18: Surrender of Premises

- Provides that the tenant must return the premises to the Town in good order, condition and repair (as defined) at the termination of the Lease.

November 8, 2007

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Article 19: Trade Fixtures and Personal Property

- So long as the tenant is not in default and is otherwise permitted to do so under the Lease, the tenant may remove trade fixtures and personal property installed by the tenant on the property.

Article 20: Estoppel Certificates

- Provides for the issuance of a certificate by the tenant that the Lease is in full force and effect, that rent has been paid and that tenant has not received any notice of default.
- Provides for the issuance of a certificate by the Town that the Lease is in full force and effect, that rent has been paid and that there is no default under the Lease.

Article 21: General Provisions

- These set forth general contractual provisions common to lease agreements of this kind or tailored to this particular Lease agreement.

Article 22: Representations

- This Article contains various representations of the parties.

RESOLUTION NO. 2345

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING THE PAYSON EVENT CENTER HOTEL, RESTAURANT AND CONFERENCE CENTER LAND AND IMPROVEMENTS LEASE AS AMENDED.

WHEREAS, at its November 1, 2007 meeting, the Mayor and Common Council of the Town of Payson adopted Resolution Number 2343 approving the Payson Event Center Hotel, Restaurant and Conference Center Land and Improvements Lease ("Lease"); and

WHEREAS, the Mayor and Common Council desire to have certain provisions contained in the Lease amended, and

WHEREAS, those amendments have been prepared and incorporated into the Lease,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Lease attached hereto marked Exhibit "1" and made a part hereof by this reference, which incorporates certain amendments to the Lease previously approved on November 1, 2007 under Resolution Number 2343, be and is hereby approved in substantially the form as attached and amended.

Section 2. That the persons authorized by Resolution Number 2343 to execute the Lease approved by Resolution Number 2343 are further authorized to execute the Lease in substantially the form as amended and attached as Exhibit "1" hereto.

Section 3. That the Town of Payson be and is hereby authorized to take such other and further actions as are necessary or appropriate to carrying out the purposes provided for in this Resolution Number 2345 and in the Lease attached hereto as Exhibit "1".

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this ____ day of _____, 2007, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

F. Robert Edwards, Mayor

APPROVED AS TO FORM:

ATTEST:

Samuel I. Streichman, Town Attorney

Silvia Smith, Town Clerk

Prepared by Town of Payson Legal Department

*SIS drs November 7 2007 (11:55AM)
C:\MyI files\Resolutions 2345 Approving Amended Event Center Lease.wpd*

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EXHIBIT "1"

to Resolution No. 2345

WHEN RECORDED RETURN TO:

Town Attorney's Office
Town of Payson
303 N. Beeline Highway
Payson, AZ 85541-4306

**PAYSON EVENT CENTER HOTEL, RESTAURANT
AND CONFERENCE CENTER**

LAND AND IMPROVEMENTS LEASE

between

TOWN OF PAYSON, ARIZONA,
an Arizona municipal corporation,

and

HOSPITALITY SUPPORT GROUP, LLC,
an Arizona limited liability company

_____, 2007

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- A. Legal Description of the Land
- A-1. Approximate Depiction of the Land
- B. Bond Requirements
- C. Insurance Requirements
- D. Memorandum of Lease
- E. Concept Site Plan
- F. Tenant Performance Schedule
- G. Deed and Bill of Sale for Improvements
- H. Hotel and Conference Center Development Plan
- I. Hotel Site Plan
- J. Conceptual Plan
- K. Conditions of Conditional Use Permit

**PAYSON EVENT CENTER HOTEL, RESTAURANT
AND CONFERENCE CENTER**

LAND AND IMPROVEMENTS LEASE

THIS LAND AND IMPROVEMENTS LEASE (“**Lease**”) is made and entered into as of the _____ day of _____, 2007 (“**Execution Date**”) by and between the **TOWN OF PAYSON**, an Arizona municipal corporation (“**Landlord**”), and **HOSPITALITY SUPPORT GROUP, L.L.C.**, an Arizona limited liability company, (“**Tenant**”). The Landlord and Tenant are sometimes referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

RECITALS

- A. Landlord has title to the land described in **Exhibit A** and depicted in **Exhibit A-1** hereto (the “**Land**”) on which the Tenant will construct or cause to be constructed and conveyed to Landlord certain building(s) and other improvements, along with fixtures, furnishings and equipment therein, (the “**Improvements**”) in accordance with this Lease (which, together with all rights and privileges appurtenant thereto and all future additions thereto or alterations and replacements thereof, are collectively referred to herein as the “**Premises**”).
- B. The construction of the Improvements will result in an increase in the property value of the Premises of at least one hundred percent (100%).
- C. Pursuant to A.R.S. § 42-6206, notice is hereby given that the Premises will be subject to the government property lease excise tax under A.R.S. § 42-6201 through A.R.S. § 42-6209 (the “**GPLET**”).
- D. Landlord and Tenant desire to set forth in this Lease the definitive terms and conditions pursuant to which Tenant will develop the Hotel, Conference Center and Restaurant and related Improvements as generally depicted in the Concept Site Plan (the “**Concept Site Plan**”) as illustrated on **Exhibit E** attached hereto.

AGREEMENT

IN CONSIDERATION of the mutual promises and covenants contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the conditions herein set forth, Landlord and Tenant agree as follows:

**ARTICLE I
LEASE OF PREMISES**

1.1 Lease. In consideration of the covenants of Tenant contained in this Lease, Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, effective as of the Commencement Date set forth in **Section 2.1**, in an “**AS IS**” condition and subject to: (a) current taxes and assessments, reservations in deeds and patents, all rights of way, easements, liens, encumbrances, covenants, conditions, restrictions, obligations, liabilities of record, and all other matters of record, existing contracts, including, but not limited to, the Agreement to Purchase Real Property dated August 8, 1985, between the Town of Payson and Suburban Developers, Inc., and deed restrictions, specifically including, but not limited to, those set forth in the deed dated June 10, 1986 and recorded at _____; (b) all matters which an accurate survey or physical inspection of the Premises would disclose; and (c) all federal, state, county and local laws (statutory and common law), ordinances, rules, regulations, permit requirements, development fees (in accordance with A.R.S. § 9-463.05), and other requirements and official policies of the Town of Payson, now or hereafter in effect (“**Applicable Laws**”).

1.2 Premises. Subject to the exclusions of public rights of way and other possible areas as may be clarified by a Survey that the Parties may cause to be performed, the Premises include the Land described by the legal description attached as **Exhibit A** hereto, and are comprised of the Hotel, Conference Center and Restaurant, as follows:

(a) The Hotel and Conference Center shall include (i) one or more buildings containing at least one hundred fifty (150) guest lodging rooms and related lobby(ies), meeting room(s), and various retail and personal service facilities primarily for the use of hotel guests (the “**Hotel**”); and (ii) separate, attached or included conference center building measuring at least ten thousand (10,000) square feet in area containing state-of-the-art conference facilities with a main room of at least five thousand (5000) square feet capable of accommodating a minimum of five hundred (500) persons in such room alone and containing additional, smaller conference rooms (the “**Conference Center**”), as is more particularly described in the Hotel and Conference Center Development Plan, attached hereto, marked **Exhibit H** and made a part hereof by this reference.

(b) The Hotel Restaurant consists of an adjacent or adjoining restaurant located near or within the Hotel and containing at least 4,800 square feet of floor area and seating for not less than one hundred fifty (150) people (the “**Hotel Restaurant**”), as will be more particularly described in the Hotel Site Plan, attached hereto marked **Exhibit I** and made a part hereof by this reference, which shall be submitted to and approved by the Landlord prior to construction.

(c) The Premises shall also include all additions to existing improvements upon the Property which are approved by the Landlord and additional Improvements which are approved by the Landlord and placed upon the Property

1.3 Tenant's Inspection of the Premises. Tenant has inspected and investigated the Land to Tenant's complete satisfaction, observed its physical characteristics and existing

conditions, the operations thereon and on adjacent areas, and has considered, approved and is satisfied with its suitability for the development of the Improvements intended to be constructed on the Land by Tenant, and Tenant hereby waives any and all objections to, complaints about, or claims regarding the Land and its physical characteristics and existing conditions, including, without limitation, subsurface soil and water conditions and solid and hazardous waste and any Hazardous Substance on, under or adjacent to the Land or its suitability for the Improvements, the Hotel, the Conference Center, the Hotel Restaurant and Tenant's intended businesses thereon. Tenant hereby further assumes the risk of changes in Applicable Laws and regulations relating to past, future and present environmental conditions on, under or adjacent to the Land and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of any Hazardous Substance or other contaminants that may not have been revealed by its investigation. Landlord is hereby released from all responsibility and liability regarding the operation, condition (including the presence in the soil, air, structures, and surface and subsurface waters, of materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Land or Premises under current or future federal, state and local laws and regulations), valuation or utility of the Land and the Premises, or their suitability for any purpose whatsoever. Tenant expressly acknowledges that Tenant has not relied on any warranties, promises, understandings or representations, express or implied, oral or written, of Landlord or of any agent of Landlord, or other person professing to speak on behalf of Landlord, relating to the Land, or the Improvements to be placed upon the Land, except as specifically set forth in this Lease, and except that Tenant has independently satisfied itself as to the suitability of the location and site of the project and the Land for the uses envisioned by Tenant.

1.4 Quiet Enjoyment. Landlord covenants that so long as Tenant shall perform the obligations of Tenant contained in this Lease and shall not be in default in the performance of any of such obligations, Landlord shall take no action or fail to take any action that would deny Tenant and its permitted subtenants, licensees, successors and assigns the right to freely, peaceably, and quietly have, hold and enjoy full and exclusive use and enjoyment of the Premises, subject to Section 1.1 and Section 1.3.

ARTICLE 2 TERM

2.1 Commencement Date and Term. The term of this Lease (the "Term" or "Lease Term") shall be for a period of thirty-five (35) years, commencing as of _____, 2007 (the "Commencement Date"), and ending at midnight on _____, 2042, subject to the terms and conditions set forth in this Lease which may permit or provide for an earlier termination.

2.2 Options. So long as Tenant is in compliance with all the terms in this Lease and has fulfilled all of Tenant's obligations to be fulfilled hereunder, Tenant is granted the option to extend the Lease Term for two (2) successive ten (10) year periods. Tenant may exercise each such option by giving written notice in accordance with Article 16 hereinafter to Landlord of Tenant's intent to exercise each such option, such written notice to be given not less than six (6)

months nor more than twelve (12) months prior to the expiration of the Lease Term or the prior option period, as the case may be.

2.3 Holding Over. If Tenant or any successor in interest of Tenant should remain in possession of the Premises after the end of the Term or earlier termination of the Lease without executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all the covenants, terms, provisions and obligations of this Lease except for the provisions relating to the Rent payable hereunder, which Rent, during any holdover period shall be equal to one hundred fifty percent (150%) the amount of Rent otherwise calculated to be paid during the holdover period, and in any event, not less than one hundred fifty percent (150%) the amount of Rent otherwise calculated to be paid during the last comparable period of the Term prior to the commencement of the holdover period, together with all other sums owing to Landlord hereunder. Nothing contained herein shall be construed as Landlord's permission for Tenant to hold over or as limiting Landlord's remedies against a holdover tenant, and if the Premises are not surrendered on or before the end of the Term or earlier termination of this Lease, Tenant shall indemnify Landlord for, from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, any claims made by any succeeding tenant based on such delay

ARTICLE 3 RENT

The consideration for this Lease includes, without limitation, the following payments by Tenant to Landlord (collectively, the "**Rent**"), and the promise by and obligation upon Tenant to pay the Rent as follows.

3.1 Annual Rental Tenant shall pay to Landlord as annual rental for the Premises the sums described below (the "**Annual Rent**") on the Commencement Date and on each consecutive anniversary thereof:

3.1.1 Hotel, Conference Center and Restaurant Rent. No Annual Rent shall be payable for the first fifteen (15) years of the Lease Term for the Hotel, Conference Center and Restaurant. After the initial fifteen (15) years of the Lease Term, the Annual Rent for the remaining Term for the Hotel, Conference Center and Restaurant shall be equal to the percentage of the Hotel Revenue for the remaining term of the Lease: Three percent (3%) of Hotel Revenue for years sixteen (16) through twenty (20); Four percent (4%) of Hotel Revenue for years twenty-one (21) through twenty-five (25); Five percent (5%) of Hotel Revenue for years twenty-six (26) through thirty-five (35). The Annual Rent for each of the two (2) ten (10) year optional extension periods shall be negotiated between the Parties during year thirty-five (35) of the Lease and will be based on the then current value of the Premises for hotel, conference center and restaurant use, together with the value of any additional uses in effect or envisioned at such time, with consideration given to any proposed reinvestment in the Hotel, Conference Center and Restaurant proposed at that time and will include both surcharge and hotel room percentage values.

(a) The term “**Hotel Revenue**” means all revenue, income and receipts from the Hotel, Conference Center and Restaurant, including without limitation guest room rental revenue, meeting room revenue, food revenue, beverage revenue, telephone revenue, rental revenue, miscellaneous revenue and other revenue, income and receipts from the Hotel, the Conference Center and the Restaurant of every kind that are received, accrue or are accounted for on an accrual basis in conformity with the then-current Uniform System of Accounts for the lodging industry, or any successor thereof. Each credit or installment transaction shall be treated as revenue for the full price in the month during which such credit or installment transaction is made, regardless of whether or when Tenant receives actual payment therefor. Hotel Revenue shall not include, or if included there shall be deducted (but only to the extent the same have been included as Hotel Revenue):

(i) transaction privilege, sales, use, excise and gross receipts taxes and the Development Surcharge on any of the foregoing transactions which are paid to the taxing authorities by Tenant;

(ii) service charges, interest and collection expenses received or receivable for credit transactions, as well as other charges or fees paid by Tenant to credit card companies, banks and similar organizations resulting from the use of credit or debit cards by guests, patrons or customers;

(iii) bad debts and charge backs, to the extent previously included in Hotel Revenue;

(iv) gross receipts of Tenant’s subtenants or concessionaires, but all rents or fees payable to Tenant by its subtenants and concessionaires shall be included as Hotel Revenue; provided, however, that if any subtenant or concessionaire is affiliated with Tenant, the rent and fees payable by such affiliated subtenant or concessionaire shall be subject to the reasonable approval of the Landlord;

(v) gratuities to Hotel employees, including, without limitation, gratuities or service charges added to a customer’s bill or statement in lieu of gratuities or tips which the Hotel manager and/or Tenant is obligated to turn over an employee as compensation;

(vi) insurance proceeds (except any insurance proceeds received in reimbursement for lost revenues);

(vii) proceeds from any Mortgage financing or refinancing,

(viii) receipts from condemnation (except as provided in **Article 11** hereof); and

(ix) all sums and credits received in settlement of claims or loss or damage of merchandise, or otherwise against third parties arising out of or during the course of operation of the Hotel

(b) **Development Surcharge.** Tenant and its permitted successors and assigns shall collect taxes on all Taxable Activities that occur within or upon the Premises, during the term of this Lease. "Taxable Activities" shall include:

(i) The Landlord's Sales Taxes imposed by the Tax Code adopted by the Town of Payson for construction contracting activities by the Tenant or contractors or subcontractors of Tenant and Sales Taxes imposed by the Tax Code adopted by the Town of Payson for retail sales, admissions, exhibitions, amusements, restaurant, bar, hotel and motel activities occurring on the Premises.

(ii) The Landlord's three percent (3%) Bed Taxes from hotels and motels located on the Premises.

(c) The term "Lease Year" means each consecutive period of twelve (12) months during the term hereof or any extended term hereof due to the exercise of an option, the first Lease Year commencing on the Commencement Date and each subsequent Lease Year commencing on each subsequent Lease Year commencing on each consecutive anniversary of the Commencement Date.

(d) Within sixty (60) days after the end of the ~~sixteenth (16th) Lease Year, and within sixty (60) days after the end of each consecutive Lease Year thereafter~~ during the Lease Term, Tenant shall submit to Landlord a written statement signed by Tenant and certified by an independent certified public accountant to be true and correct, showing the Hotel Revenue in reasonable detail for the immediately preceding Lease Year, each such written statement to be accompanied after the end of the ~~sixteenth (16th) Lease Year~~ by Tenant's payment of the Annual Rent equal to the then applicable percentage of the total Hotel Revenue for each such preceding Lease Year.

(e) Tenant shall keep for at least four (4) years following the end of each Lease Year full, complete and proper books and records of the Hotel Revenue in accordance with generally accepted accounting principles applied on a consistent basis. At any time within four (4) years after the end of a Lease Year, Landlord may cause an audit of Tenant's Hotel, Conference Center and Restaurant business(es) to be made for the purpose of verifying the accuracy of any annual statement of Hotel Revenue for any prior Lease Year. The audit shall be performed by a certified public accountant selected by Landlord, and Tenant shall make all books and records available for the audit at the Hotel premises, unless Landlord agrees to a different location. If the results of the audit show that Tenant's annual written statement of Hotel Revenue has been understated, then Tenant shall pay such deficiency to Landlord within thirty (30) days of the determination of such deficiency, together with interest thereon at the Default Rate provided in **Section 3.4** from the date such payment should have been made until the date actually paid. ~~If such understated deficiency is three percent (3%) or more than the Hotel Revenue originally reported,~~ Tenant also shall reimburse Landlord for the cost of the audit.

3.2 Municipal Service Fee. In addition to the Annual Rent set forth in **Section 3.1**, beginning on the ninth (9th) anniversary of the Commencement Date and on each consecutive anniversary of the Commencement Date thereafter during the Lease Term, Tenant shall pay to Landlord a **Municipal Service Fee**, as defined below.

3.2.1 The Municipal Service Fee shall equal the difference between (i) the applicable combined state, county, Town of Payson and special district assessments and property taxes for the Premises, determined as if the Premises were privately owned and subject to such property taxes and assessments, and (ii) the GPLET for the Premises, as determined under the provisions of A.R.S. §§ 42-6201 through 42-6209. No later than thirty (30) days prior to the ninth (9th) anniversary of the Commencement Date and no later than thirty (30) days prior to every fifth (5th) consecutive anniversary of the Commencement Date thereafter, Landlord's Town Manager (or his or her designee) shall determine and give Tenant written notice of the amount of Municipal Service Fee payable pursuant to this Section 3.2.1 for the ensuing five (5) Lease Years (the "**Municipal Service Fee Notice**"); provided, that if Tenant has not timely received a Municipal Service Fee Notice, Tenant shall give Landlord written notice thereof (the "**Reminder Notice**"), and Landlord then shall have an additional ninety (90) days after receiving Tenant's Reminder Notice during which to determine and/or give Tenant the Municipal Service Fee Notice for which Tenant's Reminder Notice was given. The determination and/or giving of the Municipal Service Fee Notice to Tenant during such ninety (90) day period shall not abrogate or otherwise affect Tenant's obligation to pay the Municipal Service Fee from and after the Commencement Date anniversary as set forth in such Municipal Service Fee Notice. However, if the Municipal Service Fee Notice is given to Tenant after such ninety (90) day period, Tenant's obligation to pay the Municipal Service Fee shall commence as of the date Tenant receives the Municipal Service Fee Notice rather than as of the Commencement Date anniversary for which the Municipal Service Fee Notice was given. Each such determination and notice of the Municipal Service Fee shall be final, binding upon Landlord and Tenant and enforceable as provided herein.

3.3 Additional Rent. Upon ten (10) days prior written notice to Tenant, Landlord may pay any sum owed to a third party or do any act which Tenant has failed to do (however, Landlord shall have no obligation to do so), and Tenant agrees to pay Landlord, upon demand, all sums so expended by Landlord, together with interest at a rate (the "**Default Rate**") equal to four (4) percentage points added to the prime lending rate of JP Morgan Chase Bank, N.A. or its successor bank, as it varies from time to time. In addition to Annual Rent and the Municipal Service Fee, such sums expended by Landlord, interest thereon and all other payments to be made by Tenant under this Lease shall be deemed "**Additional Rent**" and shall be due and payable within ten (10) days after notice thereof to Tenant if no other time for payment is specified.

ARTICLE 4 UTILITIES

In addition to the Rent and other payments herein provided, Tenant during the Term of this Lease shall pay, prior to delinquency, for all water, gas, light, power, telephone, telecommunications, cabling, sewage, refrigeration, air conditioning, heat and ventilation,

janitorial and all other materials and utilities used in connection with or supplied to the Premises. To the extent not already installed, Tenant at its cost and expense shall be solely obligated for all connection fees, development fees, impact fees, utility connect, disconnect and security deposit charges applicable to the Premises, including, but not by way of limitation, any such fees or charges made by the Town and by the Northern Gila County Sanitary District. Landlord shall not be liable for, and Tenant shall not be entitled to any other relief, by reason of the unavailability, limited availability, or interruption of any utilities and services.

ARTICLE 5 TAXES AND ASSESSMENTS

5.1 Payment of Taxes and Assessments. Tenant shall pay, prior to delinquency: (a) all real property taxes, personal property taxes, GPLET and other taxes, assessments, levies, fees, fines and penalties and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which now or hereafter under existing or future Applicable Laws are imposed or levied upon, measured or assessed during the Lease Term against (i) the Premises, (ii) any Annual Rent, Municipal Service Fees, or any Additional Rent or other sum payable by Tenant hereunder or (iii) this Lease, the leasehold estate hereby created or which arises in respect of the operation, possession or use of the Premises; and (b) all sales, transaction privilege, gross receipts or similar taxes imposed or levied upon, assessed against or measured by any Annual Rent, Municipal Service Fees, or other amounts payable to Landlord hereunder, but not income taxes (collectively, the "Taxes"). If Tenant fails to pay any Taxes before they become delinquent, Landlord, after notice to Tenant, may pay such delinquent Taxes, and all expenditures and costs incurred thereby shall be payable as Additional Rent hereunder within ten (10) days after such notice to Tenant. Tenant will furnish to Landlord, promptly after demand therefor, proof of payment of all Taxes payable by Tenant. Tenant may pay such Taxes in installments if legally permitted to do so

5.2 GPLET. Pursuant to A.R.S. § 42-6206, and in addition to the notice of the GPLET given in **Recital C** above, any failure by Tenant to pay the GPLET after notice and an opportunity to cure as set forth in **Article 15** of this Lease is an Event of Default that could result in divesting Tenant of any interest in or right of occupancy of the government property improvement which is part of the Premises being leased hereunder.

5.3 Prorations. All Taxes due and payable in the first and last Lease Years shall be prorated so that Tenant is only obligated for those Taxes accruing or due during the Lease Term.

5.4 Privilege of Contesting. Upon at least ten (10) days prior written notice to Landlord and Tenant furnishing to Landlord such bonds or other security in such form and by such issuers as reasonably approved by Landlord in an amount equal to one hundred fifty percent (150%) of the amount of Taxes being contested, Tenant shall have the right to protest, contest, object to or oppose the legality or amount of any such Taxes to be paid by Tenant hereunder. In the event of any such contest, Tenant may defer payment of any such Taxes so long as the legality or the amount thereof is being so contested, diligently and in good faith; provided, however, that if at any time payment of the whole or any part thereof shall become necessary in order to prevent the termination by sale or otherwise of the right of redemption of any property

affected thereby or to prevent the eviction of either Landlord or Tenant because of nonpayment thereof, Tenant shall pay the same in order to prevent such termination of the right of redemption or such eviction. Any such contest shall be at the sole cost and expense of Tenant, and Tenant shall pay any costs or expenses incurred by Landlord as a result of any such contest. Each refund of any Taxes so contested shall be paid to Tenant, and Landlord shall not, without prior approval of Tenant, make or enter into or finally agree to any settlement, compromise or any disposition of any contest or discontinue or withdraw any contest or accept any refund, other adjustment or credit of or from any such Taxes as a result of any contest. If there are any refunds of the Taxes at the beginning or end of the Lease Term, the amounts will be prorated between Landlord and Tenant on the basis set forth in **Section 5.3**. Any and all penalties and interest that become due as a result of any such contest shall be paid by Tenant.

ARTICLE 6 USES; LEGAL AND ENVIRONMENTAL COMPLIANCE

6.1 Permitted Uses. Tenant shall use and occupy the Premises only for the following uses and purposes and no other without the prior written consent of Landlord in its sole and absolute discretion:

- (a) for the construction, installation, furnishing, maintenance, repair, reconstruction, replacement, alteration and operation in strict conformity with this Lease, the Improvements which include a first class Hotel, Conference Center and Hotel Restaurant, together with appurtenant asphalt or concrete paving, landscaping, sidewalks, required or appropriate roadways and all necessary and appurtenant structures, machinery and equipment, all as will be more particularly described in the Hotel and Conference Center Development Plan (**Exhibit H**) and in accordance with the Tenant Performance Schedule (**Exhibit F**); and
- (b) for construction, erection, maintenance, repair, reconstruction, replacement, alteration and operation of parking spaces in accordance with local codes and regulations and in sufficient numbers to provide adequate parking, as may be approved by Landlord, for the uses to be developed and operated on the Premises.

6.2 Continuous Operation. After the issuance of a Certificate of Occupancy for the Improvements or any portion thereof, Tenant shall continuously occupy, operate, and use the Premises and all Improvements for which such Certificate(s) of Occupancy were issued for the operational purposes specified above, during all usual business hours and on such days as similar businesses are operated in the same market area in which the Premises are located, except to the extent that Tenant is unable to occupy, operate or use the Premises for reasons beyond the reasonable control of Tenant, financial inability and market conditions excluded, such as during periods of damage or destruction. Tenant shall develop and operate the Premises and the businesses conducted thereon in a manner calculated to produce the maximum profitable and practical volume of Hotel Room Revenue obtainable and to enhance the reputation and attractiveness of the Premises and the businesses contained thereon. Landlord is entering this Lease in consideration of and in reliance on Tenant's obligations hereunder, including those to finance, construct, operate and maintain the Improvements and the Premises. Tenant will use

commercially reasonable efforts to operate and maintain the Hotel, Restaurant and Conference Center on the Premises on all days and at all hours during which there may be reasonably expected use or demand for the same by the guests of the Hotel and by the general public who might be expected to use the Restaurant or the Conference Center. The failure of the Restaurant or the Conference Center to be available for use by the general public for more than ten (10) non-consecutive days within any calendar year during the Lease term (an “**Unavailability Period**”) shall constitute a material event of default remediable in accordance with Paragraph 15.2 hereunder.

6.3 Legal Compliance; Nuisance; Waste. Tenant shall fully comply with all Applicable Laws of all governmental authorities having jurisdiction over the Premises, or any part thereof. Tenant shall pay all costs, expenses, liabilities, losses, fines, penalties, claims and demands including, without limitation, attorneys’ fees, that may in any way arise out of or be imposed because of the failure of Tenant to comply with such Applicable Laws. Tenant shall not conduct or permit to be conducted any public or private nuisance on or from the Premises. Tenant shall not permit or commit any waste of the Premises.

6.4 Hazardous Substances.

(a) **Definitions.** As used herein, the term “**Hazardous Substance**” means any hazardous or toxic substance, material, or waste which is or becomes regulated by any federal, state or local governmental authority, including, without limitation, (i) any substance, chemical or waste that is or shall be listed or defined as hazardous, toxic or dangerous under Applicable Environmental Law, (ii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state or local governmental authority pursuant to any environmental, health and safety or similar law, code, ordinance, rule, regulation, order or decree and which may or could pose a hazard to the health and safety of occupants or users of the Premises or any part thereof, any adjoining property or cause damage to the environment, (iii) any petroleum products, (iv) PCB’s, i.e polychlorinated biphenyl (v) leaded paint, and (vi) asbestos. As used in this Lease, the term “**Applicable Environmental Law**” shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, the Resources Conservation Recovery Act, 42 U.S.C §§ 6901 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*, and the Safe Drinking Water Act, 42 U.S.C §§ 300f through 300j-26, as such Acts have been or are hereafter amended from time to time; any so called Superfund or superlien law; and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning hazardous, toxic or dangerous waste, substance or material as now or any time hereafter in effect

(b) **Restrictions on Hazardous Substances; Remedial Work.** Tenant shall not cause or permit any Hazardous Substance to be brought, kept or used in or about the Premises by Tenant, its members, managers, officers,

directors, owners, agents, employees, subtenants, assignees, vendors, suppliers, contractors, subcontractors, invitees or concessionaires (“**Tenant’s Personnel**”) except in commercial quantities not in violation of Applicable Environmental Law and similar to those quantities usually kept on similar premises by others in the same businesses. Tenant shall store, use and dispose (and shall cause Tenant’s Personnel to store, use and dispose) of any Hazardous Substance in compliance with all Applicable Laws, including, without limitation, Applicable Environmental Law. If the presence of any Hazardous Substance on, in or under the Premises caused or permitted by Tenant or Tenant’s Personnel results in any contamination of the Premises, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the affected area to the condition existing prior to the introduction of any such Hazardous Substance, including, without limitation, any investigation or monitoring of site conditions or any clean up, remediation, response, removal, encapsulation, containment or restoration work required because of the presence of any such Hazardous Substance on, in or under the Premises or any release or suspected release or threat of release of any such Hazardous Substance in the air, soil, surface water or ground water (collectively, “**Tenant’s Remedial Work**”). Tenant shall obtain all necessary licenses, manifests, permits and approvals to perform Tenant’s Remedial Work. Tenant shall promptly perform all of Tenant’s Remedial Work and the disposal of all waste generated by Tenant’s Remedial Work in accordance with all Applicable Environmental Law.

(c) **Compliance with Applicable Environmental Law.** Without limiting the generality of the foregoing or any other provision of this Lease, Tenant shall be solely and completely responsible for insuring that the Premises and all activities thereon (including activities of Tenant and Tenant’s Personnel) comply fully with Applicable Environmental Law and for responding to, defending against and/or complying with any administrative order, request or demand relating to potential or actual contamination on the Premises, or Third Party claims (including the claims of current or future subtenants in the Premises, or other tenants or subtenants in parcels adjoining or near the Premises) for Tenant’s Remedial Work or for the costs of any such remedial work or for the costs of any such Tenant’s Remedial Work which any Third-Party claimant has undertaken, whether such order, request, demand or claim names Landlord, Tenant or both, or refers to the Premises in any way, except where the contamination or other violation of Applicable Environmental Law occurred prior to the date of execution of the Lease or was caused solely by Landlord or any prior owner or tenant (other than subtenants of Tenant) of the Premises. Tenant’s responsibility under this Section includes but is not limited to promptly responding to such order, requests, demands and claims on behalf of Landlord and defending against any assertion of Landlord’s financial responsibility or duty to perform thereunder, except where the contamination or other violation of Applicable Environmental Law occurred prior to the date of execution of the Lease or was caused solely by Landlord or any prior owner or tenant (other than subtenants of Tenant) of the Premises.

(d) **Indemnification of Landlord.** Tenant shall indemnify, save harmless and defend Landlord, its council members, officers, officials, attorneys, employees, agents, successors and assigns (collectively with Landlord, the “**Landlord Indemnitees**”) for, from and against any and all claims (including, without limitation, by any person or entity not a signatory to this Lease for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses (including, without limitation, diminution in value of the Premises and the Improvements to the Premises, damages for the loss or restriction on use of rentable space or of any amenity in the Improvements to the Premises, damages arising from any adverse impact on marketing of space in the Improvements to the Premises, and sums paid in settlement of claims, attorney’s fees, consultant fees, expert fees and any fees and expenses incurred in enforcing this indemnity) incurred by, sought from or asserted directly or indirectly against any Landlord Indemnitees during or after the Term of this Lease as a result of the presence of any Hazardous Substance on, in or under the Premises or any release of any Hazardous Substance into the air, soil, surface water or ground water, which Hazardous Substance was brought, kept or used in or about the Premises by Tenant or Tenant’s Personnel, or as a result of a breach by Tenant of its obligations under this **Section 6.4**. Tenant shall promptly provide Landlord copies of all communications, filings or other writings, photographs or materials given to or received from any person, entity or agency in connection with any cleanup or Tenant’s Remedial Work conducted by Tenant, and shall notify Landlord of, and permit Landlord’s representative to attend, any meetings or oral communications relating thereto.

(e) **Indemnification of Tenant.** To the extent permitted by law, Landlord shall indemnify, save harmless and defend Tenant, its members, managers, employees, agents, successors and assigns (collectively with Tenant, the “**Tenant Indemnitees**”) for, from and against any and all governmental and other Third Party claims for clean up, restoration, response, removal, encapsulation, containment or remediation work (collectively, “**Landlord’s Remedial Work**”) because of any Hazardous Substance contamination or violation of Applicable Environmental Law which occurred prior to the Execution Date of this Lease and which was caused by any actions of Landlord (including, without limitation, judgments, damages, penalties, fines, reasonable attorneys’ fees and costs directly related to Landlord’s Remedial Work, but excluding losses, liabilities, consequential, punitive and all other damages whatsoever arising therefrom); provided, however, that this indemnification shall not extend to any activity or effort of the Landlord or the Landlord Indemnitees to remediate or assist in the remediation of any hazardous substance contamination caused or contributed to by parties other than Landlord.

(f) **Survival.** The forgoing obligations and indemnities set forth in this **Section 6.4** shall survive the termination or expiration of this Lease

ARTICLE 7
DEVELOPMENT OF THE PREMISES AND
CONSTRUCTION OF IMPROVEMENTS; TRADE FIXTURES

7.1 Development.

(a) **Planning and Development.** The planning and development of the Premises and Improvements shall be achieved pursuant to the ordinances, rules, regulations and resolutions of the Town, including, but not limited to, those pertaining to the Planning Commission and the Design Review Board of the town, the applicable provisions of this Lease, the Tenant Performance Schedule attached hereto as **Exhibit F**, and Landlord's review and construction inspection process

(b) **Construction.** Within the first three hundred sixty-five (365) days following the Commencement Date, Tenant shall commence construction of the Improvements, such construction to be pursued diligently to completion and in accordance with the applicable provisions of this Lease and the Schedule of Performance. All of the Improvements shall be constructed at the sole cost and expense of Tenant, in a first class workmanlike manner, and in accordance with the requirements of all Applicable Laws.

(c) **Bonds.** Tenant shall provide to Landlord, at Tenant's expense, such payment, performance, and completion bonds as are described on **Exhibit B** hereto which Landlord may request from time to time in connection with any construction on the Premises.

(d) **Master Planning.** The Landlord and Tenant have caused the Property to be master-planned within the Town for development as shown in **Exhibit E**. The Concept Site Plan shall be subject to modification from time to time by the Parties to address market demand, available financing and other similar factors, but, may only be amended upon the mutual written consent of the Parties, which consent may be withheld by either Party in its sole and absolute discretion.

(e) **Concept Site Plan.** The Concept Site Plan sets forth the scope of development for the entire Premises, including depicting the types of basic land uses, buildings and structures on the Property. Tenant understands, acknowledges and agrees that the prior Conceptual Plan developed by the Town and illustrated in **Exhibit J** attached to this Lease is a general manifestation of a possible development that could be, with refinement, transferred to the Premises. Tenant further understands and agrees that such Conceptual Plan, because of its general nature, does not address all of the issues and requirements related to the actual use of the Premises. By way of illustration, such Conceptual Plan does not indicate areas for water detention or water retention which will be necessary in connection with the completed project. Tenant has caused a reasonably detailed specific

Concept Site Plan to be developed and has provided the same to Town for its approval prior to the execution of this Agreement.

(f) **Applicable Laws.** The Premises and Improvements shall be developed in accordance with all Applicable Laws, as that term is defined in Section 1.1, hereinabove.

(g) **Tenant's Access to the Property.** The Landlord agrees that Tenant, its agents, employees, designees, and contractors shall have the right, at all reasonable times, of access to and entry upon the Property for the purpose of obtaining data, making surveys, and conducting tests necessary to carry out the transactions and development contemplated by this Lease. Tenant shall indemnify, defend, and hold Landlord and its officers, employees, contractors, agents, and representatives harmless from any and all injuries, damages, claims, costs, fees (including court costs and witness and attorneys' fees), losses, damages, and liabilities of any kind, expressly excluding those incurred because of the gross negligence or willful misconduct of Landlord or its officers, agents, contractors, or employees, but including, without limitation, mechanic's or materialman's liens, which may be asserted against or incurred by Landlord, the Property resulting from, or arising out of, such access and entry by Tenant, its agents, employees, designees, or contractors pursuant to the terms of this **Section 7.1(g)**. Notwithstanding any provision in this Lease to the contrary, Tenant and Landlord agree that the foregoing indemnification obligations shall survive the closing of any transaction involving the Property or the rescission, cancellation, or termination of this Lease for any reason

7.2 Alterations. In addition to the initial Improvements pursuant to **Section 7.1** above, Tenant at its sole cost and expense may make additions and alterations to the Improvements now or hereafter located on the Premises, provided that (a) all such additions and alterations shall be constructed of new, high quality materials in a first class workmanlike manner, and shall not weaken or impair the structural strength or materially decrease the value of any existing Improvements; (b) all such additions and alterations shall comply with Applicable Laws, including, without limitation, obtaining all required permits and approvals of such construction from the governmental authorities and utilities having jurisdiction thereof; and (c) Tenant has complied with the provisions of **Section 7.3** with respect thereto.

7.3 Plans and Specifications; Contractors. All construction work on the Premises, and all alterations and additions thereto, shall be done in compliance with and pursuant to detailed plans, drawings and specifications prepared by duly licensed and reputable architects and/or engineers and by duly licensed and reputable contractors, first approved in writing by Landlord, such approval not to be unreasonably withheld or delayed and to be presumed given if written notice of disapproval is not given within thirty (30) Business Days of Landlord's receipt of a request for approval ("**Business Days**" hereby defined to mean calendar days other than Saturdays, Sundays, and legal holidays observed by the Town of Payson). Any modifications to any such plans, drawings, and

specifications shall also require the prior written approval of Landlord, such approval not to be unreasonably withheld or delayed and to be presumed given if written notice of disapproval is not given within thirty (30) Business Days of Landlord's receipt of a request for approval.

7.4 Ownership of Improvements In addition to the Deed and Bill of Sale requirements in Section 7.12 hereunder, all Improvements, and all alterations and additions thereto, constructed by or on behalf of Tenant are hereby conveyed to and shall remain the exclusive property of Landlord during the Term of this Lease. Upon the expiration of this Lease, all such Improvements, and all alterations and additions thereto, shall remain the property of Landlord, and Tenant or those holding under or through Tenant shall have no rights with respect thereto. This Section excludes Trade Fixtures and Personal Property (as defined in Article 19).

7.5 Mechanics' Liens.

(a) **Tenant Not Agent of Landlord.** Notice is hereby given that Tenant is not the agent of Landlord for the construction, alteration or repair of any Improvements, the same being done at the sole direction and expense of Tenant. All contractors, materialmen, mechanics, and laborers are hereby charged with notice that they must look only to Tenant for the payment of any charge for work done or material furnished on the Premises during the Lease Term. Tenant shall have no right, authority or power to bind Landlord or any interest of Landlord for the payment of any claim for labor or material, or for any charge or expense, incurred by Tenant as to Improvements, additions, alterations or repairs on or to the Premises, and Tenant shall post notices on the Premises during all construction work of any nature whatsoever that Landlord is not responsible for any material and labor used on the Premises.

(b) **Landlord's Protection.** Tenant shall not suffer or permit to be enforced against the Premises, or any part thereof, and shall indemnify, defend and hold Landlord and the Premises harmless for, from, and against (i) any mechanics', materialman's, contractor's or subcontractor's liens arising from, and (ii) any claim for damage arising from the work or any construction, repair, restoration, replacement, or improvement done by or on behalf of Tenant. Tenant shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same against the Premises. If Tenant shall in good faith contest the validity of any such lien, claim, or demand, then Tenant shall, at its expense, defend itself and Landlord against the same and shall pay and satisfy any adverse judgment that may be rendered thereon prior to execution thereof and in the event of any such contest Tenant shall at the request of Landlord provide such security and take such steps as required by A.R.S. §33-1003 or other Applicable Laws to release the Premises from the effect of such lien.

7.6 Easements; Restrictive Covenants. In connection with the development of the Premises, Landlord agrees to:

(a) **Easements.** Join with Tenant in granting to public utilities, special taxing districts, or public service corporations, for the purpose of serving only the Premises, reasonable easements on, under, or over the Premises for telephone, electricity, water, cable, sanitary or storm sewers or both, drainage facilities, and for other utilities; and

(b) **CC&Rs.** Consent to or join with Tenant in granting or otherwise subjecting portions of the Premises to such covenants, conditions, restrictions and reciprocal easements as are reasonably necessary or appropriate in connection with the development of the Premises.

7.7 **Schedule of Performance.** The planning and development of the Property by the Tenant shall be achieved pursuant to the Tenant Performance Schedule attached hereto as **Exhibit F**. Any failure of Tenant to comply with the requirements of the Schedule of Performance shall be deemed a material event of default, remediable pursuant to the provisions of Article 15 hereunder.

7.8 **Review and Inspection Process.** Landlord acknowledges and agrees that it is desirable for Tenant to proceed rapidly with the implementation of the Lease and the development of the Premises and that an expedited review and construction inspection process may be necessary. Accordingly, the Parties agree that if at any time Tenant believes an impasse has been reached with the Landlord's staff on any issue affecting the Premises, Tenant shall have the right to immediately appeal to the Landlord's Community Development Director for an expedited decision pursuant to this Section 7.8.

7.9 **Appointment of Representative.** In order to help expedite decisions by Landlord relating to the Project, Landlord shall designate a representative ("**Landlord Representative**") of Landlord to act as a liaison between Landlord and Tenant and between the various departments of Landlord and Tenant. The Landlord Representative shall be available at all reasonable times to serve as such liaison, it being the intention of this **Section 7.9** to provide the Tenant with one individual as Landlord's principal representative with respect to the Project. Tenant shall also designate a representative ("**Tenants Representative**") who shall serve as a liaison between the Tenant and the Landlord. The Landlord Representative shall be the Community Development Director or as designated by the Town Manager during the Term of this Lease, and the initial Tenant Representative shall be _____. By giving notice to the other Party as provided in **ARTICLE 16**, either Party may change representatives at any time.

7.10 **Tenant Assistance.** Notwithstanding anything contained herein to the contrary, the Tenant acknowledges that the Landlord may not have sufficient number of personnel to implement an expedited development review and/or expedited construction inspection process. The Tenant, by notice to the Landlord, may elect to have the Landlord implement an expedited review and/or inspection process, in which case the Tenant shall engage at its cost such private independent consultants and advisors as are approved by and necessary to assist the Landlord

in the review and/or inspection process; provided, however, that such consultants and advisors shall take instruction from, be controlled by, and be responsible to the Landlord rather than to the Tenant; and provided further, that to the extent the Landlord elects to use its own personnel and overtime and similar charges are incurred by Landlord, the Tenant shall be responsible for overtime costs incurred above the Landlord's ordinary operation expenses for such personnel.

- 7.11 **Certificate of Occupancy.** Promptly after final completion of the construction of the Improvements or any component thereof, the Landlord shall consider issuing to the Tenant a Certificate of Occupancy for such Improvements. Upon issuance of the Certificate of Occupancy, the Tenant may Record the Certificate of Occupancy. If the Landlord refuses or fails to provide the Certificate of Occupancy, the Landlord shall, within ten (10) days after written request by the Tenant, issue a written statement setting forth the reason(s) why the Certificate of Occupancy was not issued by the Landlord and what measures or acts the Landlord requires of Tenant before the Landlord will issue the Certificate of Occupancy.
- 7.12 **Conveyance of Improvements.** Upon issuance of the Certificate of Occupancy for each Improvement constructed upon the Land, Tenant shall execute a Deed and Bill of Sale, in the form attached hereto as **Exhibit G**, conveying title to each Improvement to Landlord.

ARTICLE 8 REPAIRS AND MAINTENANCE

8.1 Obligations of Tenant. During the Lease Term, Tenant, at its sole cost and expense, shall keep and maintain all of the Improvements now or hereafter located on the Premises, together with all additions and alterations thereto, and all fixtures and equipment therein, in good, first-class, attractive and safe condition and repair and shall make all necessary repairs, replacements and renewals, whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary, in order to maintain such state of repair and condition, it being understood and agreed that Landlord shall have no liability for any of the foregoing. Tenant's maintenance and repair obligations shall apply, without limitation, to the maintenance, repair and replacement of all buildings, heating, ventilation and air conditioning equipment, windows and plate glass, wiring, plumbing, roadways, driveways, parking areas, landscaping, sidewalks, fencing, lighting, retention ponds, drainage and utility facilities and other Improvements located on, in, or under the Premises. Tenant's maintenance and repair obligations shall not apply to roadways that have been dedicated as public roadways to a government agency. Tenant, at Tenant's expense, shall be responsible for all improvements, additions, alterations, maintenance, and repairs necessary or appropriate such that the Premises and all Improvements thereon are in substantial compliance with Applicable Laws. In addition, but notwithstanding anything contained in this **Section 8.1** to the contrary (and subject to causes beyond Tenant's reasonable control which are described in **Articles 10 and 11** hereof), Tenant shall cause the Hotel to be maintained in good repair and condition and in conformity with Applicable Laws, which

shall not be less than the maintenance standards and specifications promulgated from time to time by the hotel brand under which the Hotel is then being operated, and in no event less than if the Hotel were being operated under the Hilton (Garden Inn) brand (the “**Hotel Franchisor**”). Tenant shall make or cause to be made such routine Hotel maintenance, repairs and minor alterations as Tenant, from time to time, reasonably deems necessary. Tenant waives any provisions of Applicable Laws that may require any duty of repair by Landlord or permit Tenant to make repairs at the expense of Landlord.

8.2 Renovation. The Hotel and the Conference Center periodically shall be renovated in accordance with the following provisions:

8.2.1 Hotel. Except to the extent prevented by causes beyond Tenant’s reasonable control which are described in **Articles 10 and 11**, Tenant shall significantly renovate the Conference Center and the guest rooms, guest room corridors and public facilities, including without limitation replacement of soft goods furniture, fixtures and equipment (e.g., textile, fabric and vinyl and similar products used in finishing and decorating the Hotel, its guestrooms, corridors and Public Facilities, such as vinyl wall and floor coverings, drapes, sheers, cornice coverings, carpeting, bedspreads, lamp shades, upholstery and all other unspecified items of the same class) (the “Renovation”), except as hereafter provided, at least every consecutive period of five (5) Lease Years during the Term and any extended term hereof, commencing on the fifth (5th) anniversary of the issuance of a Certificate of Occupancy for the Hotel and Convention Center, and shall replace case goods, furniture, fixtures and equipment (e.g., chests, armoires, chairs, beds, headboards, desks, tables, television sets, mirrors, pictures, wall decorations and all other unspecified items of the same class) at least every consecutive period of ten (10) Lease Years during the Term hereof (the “Replacement”); provided, however, that Tenant shall make such earlier, more frequent and/or more extensive Hotel renovations as may be required to maintain the Hotel in good standing under the Hotel Franchisor brand that the Hotel is then being operated, but in any event no less than if the Hotel were being operated under the Hilton (Garden Inn) brand (the “**Hotel Franchisor Standard**”). If the Hilton (Garden Inn) brand ceases to exist, the Hotel Franchisor Standard shall be no less than the successor brand to the Hilton (Garden Inn) brand or, if no such successor brand then exists, then to the next closest hotel brand as mutually agreed upon in writing by Landlord and Tenant or, if Landlord and Tenant are unable to reach such agreement in writing within thirty (30) days after written request by either Party to the other, then the next closest brand shall be selected by a mediator mutually agreed upon in writing by Landlord and Tenant. If Landlord and Tenant are unable to reach an agreement as to a mediator, then Tenant shall select one mediator, Landlord shall select another mediator, and the two mediators so chosen shall choose a third to compose a panel of mediators to determine the next closest hotel brand. Notwithstanding the foregoing, Tenant and Landlord may conduct an inspection and review of the Leased Premises at the time provided for the first renovation, and at the sole discretion of the Landlord, the first renovation may be delayed for a period of up to two years. Should such a delay be granted by Landlord, Tenant will thereafter continue to make Renovations according to the schedule hereinabove provided every five (5) Lease Years after the first Renovation, and each subsequent Renovation shall be completed each subsequent five (5) years thereafter. No change in the timing for one or more required Renovations shall affect the time for any Replacement required under this **Section 8.2.1**. If any renovations are

completed earlier than required under the foregoing schedule because of requirements of the hotel franchisor, and if such hotel franchisor required renovation includes every item required to be renovated pursuant to this **Section 8.2.1**, then the next renovation shall not be required until five years from the date of such hotel franchisor required renovation.

8.2.2 Furniture, Fixtures and Equipment Reserve. In order to provide funds to accomplish the renovation requirements in **Section 8.2.1** above, as well as other necessary replacements and renewals of furniture, fixtures and equipment, Tenant shall establish, at a bank selected by Tenant (with notice thereof to Landlord), a reserve account, (the “**Reserve**”), which Reserve shall be funded on a monthly basis. During the first ten (10) years after a Certificate of Occupancy is received by the Hotel or the Conference Center, whichever is later, Tenant shall transfer into the Reserve each month amounts equal to the following percentages of Hotel Room Revenues:

Year	Percentage
Year One (1)	One Percent (1%)
Year Two (2)	Two Percent (2%)
Years Three (3) - Five (5)	Three Percent (3%)
Years Six (6) - Ten (10)	Four Percent (4%)

The Reserve shall be subject to the sole control of Tenant and the funds so deposited shall be utilized only for the purposes described in this **Section 8.2**. The renovation requirements in **Section 8.2.1** above shall not be limited to the funds in the Reserve or by any other provisions of this **Section 8.2.2**. The Landlord shall receive notice of each withdrawal from the Reserve within ten (10) days following the withdrawal.

ARTICLE 9 INDEMNITY AND INSURANCE

9.1 Indemnity. Tenant shall pay, defend, indemnify and hold harmless each and all Landlord Indemnitees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys fees, experts’ fees and court costs associated therewith) arising out of any accident or other occurrence causing injury to or death of persons or damage to property by reason of construction, operation, or maintenance of any Improvements, of any additions, alterations or renovations thereto, or due to the condition of the Premises or any Improvements thereon, or the use or neglect thereof by Tenant, Tenant’s Personnel, or any other person, or otherwise occurring upon the Premises or any Improvements thereon, or arising out of any failure of Tenant to comply with any of Tenant’s obligations under this Lease; provided however, that the provisions of this **Section 9.1** shall not apply to loss or damages or claims therefor which are solely caused by acts or omissions of Landlord, its employees, contractors, subcontractors, agents or representatives, and Tenant shall have no defense obligations in any instance in which a claim is asserted based in whole upon an act or omission of Landlord, its employees, contractors, subcontractors, agents or representatives. The foregoing provisions of this

Section 9.1 shall survive the expiration or termination of this Lease for a period equal to the applicable statute of limitations period.

9.2 Liability, Etc. Insurance. Tenant shall, at all times during the Lease Term and at the sole cost and expense of Tenant, procure and maintain liability and other insurance in accordance with and in amounts and coverages set forth in **Section 9.3** and on **Exhibit C** hereto.

9.3 Casualty Insurance. Tenant, at its sole cost and expense, shall obtain and continuously maintain in full force and effect during the Lease Term, policies of insurance covering the Improvements now or hereafter constructed, installed or located on the Premises naming the Landlord as an additional insured against (a) loss or damage by fire; (b) loss or damage from such other risks or hazards now or hereafter covered by a current ISO form "special causes of loss" (also known as "all-risk") policy (or similar policy providing comparable coverage), including, but not limited to, windstorm, hail, explosion, vandalism, riot and civil commotion, damage from vehicles, smoke damage, water damage and debris removal; (c) loss for flood if the Premises are in a designated flood or flood insurance area; (d) loss for damage by earthquake if the Premises are located in an earthquake-prone area; (e) loss from so-called explosion, collapse and underground hazards; (f) loss or damage covered by a customary policy of boiler and machinery insurance to the extent applicable to the Improvements; and (g) loss or damage from such other risks or hazards of a similar or dissimilar nature which are now or may hereafter be customarily insured against with respect to improvements similar in construction, design, general location, use and occupancy to the Improvements. Such insurance coverage at all times shall be in an amount equal to one hundred percent (100%) of the then Full Replacement Cost of the Improvements. "**Full Replacement Cost**" means the cost of replacing the Improvements without deduction for depreciation or wear and tear, and shall include a reasonable sum for architectural, engineering, legal, administrative and supervisory fees connected with the restoration or replacement of the Improvements in the event of damage thereto or destruction thereof. If a sprinkler system shall be located in any of the Improvements, sprinkler leakage insurance consistent with the foregoing general requirements shall be procured and continuously maintained by Tenant at Tenant's sole cost and expense. All such policies shall comply with the insurance requirements in Paragraphs D, E and F of **Exhibit C** hereto and shall provide that loss, if any, payable thereunder shall be payable jointly to Landlord and Tenant (or to the Leasehold Mortgagee, if required by the terms of any Leasehold Mortgage) to be held in trust and disbursed for the restoration and repair of the Premises pursuant to **Section 10.3** or allocated between Landlord and Tenant after a termination of the Lease pursuant to **Section 10.2**, whichever is applicable.

9.4 Waiver of Subrogation and Release of Claims. Tenant, on behalf of Tenant and its insurers, waives, releases and discharges Landlord from all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, attorneys' fees and the costs and expenses of enforcing any indemnification, defense or hold harmless obligation under this Lease (collectively, "**Claims**"), arising out of personal injury or damage to or destruction of the Premises or Tenant's trade fixtures, other personal property or business, and any loss of use or business interruption, occasioned by any fire or other casualty or occurrence whatsoever (whether similar or dissimilar), regardless whether any of such Claims results from the negligence or fault of Landlord or otherwise, and Tenant will look only to Tenant's insurance coverage (regardless whether Tenant

maintains any such coverage, regardless whether any such insurance covers such Claims and regardless of any self-insured retention maintained by Tenant) in the event of any such Claims. Tenant's Trade Fixtures and Personal Property and all other property in Tenant's care, custody or control, is located within the Premises at Tenant's sole risk, and Landlord is not liable for any damage to or for any theft, misappropriation or loss of such Trade Fixtures and Personal Property. Tenant is solely responsible for providing such insurance as may be required to protect Tenant and Tenant's Personnel against any injury, loss, or damage to persons or property occurring within the Premises, including, without limitation, any loss of business or profits from any casualty or other occurrence within the Premises.

ARTICLE 10 DAMAGE AND DESTRUCTION

10.1 Damage or Destruction. Subject to the provisions of **Sections 10.2 and 10.3**, if any Improvements are damaged or destroyed during the Lease Term by fire, earthquake, flood or any other casualty covered or required to be covered by a policy of insurance to be maintained pursuant to **Article 9**, Tenant shall repair and/or rebuild the same (a "Restoration") so that the repaired or rebuilt Improvements shall have at least the same values as such Improvements immediately prior to such damage or destruction, such construction to be undertaken and completed in accordance with the requirements of **Article 7**. In no event whatsoever shall Landlord be required to repair, replace, or restore any Improvements as a result of any such damage or destruction. No damage to or destruction of Improvements shall effect an abatement or reduction in Rent or, except as provided in **Section 10.2**, a termination of this Lease, and Tenant waives any provisions of Applicable Laws that may be to the contrary.

10.2 Lease Termination. If the Improvements are damaged or destroyed (a) at any time during the last two (2) years of the Term of this Lease by fire or other casualty covered or required to be covered by a policy of insurance to be maintained pursuant to **Article 9** and the cost of repairing or rebuilding such Improvements exceeds twenty-five percent (25%) of the full replacement value thereof; or (b) at any time during the Term of this Lease by casualties not covered or required to be covered by a policy of insurance to be maintained pursuant to **Article 9** and the cost of repairing or rebuilding such Improvements exceeds fifty percent (50%) of the full replacement value thereof, Tenant, by giving written notice to Landlord within sixty (60) days after the occurrence of such damage or destruction and by removing, if requested by Landlord and approved by any permitted Leasehold Mortgagee, any and all Improvements and leveling and grading that portion of the Premises underlying such removed Improvements, may elect to terminate this Lease. Also, if a Restoration of any damaged or destroyed Improvements shall not occur by reason of any Leasehold Mortgagee applying the insurance monies to the repayment of any amounts due under its Leasehold Mortgage as permitted by **Section 10.3** below, Landlord, by giving written notice to Tenant, may elect to terminate this Lease, as well as the parking or common area therefor. Notwithstanding anything contained in this Lease to the contrary, in the event of a termination of the Lease pursuant to this **Section 10.2**, any insurance monies payable by reason of any damage or destruction shall be paid for the full cost to remove the Improvements and to level and grade the Premises, with the balance thereof to be disbursed

to the permitted Leasehold Mortgagee(s) and applied to the repayment of its or their Leasehold Mortgage(s).

10.3 Application of Insurance Proceeds. All insurance monies recovered on account of such damage or destruction, less the costs, if any, of such recovery, shall be disbursed to the permitted Leasehold Mortgagee(s) and, in the sole and absolute discretion of any permitted Leasehold Mortgagee(s), applied either to the cost of Restoration or to the repayment of any amounts due under the Leasehold Mortgage(s); provided, however, that if any Leasehold Mortgagee applies such insurance monies to the repayment of its Leasehold Mortgage, that portion of such insurance monies required to pay the full cost to remove the Improvements and to level and grade the Premises underlying such removed Improvements shall be excluded from the repayment of amounts due under the Leasehold Mortgage(s) and, instead, shall be paid for the full cost of removing the Improvements and leveling and grading the portion of the Premises underlying such removed Improvements. To the extent that a Leasehold Mortgagee elects to allow the insurance monies to be utilized for the Restoration, such insurance monies shall be applied to the payment of the costs of the Restoration and shall be paid out from time to time as the Restoration progresses upon the written request of Tenant (such written request to be made to Landlord and the insurer or, if the Leasehold Mortgagee requires such insurance proceeds to be held by the Leasehold Mortgagee, to Landlord, the Leasehold Mortgagee, and the insurer), accompanied by a certificate of the architect or a qualified professional engineer in charge of the Restoration stating that as of the date of such certificate (a) the sum requested is justly due to the contractors, subcontractors, materialmen, laborers, engineers, architects or persons, firms or corporations furnishing or supplying work, labor, services or materials for such Restoration, or is justly required to reimburse Tenant for any expenditures made by Tenant in connection with such Restoration, and when added to all sums previously paid out by Landlord does not exceed the value of the Restoration performed to the date of such certificate by all of said parties; (b) except for the amount, if any, stated in such certificate to be due for work, labor, services or materials, there is no outstanding indebtedness known to the person signing such certificate, after due inquiry, which is then due for work, labor, services or materials in connection with such Restoration, which, if unpaid, might become the basis of a mechanic's lien or similar lien with respect to the Restoration or a lien upon the Premises, or any portion thereof; and (c) the costs, as estimated by the person signing such certificate, of the completion of the Restoration required to be done subsequent to the date of such certificate in order to complete the Restoration do not exceed the sum of the remaining insurance monies, plus the amount deposited by Tenant, if any, remaining in the hands of Landlord after payment of the sum requested in such certificate. Tenant shall furnish Landlord, at the time of any such payment, evidence reasonably satisfactory to Landlord that there are no unpaid bills in respect to any work, labor, services or materials performed, furnished or supplied in connection with such Restoration. Landlord (or the Leasehold Mortgagee, if applicable) and Tenant shall not be required to pay out any insurance monies where Tenant fails to supply satisfactory evidence of the payment of work, labor, services or materials performed, furnished or supplied, as aforesaid. Upon completion of the Restoration and payment in full thereof by Tenant, Tenant shall be entitled to receive any insurance monies or other monies then remaining upon submission of proof reasonably satisfactory to Landlord that the Restoration has been paid for in full and the damaged or destroyed Improvements repaired, restored or rebuilt as nearly as possible to the condition they were in

immediately prior to such damage or destruction, or with such additions or alterations as may be made in accordance with **Section 7.2** above.

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ARTICLE 11 CONDEMNATION

11.1 Entire or Substantial Condemnation. If all or Substantially All of the Premises shall be lawfully taken by condemnation or other eminent domain proceedings pursuant to any Applicable Laws, general or special, this Lease shall terminate on the date of such taking. All Rent required to be paid by Tenant under this Lease shall be paid up to the date of such termination and upon such termination this Lease shall be of no further force and effect, except that any obligation or liability of either Party, actual or contingent, under this Lease which has accrued on or prior to such termination date shall survive and any prepayment of Rent shall be prorated between the Parties. For purposes of this Section “**Substantially All of the Premises**” shall mean such portion of the Premises as, when so taken, would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, applicable zoning laws and building regulations then existing or prevailing, reasonably accommodate Tenant’s business as conducted at the date of such taking. Tenant, in cooperation with Landlord, shall have the right to participate in any condemnation proceedings and be represented by legal counsel for the purpose of protecting its interests hereunder.

11.2 Continuation of Lease. In the event of a taking of less than all or Substantially All of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken, and Tenant at its expense, to the extent Tenant has received the award for the taking, shall proceed with reasonable diligence with restoring the remaining parts of the Premises, subject to **Section 7.2**, to substantially the condition existing immediately prior to the date of taking to the extent that the same may be feasible to constitute a complete and tenantable Premises.

11.3 Award. Except for a partial taking that does not result in a termination of this Lease, Landlord and Tenant shall share the award in any proceeding with respect to any taking provided for in this **Article 11** as follows: Landlord shall receive the entire award, minus (if no Default shall have occurred and be continuing) Tenant’s Proportional Share of Improvements, which shall be paid to Tenant. “**Tenant’s Proportional Share of Improvements**” means an amount equal to the total cost of the Improvements multiplied by a fraction, the numerator of which is the number of months remaining in the Lease Term and the denominator of which is the total number of months in the entire Lease Term. In the case of a partial taking which does not result in a termination of this Lease, and, provided no Default shall have occurred and be continuing, such award shall be paid in the same manner as insurance proceeds are paid pursuant to **Section 10.3** for the cost of restoring the Premises pursuant to **Section 11.2** hereof. Nothing herein contained shall prohibit Tenant from making a separate claim, to the extent permitted by Applicable Laws, for the value of Tenant’s relocation expenses, Trade Fixtures and Personal Property.

11.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or any part thereof by any public or quasi-public authority under the power of eminent domain, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the Premises or any part thereof by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt

notice thereof to the other Party and each shall have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting the Premises shall be made without the prior written approval of both Landlord and Tenant.

ARTICLE 12 NET LEASE

This Lease shall be interpreted and construed as an absolute net lease, and it is the express intent and agreement of Landlord and Tenant that (a) the obligations of Landlord and Tenant hereunder shall be separate and independent covenants and agreements and the Rent and all other charges payable by Tenant hereunder shall be payable in all events without abatement, deduction, diminution, deferment, suspension, reduction or setoff whatsoever, unless this Lease shall be terminated pursuant to **Articles 10 or 11** hereof; (b) all costs or expenses of whatever character or kind, general or special, ordinary or extraordinary, foreseen or unforeseen, and of every kind and nature whatsoever that may be necessary, appropriate or required in and about the Premises or any part thereof, or in connection with Tenant's possession or authorized use thereof during the Term of this Lease, shall be paid by Tenant; (c) the Rent shall be absolutely net to Landlord; (d) all Taxes, insurance premiums, utility expenses, repair and maintenance expense, and all other costs, fees, interest, charges, expenses, reimbursement and obligations of every kind and nature whatsoever relating to the Premises, or any portion thereof, which may arise or become due during the Term of this Lease, or any extension or renewal thereof, shall be paid or discharged by Tenant as Additional Rent; and (e) Tenant shall indemnify, defend and save Landlord harmless from and against such costs, fees, charges, expenses, reimbursements and obligations, any interest thereon. Except as otherwise expressly provided in **Articles 10 and 11** hereof, this Lease and the rights of Landlord and the obligations of Tenant hereunder shall not be affected by any event or for any reason, including without limitation: (i) any damage to or theft, loss or destruction of any of the Premises by fire, flood, earthquake or other casualty, (ii) any condemnation, (iii) any default on the part of Landlord hereunder, (iv) any latent or other defect in any of the Premises, (v) any violation of any provision of this Lease by Landlord, (vi) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up of, or other proceeding, affecting either of the Parties, (vii) the exercise of any remedy, including without limitation foreclosure, under any Leasehold Mortgage, collateral assignment or other encumbrance, (viii) any action with respect to this Lease (including the disaffirmance hereof) which may be taken by any trustee, receiver or liquidator of either of the Parties or any court under the Federal bankruptcy laws or otherwise, (ix) any interference with Tenant's use of the Premises, (x) market or economic changes or (xi) any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to disruption or unavailability of gas, heat, water, light, power, telephone, telecommunications, cabling, sewage, and any other utilities or services for or to the Premises; maintenance, repair or Restoration of the Premises; or any other cost, expense, duty, obligation, service or function whatsoever related to the Premises.

ARTICLE 13
ASSIGNMENT; SUBLETTING

13.1 Restrictions on Transfer. Except as permitted in **Sections 13.3 or 13.4** below, or in **Article 14** hereof, Tenant shall not sublet the Premises, or any portion thereof, nor assign, mortgage, pledge, transfer or otherwise encumber or dispose of this Lease, or any interest therein, or in any manner assign, mortgage, pledge, transfer or otherwise encumber or dispose of its interest or estate in the Premises, or any portion thereof (each of which are herein referred to sometimes as a “**Transfer**”), without obtaining Landlord’s prior written consent in each and every instance, such consent not to be unreasonably withheld. Tenant’s request for Landlord’s consent to a Transfer must describe in detail the parties, terms, portion of the Premises, and other circumstances involved in the proposed Transfer. If Landlord consents to a Transfer, the following terms and conditions shall apply:

- (a) Any assignment of this Lease shall transfer to the assignee all of Tenant’s right, title and interest in this Lease and all of Tenant’s estate or interest in the Premises.
- (b) Any such assignee shall assume, by written, recordable instrument, in form and content satisfactory to Landlord, the due performance of all of Tenant’s obligations under this Lease, including any accrued obligations at the time of the effective date of the assignment, and such assumption agreement shall state that the same is made by the assignee for the express benefit of Landlord as a third party beneficiary thereof. A copy of the assignment and assumption agreement, both in form and content satisfactory to Landlord, fully executed and acknowledged by the assignee, together with a certified copy of a properly executed corporate resolution (if assignee or its signator is a corporation) or other written evidence, satisfactory to Landlord if assignee or its signatory is not a corporation, authorizing the execution and delivery of such assumption agreement, shall be sent to Landlord within a reasonable time following the effective date of such assignment. The failure to provide such a resolution or other written evidence in the time and manner provided in this **Section 13.1(b)** shall constitute an Event of Default.
- (c) No Event of Default under this Lease shall exist at any time of any assignment or subletting, nor when Tenant requests Landlord’s written consent thereto.
- (d) A complete copy of each fully executed sublease shall be given to Landlord by Tenant promptly following the effective date of such subletting.
- (e) Any assignment or sublease shall be subject to all the provisions, terms, covenants, and conditions of this Lease. Tenant shall continue to be and remain liable under this Lease, as it may be amended from time to time with or without notice to Tenant and any assignment or sublease shall not relieve Tenant of Tenant’s liability and obligations under this Lease.
- (f) Each sublease shall contain provisions to the effect that (i) such sublease is subject and subordinate to all of the terms, covenants and conditions of this Lease and to all of the rights of Landlord thereunder; and (ii) in the event this Lease terminates before the expiration of such sublease, the sublessee thereunder will, at Landlord’s option, attorn to

Landlord and waive any rights the sublessee may have to terminate the sublease or to surrender possession thereunder, as a result of the termination of this Lease.

- (g) No assignee or sublessee shall further assign its interest in this Lease or in the Premises, or any portion thereof, nor sublease the Premises, or any portion thereof, without Landlord's prior written consent in each and every instance, which consent shall not be unreasonably withheld or unduly delayed. No such assignment or subletting shall relieve Tenant from any of Tenant's obligations in this Lease.
- (h) Tenant shall pay or reimburse Landlord as Additional Rent any and all costs of Landlord, including reasonable attorney's fees paid or payable in house or to outside counsel, occasioned by such Transfer.
- (i) Tenant's failure to comply with all of the foregoing provisions and conditions of this **Section 13.1** shall, in addition to other consequences (whether or not Landlord's consent is required under this **Section 13**), at Landlord's option, render any purported Transfer null and void and of no force and effect.

13.2 Landlord's Consent Standard. For purposes of **Section 13.1** and in addition to any other reasonable grounds for denial, Landlord's consent to any requested Transfer described in **Section 13.1** will be deemed reasonably withheld if, in Landlord's good faith judgment, any one or more of the following apply: (i) a proposed assignee or sublessee of the entire Premises does not have the financial strength to perform the Tenant's obligations under this Lease; (ii) the business and operations of the proposed assignee or sublessee are not of comparable quality to the business and operations then being conducted by Tenant in the Premises; (iii) the proposed assignee or sublessee does not have a good business reputation; (iv) the use of the Premises by the proposed assignee or sublessee would, in Landlord's reasonable judgment, impact the Premises in a negative manner; (v) the proposed assignee or sublessee is a government entity (or agency or instrumentally thereof); or (vi) an Event of Default exists under this Lease at the time Tenant requests consent to the proposed transaction

13.3 Transfer to Affiliate. Provided that no Event of Default exists under this Lease, Tenant may, without Landlord's consent, assign or sublet all or a portion of this Lease or the Premises to an Affiliate (as herein defined) if (a) Tenant notifies Landlord at least twenty (20) days prior to such assignment or subletting; (b) in the case of an assignment, Tenant delivers to Landlord, at the time of Tenant's notice, current financial statements of Tenant and the proposed assignee that are reasonably acceptable to Landlord, (c) Tenant delivers to Landlord, not later than the effective date of the assignment or subletting, a written agreement reasonably acceptable to Landlord under which the assignee or sublessee (to the extent applicable under the terms of the sublease) assumes and agrees to perform Tenant's obligations under this Lease and to observe all terms and conditions of this Lease. Tenant will also promptly provide Landlord with copies of any documents reasonably requested by Landlord to document the status and relationship between Tenant and its Affiliate. A Transfer to an Affiliate shall not release Tenant from any liability or obligation under this Lease. "Affiliate" means (i) any person or entity that, directly or indirectly, controls, is controlled by or is under common control with Tenant or any of its controlling principals; (ii) any trust or entity created by any of Tenant's controlling principals for estate planning

purposes; (iii) any entity into which Tenant is consolidated or merged; and (iv) any entity to which substantially all of the assets of Tenant are transferred. For purposes of this definition, "control" means possessing the power to direct or cause the direction of management and policies of the entity by the ownership of a majority of the voting securities of the entity. In the event of consolidation of Tenant with one or more other entities or the sale or other disposition of all or substantially all of the assets of Tenant to one or more entities, the surviving entity or transferee of assets, as the case may be, shall deliver to Landlord, and any assignee of any interest of Landlord, an acknowledged instrument assuming all obligations, covenants and responsibilities of Tenant hereunder.

13.4 Permitted Subleases. Provided that no Event of Default exists under this Lease, Tenant may, without Landlord's consent, sublet spaces within the Hotel, Conference Center and Restaurant component for restaurant uses; provided, that (a) the size of each subleased premises will not exceed ten thousand (10,000) square feet; (b) the term of each sublease, including all renewals and extensions thereof, will not exceed ten (10) years; (c) the rents payable under each sublease will not be less than five percent (5%) below then current market rents for comparable space; and (d) Tenant otherwise complies with the provisions of **Section 13.1(c) through (h)** above. Similarly, and provided that no Event of Default exists under this Lease, Tenant may, without Landlord's consent, sublet spaces within the Hotel for retail sales and personal service business uses; provided, that (e) the combined size of all sublet spaces will not exceed ten thousand (10,000) square feet; (f) the size of each subleased premises will not exceed two thousand (2,000) square feet; (g) the term of each sublease, including all renewals and extensions thereof, will not exceed ten (10) years, (h) the rents payable under each sublease will not be less than five percent (5%) below then current market rents for comparable space; and (i) Tenant otherwise complies with the provisions of **Section 13.1(c) through (h)** above.

ARTICLE 14 LEASEHOLD MORTGAGE OF PREMISES

14.1 Permitted Encumbrances. From time to time during the Lease Term, except during the last three (3) years of the Lease Term or any extended Lease Term, Tenant may encumber Tenant's leasehold interest in the Premises under this Lease, or any part thereof, or any of the Improvements, by one or more Leasehold Mortgages (as defined below), and assign Tenant's interest in this Lease, or any part or parts thereof, as collateral security therefor; subject to the following:

- (a) For the purposes of this Lease, the term "Leasehold Mortgage" shall mean an encumbrance on Tenant's leasehold interest in the Premises under this Lease, which shall be deemed to include a deed of trust and such other types of security instruments as are commonly given to secure loans or advances for the construction and permanent financing and refinancing of improvements similar to the Improvements, and the term "Leasehold Mortgagee" shall mean a bank, insurance company, pension fund or other financial institution which is the holder of record of a Leasehold Mortgage (including a beneficiary or trustee under a deed of trust).

- (b) Tenant or the Leasehold Mortgagee shall promptly deliver to Landlord in the manner provided in this Lease for the giving of notice to Landlord a true and complete copy of the Leasehold Mortgage and of any assignment thereof, and shall notify Landlord of the address to which notices to the Leasehold Mortgagee may be sent.
- (c) The Leasehold Mortgage shall secure financing to be utilized only for the development and construction of the Improvements in such amount not exceeding the cost to Tenant of such Improvements.
- (d) No Leasehold Mortgage shall extend to or affect the reversionary interest and estate of Landlord in and to the Premises, or in any way attach to or affect the Premises from and after any expiration or termination of this Lease.
- (e) The Leasehold Mortgage shall include provisions to the effect that any notice of default under the Leasehold Mortgage shall be delivered to Landlord, as well as to Tenant; that Landlord shall have the same time period as is available to Tenant within which to cure a default, with Landlord's time period for curing a default to commence upon the expiration of the time period available for Tenant's cure of such defaults; and that neither Landlord's right to cure a default nor Landlord's exercise of such right shall be deemed to be an assumption by Landlord of liability under the Leasehold Mortgage.
- (f) In the event of an Event of Default by Tenant, Landlord shall provide notice of such Event of Default, at the same time notice is provided to Tenant, to not more than two (2) of such Leasehold Mortgagees, as previously designated by Tenant to receive such notice (the "**Designated Lenders**") whose names and addresses were provided by written notice to Landlord in accordance with **Article 16**. Landlord shall give Tenant copies of any such notice provided to such Designated Lenders and, unless Tenant notifies Landlord that the Designated Lenders names or addresses are incorrect (and provides Landlord with the correct information) within three (3) Business Days after Tenant receives its copies of such notice from Landlord, Landlord will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Tenant may provide notices to other Leasehold Mortgagees.
- (g) It may be necessary for the Leasehold Mortgagees to enter into an agreement among themselves, Tenant and/or its permitted assignees, acknowledging the various rights of the Leasehold Mortgagees (the "**Triparty Agreement**"). Landlord agrees that it shall execute such Triparty Agreement only for the purpose of acknowledging the rights of such Leasehold Mortgagees in this Lease, provided that such Triparty Agreement imposes no additional obligations upon nor diminishes any rights of Landlord other than those contained within this Lease. If a Leasehold Mortgagee is permitted, under the terms of its nondisturbance agreement with Landlord, or under a Triparty Agreement executed by Landlord, to cure the Event of Default and/or to assume Tenant's position with respect to this Lease, Landlord agrees to recognize such rights of the Leasehold Mortgagee or Leasehold Mortgagees under the Triparty Agreement, and to otherwise permit each such Leasehold Mortgagee to assume all of its respective rights and obligations of Tenant under this Lease. Landlord shall, at any time upon reasonable request by Tenant, provide to any Leasehold Mortgagee an estoppel certificate or other document evidencing that this Lease is in full force and effect and that no Event of

Default by Tenant exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon request by a Leasehold Mortgagee, Landlord will enter into a separate nondisturbance agreement with each such Leasehold Mortgagee, consistent with the provisions of this **Article 14**.

- (h) From and after receiving notice of the existence of a Designated Lender's Leasehold Mortgage, Landlord and Tenant shall not cancel, surrender, modify, or amend this Lease in any respect without the prior written consent of the Designated Lender, which written consent shall not be unreasonably withheld or delayed. If such prior written consent is unreasonably withheld or delayed by the Designated Lender, Landlord and Tenant may cancel, surrender, modify, or amend this Lease without the prior or other written consent of such Designated Lender. The provisions of this **Section 14.1(h)** shall not apply to a cancellation or termination of this Lease resulting from a default by the Tenant.
- (i) Any Leasehold Mortgagee may be added as a named insured or to the "loss payable endorsement" of any and all insurance policies required to be carried by Tenant under this Lease on the condition that the insurance proceeds are to be applied in the manner specified in this Lease. The proceeds of any insurance policies or proceeds arising from a condemnation payable to Tenant shall be held by any Leasehold Mortgagee and distributed pursuant to the provisions of this Lease, but the Leasehold Mortgagee may reserve its right to apply to the Leasehold Mortgage debt all, or any part of Tenant's share of such proceeds pursuant to such Leasehold Mortgage
- (j) Landlord consents to a provision in any Leasehold Mortgage for an assignment of rents due to Tenant from sublessees to the holder thereof, effective upon any default under Leasehold Mortgage, and to a provision in the Leasehold Mortgage that the holder thereof in any action to foreclose the same shall be entitled to the appointment of a receiver.
- (k) Landlord shall have no obligation to deliver physical possession of the Premises to any Leasehold Mortgagee, or to its nominee. However, Landlord will, at the sole cost and expense of such Leasehold Mortgagee cooperate in the prosecution of summary proceedings to evict the Tenant then in Default

14.2 Leasehold Mortgagee's Rights on Tenant's Default.

- (a) If Tenant shall Default under any of the provisions of this Lease, each Leasehold Mortgagee shall have the right and period of time as Tenant to cure such Default, whether the same consists of the failure to pay Rent or the failure to perform any other obligation which Tenant is required to do or perform, and Landlord shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Tenant; provided, that any of the Designated Lenders after receiving notice in accordance with **Section 14.1** will have forty-five (45) days more than is given Tenant after notice to such Designated Lender, to remedy such default by Tenant.
- (b) Any Leasehold Mortgagee may become an owner of Tenant's interest under this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure. No Leasehold Mortgagee, however, shall become liable under the

provisions of this Lease unless and until such time as it becomes, and then only for as long as it remains, an owner of Tenant's interest under this Lease or operates as an owner under the terms of the Leasehold Mortgage. Any purchaser at a foreclosure sale, other than a Leasehold Mortgagee, shall assume all of Tenant's obligations under this Lease and such purchaser shall have no right with respect to the Premises unless it so assumes and delivers a duplicate of the assumption agreement (to be executed in due form for recording) within ten (10) days after such purchaser otherwise acquires Tenant's interest under this Lease.

14.3 Right to New Lease. In the event of termination of this Lease for any reason (including but not limited to any Default by Tenant), Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee (as reasonably determined by Landlord) requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original Term of this Lease, at the same Rent and upon the same terms, covenants and conditions herein contained; provided that

- (a) Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;
- (b) Such Leasehold Mortgagee shall pay to Landlord, at the time of the execution and delivery of said new lease, any and all sums which would at the time of the execution and delivery thereof be due under this Lease but for such termination, and in addition pay to Landlord any and all expenses, including reasonable attorneys' fees, court costs and disbursements incurred by Landlord in connection with any such Default and termination, as well as in connection with the execution and delivery of such new lease;
- (c) Such new lease shall provide that, with respect to each sublease which immediately prior to the termination of this Lease was superior to the lien of the Leasehold Mortgage held by the Leasehold Mortgagee who obtains such new lease, the Leasehold Mortgagee, as tenant under the new lease, shall be deemed to have recognized the sublessee pursuant to the terms of the sublease as though the sublease had never terminated but had continued in full force and effect after the termination of the term of this Lease, and to have assumed all of the obligations of the sublessor under the sublease accruing from and after the termination of this Lease,
- (d) Each sublessee of the Premises whose sublease was in force and effect immediately prior to termination of this Lease, and which did not expire of its own terms prior to the delivery of said new lease, shall attorn to the tenant under said new lease; and
- (e) Any new lease made in accordance with the provisions of this **Section 14.3** and the leasehold estate thereby created shall, subject to the same conditions contained in this Lease, continue to maintain the same priority as this Lease with regard to any then existing Leasehold Mortgage.

14.4 Leasehold Mortgagee; Further Assurances. Landlord and Tenant shall cooperate in including in this Lease, by suitable amendment from time to time, any provision that may

be reasonably requested by any proposed Leasehold Mortgagee which is a Designated Lender for the purpose of implementing the mortgagee protection provisions contained in this Lease by (i) allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease, and (ii) confirming the elimination of the ability of Tenant but not Landlord to modify, terminate, or waive this Lease or any of its provisions without the prior written approval of such Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any such amendment; provided, however, that any such amendment shall not in any way affect the Term or Rent under this Lease nor otherwise in any material respect adversely affect any rights or obligations of Landlord under this Lease; and, provided further, that any such amendment shall be subject to approval by Landlord's Town Council. Neither disapproval by Landlord's Town Council of such an amendment for any reason whatsoever, nor any delay by Landlord's Town Council of ninety (90) days or less (after Landlord's receipt of Tenant's written notice containing the specific provisions of each amendment requested) in deciding to approve or disapprove such an amendment (including the 30-day or other applicable period concerning the effective date of such an ordinance, and further including the effect of any referendum), shall result in any liability to Landlord or affect any time periods set forth in this Lease.

14.5 Leasehold Mortgage; Term and Obligations. No Leasehold Mortgage shall extend beyond the last day of the Term, any extended Term, or any termination of this Lease. Prior to the last day of the Term of the Lease, Tenant shall be obligated to and shall wholly and completely satisfy Tenant's obligations under each and every Leasehold Mortgage, including, but not limited to, fully paying to each and every Leasehold Mortgagee all principal and interest to be paid under such Leasehold Mortgage.

ARTICLE 15 EVENTS OF DEFAULT; REMEDIES

15.1 Events of Default. The occurrence of any of the following events shall be a default or breach of this Lease by Tenant (each a "Default" or "Event of Default"):

- (a) if Tenant fails to pay any Rent for more than fifteen (15) days after the same becomes due and payable; or
- (b) if Tenant fails to pay, when the same becomes due and payable, any Taxes or charges other than Rent which Tenant is required to pay under this Lease, and such failure continues for more than ten (10) days after written notice of such non-payment has been given by Landlord to Tenant; or
- (c) if Tenant fails to perform or comply with any other obligation of Tenant under this Lease, including without limitation the timely commencement or completion of the construction of the Improvements, and such failure shall continue for more than thirty (30) days after notice thereof has been given by Landlord to Tenant, and Tenant shall not, cure the same within such period; provided, that such period of thirty (30) days shall be extended by the number of additional days, if any, that the curing of such failure is delayed by reasons

beyond the reasonable control of Tenant, financial inability and economic market conditions excepted; or

- (d)** if Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation due to its bankrupt or insolvent financial status; or
- (e)** if, as a result of any proceeding against Tenant, a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Tenant or of or relating to all or substantially all of its property, or for the winding-up or liquidation of its affairs or for the supervision of the business or affairs of Tenant, shall have been entered, and such decree or order shall remain in force for a period of more than sixty (60) days.
- (f)** if tenant does not strictly adhere to the Hotel and Conference Center Development Plan or the Tenant Performance Schedule.

15.2 Remedies. Upon the occurrence of any Default, and after the expiration of any applicable cure periods, Landlord at Landlord's option, without notice or demand, may do any one or more of the following, in any order, successively or concurrently:

15.2.1 Continuation of Lease Without Reentry. Landlord may continue the Lease in full force and effect, without reentry, and may recover from Tenant, in one or more actions, all Rent and other sums due or coming due from Tenant, plus any added costs, expenses or damages caused by or arising out of Tenant's Default, and without any obligation of Landlord to reenter, relet, terminate or take other action.

15.2.2 Continuation of Lease With Reentry. Landlord may continue this Lease in full force and effect and reenter and take possession of the Premises, ejecting all persons from the Premises. Upon Landlord's reentry or demand to reenter, Tenant immediately shall surrender possession of the Premises to Landlord. Upon obtaining possession, Landlord shall attempt to relet the Premises using reasonable efforts to do so (but in no case being required to relet the Premises until all other available space has been leased or to spend any amount or undertake any effort more than is customary). On Landlord's reentry or demand to reenter, Tenant shall pay to Landlord all accrued Rent and other sums then due under this Lease. Thereafter, until termination or expiration of this Lease, Tenant shall be liable to Landlord for, and shall pay to Landlord, all Rent and other sums due under this Lease, offset by the amount, if any, of Landlord's net rental income from the reletting of the Premises, after deduction of all expenses of recovery of possession, of reletting, and of other amounts chargeable to Tenant under this Lease. The amounts so owed by Tenant shall be paid by Tenant to Landlord as billed or demanded from time to time, either prior to or after the termination or expiration of this Lease. If the net rental income to Landlord from reletting exceeds the amount of Tenant's Rent during any portion of

the remaining Lease Term, Landlord may retain the surplus, without interest, until the expiration or termination of this Lease for application against any subsequent deficiency. On termination or expiration of this Lease, Tenant shall remain liable for, and shall pay to Landlord on demand, any remaining deficiency by which the Rent and other sums for which Tenant is or becomes liable to Landlord under this Lease exceeds payments received by Landlord from Tenant and from any net rental income from reletting the Premises.

15.2.3 Termination of Lease. Landlord may terminate this Lease by written notice to Tenant of Landlord's election to do so, whether or not Landlord has previously elected to continue the Lease in effect, with or without reentry. Upon Landlord's notice of termination, Tenant immediately shall pay to Landlord the amount of all Rent and other sums due under this Lease to the date of termination. Also, Tenant shall pay Landlord, at Landlord's option, on demand, Landlord's prospective damages over the remaining Lease Term (as if the Lease had not been terminated) as a lump sum in an amount determined by Landlord which, so long as determined reasonably and in good faith, shall be conclusive, binding on both Parties and enforceable by any court of competent jurisdiction. The prospective damages shall be an amount equal to Landlord's calculation of the probable amount of the difference by which the Rent for the full Lease Term, plus all accrued and reasonably anticipated costs, damages and expenses for which the Tenant is or would become liable for under this Lease (including those arising out of Tenant's Default), will exceed all offsetting actual Rent received from Tenant, all actual and reasonably anticipatable net reletting income over the remaining Lease Term, and all security deposits and other credits, if any, to Tenant's account. The Parties agree that such lump-sum determination is a reasonable, appropriate and agreed-upon means of liquidating damages prior to the expiration of the period of the full Lease Term, that if Landlord elects such lump-sum settlement neither Landlord nor Tenant shall be entitled to any subsequent redetermination of damages over the remaining Lease Term, and that on the payment of the lump sum, Tenant shall be released of all liability for any claim of Landlord for additional damages arising over the remaining Lease Term.

15.2.4 Receiver. Landlord may have a receiver appointed to take possession of the Premises or to collect any Rents or profits derived from the Premises, or both. The receiver may, if necessary or convenient, conduct the business of Tenant then being carried on in the Premises. Neither the application for the appointment of a receiver nor the appointment of a receiver shall be construed as an election by Landlord to terminate this Lease unless notice of such termination is given by Landlord to Tenant.

15.2.5 Other Rights and Remedies Landlord may exercise any other rights Landlord may have under statute, regulation, common law, or generally in law or equity. Landlord may exercise any remedy without court action, or by one or more court actions, and in exercising any remedy may obtain partial relief without waiving its right to further relief. The exercise of any remedy by Landlord shall not waive Landlord's right to exercise any other remedy. The exercise of any remedy by Landlord shall not constitute an election of remedies to the exclusion of any other remedy.

15.2.6 Landlord's Expenses and Damages. Notwithstanding any other provision herein to the contrary, Landlord, in every case, shall be entitled to recover from Tenant all of Landlord's expenses, costs and damages arising out of any Event of Default, including, but not limited to, advertising, brokerage fees, clean-up, repair, alterations, refurbishing, refurbishing, custodial and security expenses, bookkeeping and accounting costs, attorneys' fees (whether or not suit is brought), and costs and expenses of litigation.

ARTICLE 16 NOTICES

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

If to Landlord:

Town of Payson
Town Manager's Office
303 North Beeline Highway
Payson, Arizona 85541

With a copy to:

Town of Payson
Town Attorney's Office
303 N. Beeline Highway
Payson, Arizona 85541

If to Tenant:

Hospitality Support Group, LLC
c/o Bruce Berris
4624 E. Cortez
Phoenix, AZ 85028

With a copy to:

or at such other place or to such other persons as any Party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two (72) hours after the postmark on the certified or registered mail, as the case may be

**ARTICLE 17
NO MERGER**

In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

**ARTICLE 18
SURRENDER OF PREMISES**

At the expiration of the Term of this Lease, or upon its earlier termination, Tenant shall surrender the Premises, including all Improvements and additions thereto and alterations thereof in good order, condition and repair (which for the Hotel shall be as determined by the maintenance standards and specifications promulgated by the Hotel Franchisor as defined in **Section 8.1** hereof), free of any debt or other encumbrances not approved by Landlord, and shall surrender all keys to the Premises to Landlord at the place then fixed for the payment of Rent and shall inform Landlord of all combinations on lock, safes and vaults, if any. Tenant at such time shall remove all of its Trade Fixtures and Personal Property therefrom and shall repair any damage to the Premises caused by such removal. Any such Trade Fixtures and Personal Property not so removed shall, at Landlord's option, become the exclusive property of Landlord or be disposed of by Landlord, at Tenant's cost and expense, without further notice to or demand upon Tenant. If the Premises shall not be surrendered as above set forth, Tenant shall indemnify, defend and hold harmless Landlord against loss or liability resulting from the delay by Tenant in so surrendering the Premises, including, without limitation any claim made by any succeeding occupant founded on such delay. All Property of Tenant not removed by the last day of the Term of this Lease shall be deemed abandoned. Tenant hereby appoints Landlord its agent to remove all such Trade Fixtures and Personal Property of Tenant from the Premises upon the expiration of the Term of this Lease or its earlier termination and to cause its transportation and storage for Tenant's benefit, all at the sole cost and risk of Tenant and Landlord shall not be liable for damage, theft, misappropriation or loss thereof and Landlord shall not be liable in any manner in respect thereto. Tenant shall pay all cost and expenses incurred by Landlord with respect to removal or storage of abandoned Trade Fixtures and Personal Property and with respect to restoring said Premises to good order, condition and repair. Tenant's obligations and covenants shall survive the expiration or other termination of this Lease.

**ARTICLE 19
TRADE FIXTURES AND PERSONAL PROPERTY**

19.1 Tenant's Property. All trade fixtures and personal property, including, without limitation, all furniture, furnishings and inventories now or hereafter maintained, installed or used in or about the Premises by Tenant (the "**Trade Fixtures and Personal Property**") shall remain

the property of Tenant and may be removed at any time during the Lease Term or within thirty (30) days after the expiration or earlier termination of this Lease. Notwithstanding the foregoing, Tenant shall have no right to remove any of the Trade Fixtures and Personal Property at any time that an Event of Default shall have occurred and is continuing, or if an event has occurred which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, or in the event that any such removal would cause damage to the Premises, unless, in such case, Tenant repairs any such damage and restores the damaged Improvements to substantially the same condition as existed prior to the removal of such Trade Fixtures and Personal Property.

19.2 Landlord's Lien Waiver. Upon request of Tenant or Tenant's permitted assignees or subtenants, Landlord shall execute and deliver any commercially reasonable consent or waiver form submitted by any vendors, landlords, chattel mortgagees or holders or owners of any Trade Fixtures and Personal Property (each a "**Third Party Claimant**") located or installed in the Premises by Tenant or any such permitted assignee or subtenant, provided that such consent or waiver form shall be limited to (i) Landlord's waiver in favor of such Third Party Claimant of any lien, claim, interest or other right superior to that of such Third Party Claimant in such Trade Fixtures and Personal Property; (ii) Landlord's acknowledgement that the Trade Fixtures and Personal Property covered by such consent or waiver form is personal property and is not to become part of the realty no matter how affixed thereto; and (iii) Landlord's acknowledgment that such personal property may be removed from the Premises by the applicable Third Party Claimant at any time, upon default by Tenant or the assignee or subtenant in accordance with the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord, subject to the Third Party Claimant at its cost repairing any damage and restoring the damaged Improvements to substantially the same condition as existed prior to the removal of such Trade Fixtures and Personal Property.

ARTICLE 20 ESTOPPEL CERTIFICATES

20.1 By Tenant. Tenant will execute, acknowledge and deliver to Landlord, within twenty (20) days of Landlord's written request, a certificate stating that:

- (a) this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect, as modified, and stating the modifications);
- (b) the dates, if any, to which Rent and other sums payable hereunder have been paid; and
- (c) no notice has been received by Tenant of any Default which has not been cured, except as otherwise specified in such certificate.

Any such certificate may be relied upon by Landlord and any permitted prospective transferee, deed of trust beneficiary, bondholder, holder of a certificate of participation, or mortgagee of Landlord's interest under this Lease.

20.2 By Landlord. Landlord will execute, acknowledge and deliver to Tenant or any permitted Leasehold Mortgagee, within thirty (30) days of Tenant's written request, a certificate stating that:

- (a) this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications);
- (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, and
- (c) whether or not, to the knowledge of Landlord, there then exists any Default under this Lease (and if so, specifying the same)

Any such certificate may be relied upon by Tenant and any permitted prospective Leasehold Mortgagee or permitted prospective assignee of Tenant's interest under this Lease.

ARTICLE 21 GENERAL PROVISIONS

21.1 Time of Essence. Time is of the essence of this Lease and of all of its parts and provisions.

21.2 Landlord's Access to Premises. Landlord and its agents, at all reasonable times and upon notice to Tenant, shall have free and full access to the Premises for the purposes of examining or inspecting the condition thereof, determining if Tenant is performing the covenants and agreements of this Lease, and posting such notices as Landlord may desire to protect the rights of Landlord, provided the exercise of such rights does not materially interfere with Tenant's use and enjoyment of the Premises.

21.3 Governing Law; Choice of Forum. This Lease shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Lease shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Gila (or, as may be appropriate, in the Justice Courts of Gila County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this **Section 21.3**.

21.4 Successors and Assigns. This Lease and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto

21.5 Waiver. No delay in exercising any right or remedy shall constitute a waiver there of, and no waiver by either Party of the breach of any of the terms, covenants or conditions of this Lease shall be construed as or held to be a waiver of any succeeding or preceding breach of the same or any other terms, covenants or conditions of this Lease, nor shall any waiver be

a continuing waiver. Except as expressly provided in this Lease, no waiver shall be binding unless executed in writing by the Party making the waiver.

21.6 Limited Severability. Landlord and Tenant each believes that the execution, delivery and performance of this Lease is in compliance with all Applicable Laws. However, in the unlikely event that any phrase, clause, sentence, paragraph, section, article or other portion of this Lease is declared void or unenforceable (or is construed as requiring Landlord to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, or Payson Town Code), such provision shall be deemed severed from this Lease and this Lease shall otherwise remain in full force and effect, provided that this Lease shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed lease (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic or otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Lease, as reformed.

21.7 Exhibits; Recitals. All Exhibits referred to herein or attached hereto are incorporated herein by this reference as though fully set forth herein. The Recitals at the beginning of this Lease are hereby incorporated herein as covenants.

21.8 Entire Agreement; Conflict. This Lease constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all other prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification, or amendment of this Lease shall be binding unless in writing and executed by the Parties.

21.9 Successor Laws. Each reference in this Agreement to a particular Town Ordinance, Arizona statute or other Applicable Laws shall include any successor Town ordinance, successor Arizona statute or successor Applicable Laws.

21.10 Memorandum of Land Lease The Parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) within ten (10) days of the final execution of this Lease, a Memorandum of Lease in substantially the form attached hereto as **Exhibit D**.

21.11 Negation of Partnership. The relationship of the Parties is solely that of landlord and tenant, and under no circumstances shall the Parties become or be deemed partners or joint venturers.

21.12 Time Periods. If the time for the performance of any obligation under this Lease expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday

21.13 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the Town shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official or employee participate in any decision relating to this

Lease which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein by reference. Said statute provides, among other things, that if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement is an employee or agent of any other party to the contract at any time while this Agreement or any extension hereof is in effect, this Agreement may be canceled.

21.14 Acknowledgement of Property. Landlord makes no representations or warranties of any kind or nature concerning the Property, including but not limited to compliance with zoning or building requirements, and will make no repairs to the Property. Tenant must satisfy itself of the value of the Property and Landlord makes no representations or warranties as to the value thereof or the suitability of the Property for Tenant's purposes. Tenant acknowledges that the Property is subject to recorded deed restrictions. Landlord makes no representations concerning and shall not be responsible or liable for any provision in such deed restrictions or their effect upon the Property or Tenant's intended or other use of the Property. Tenant must satisfy itself as to the suitability of the Property for Tenant's purposes. Tenant warrants that Tenant has reviewed and considered all of the recorded deed restrictions affecting the Property. Tenant agrees to accept the Property in the condition existing on the date of execution of this Lease and acknowledges its responsibility for satisfying itself as to the full condition of the Property and of law, regulation and ordinances affecting the Property, including but not limited to laws, regulations, and ordinances of the State of Arizona, the Town of Payson, and the Northern Gila County Sanitary District.

21.15 Dispute Resolution. Any dispute, controversy, claim, or cause of action arising out of or related to this Lease may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona. Both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum. Neither Party shall be entitled to recover from the other Party any of its attorneys' fees, costs, or expert witness fees incurred in any dispute or cause of action, but each party shall bear its own attorneys' fees incurred in any dispute, mediation, controversy, claim, or cause of action, without contribution from the other Party, whether the same is resolved through mediation, litigation in a court, or otherwise, and whether or not mediation or litigation occurs.

21.16 Headings and Counterparts. The headings of this Lease are for purposes of reference only and shall not limit or define the meaning of any provision of this Lease. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

21.17 Nonliability of Landlord Officials and Employees. No officer, employee, agent, or representative of Landlord shall be personally liable to Tenant or any successor in interest in the event of any default or breach by Landlord for any amount that may become due to Tenant or any successor in interest, or on any obligation incurred under the terms of or pursuant to this Lease.

21.18 Indemnification. Tenant agrees to indemnify, save, and hold harmless and at its sole cost defend Landlord and any of its departments, agencies, officers, or employees from any and all claims for costs, damages, or liability incurred or claimed to have been incurred by any of the above and from any other damage, cost or liability, including but not limited to attorneys' fees and costs of litigation, to any person or property whatsoever, which is caused by an activity, condition, or event arising out of the performance or nonperformance of any

provision of this Lease or arising in any other manner from this Lease, its subject matter, or the operations of the Property or premises, Tenant's servants, employees, volunteers, agents and/or contractors pursuant to this Lease. Such costs incurred by the Landlord or any of its departments, agencies, officers, or employees shall include, in the event of legal action, court costs, expenses of litigation, and attorneys' fees. When any of the above costs, damage, or liability occur as aforesaid, Tenant assumes the burden of proof that the activity, condition, or event did not cause such cost, damage, or liability and shall pay from Tenant's funds any judgment, arbitration, or other award entered against the Landlord, its departments, agencies, officers, or employees, or any of them without contribution therefrom.

21.19 Mediation. In the event that there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Landlord and Tenant. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the Landlord and Tenant shall each select one mediator, and the two selected by the Parties shall select a third mediator to create a panel. Each mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to hotel development and/or landlord tenant disputes. The cost of any such mediation shall be divided equally between the Landlord and the Tenant. The results of the mediation shall be non-binding upon the Parties, and any Party shall be free to initiate litigation subsequent to the moratorium.

21.20 Construction of Agreement. This Lease shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the Party drafting this Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Lease.

ARTICLE 22 REPRESENTATIONS

22.1 Town Representations As a material part of the consideration for this Lease, Landlord represents and warrants to the Tenant that:

22.1.1 Landlord has the full right, power and authorization to enter into and perform this Lease and each of Landlord's obligations and undertakings under this Lease, and the Landlord's execution, delivery and performance of this Lease have been duly authorized and agreed to in compliance with the requirements of the Payson Town Code

22.1.2 All consents and approvals necessary to the execution, delivery and performance of this Lease have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

22.1.3 Landlord will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Lease.

22.1.4 As of the Effective Date of this Lease, Landlord knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of

Landlord or its officials with respect to this lease which has not been disclosed in writing to the Tenant.

- 22.1.5 This Lease (and each undertaking of Landlord contained herein) constitutes a valid, binding and enforceable obligation of Landlord, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. The severability and reformation provisions of **Section ____** shall apply in the event of any successful challenge to this Lease.
- 22.1.6 The execution, delivery and performance of this Lease by Landlord is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which Landlord is a party or is otherwise subject.

22.2 Tenant Representations. As a material part of the consideration for this Lease, Tenant represents and warrants to Landlord that:

- 22.2.1 Tenant has the full right, power and authorization to enter into and perform this Lease and of the obligations and undertakings of Tenant under this Lease, and the execution, delivery and performance of this Lease by Tenant has been duly authorized and agreed to in compliance with the organizational documents of Tenant.
- 22.2.2 All consents and approvals necessary to the execution, delivery and performance of this Lease have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.
- 22.2.3 Tenant will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Lease.
- 22.2.4 As of the Effective Date of this Lease, Tenant knows of no litigation, proceeding or investigation pending or threatened against or affecting Tenant which could have a material adverse effect on Tenant's performance under this Lease which has not been disclosed in writing to Landlord.
- 22.2.5 This Lease (and each undertaking of Tenant contained herein) constitutes a valid, binding and enforceable obligation of Tenant enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Tenant will defend the validity and enforceability of this Lease in the event of any proceeding or litigation arising from its terms that names Tenant as a party or which challenges the authority of Tenant to enter into or perform any of its obligations hereunder and will cooperate with Landlord in connection with any other action by a third party in which Landlord is a party and the benefits of this Lease to Landlord are challenged. The severability and reformation provisions of **Section 21.6** shall apply in the event of any successful challenge to this Lease.
- 22.2.6 The execution, delivery and performance of this Lease by Tenant is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Tenant is a party or to which Tenant is otherwise subject.
- 22.2.7 Tenant has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Lease other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys
- 22.2.8 Tenant has been assisted by counsel of its own choosing in connection with the preparation and execution of this Lease.

22.2.9 Actions. All actions on the part of Tenant which are required for the execution, delivery and performance by Tenant of this Lease have been duly and effectively taken.

22.2.10 Information. There is no material information or document not disclosed or provided by Tenant to Landlord directly or indirectly relating to the Lease or use of the Property or Premises by Tenant.

22.2.11 Authority of Tenant. Tenant has full power and authority to enter into and to perform its obligations under this Lease. The persons executing this Lease on behalf of Tenant have full power and authority to do so and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transaction contemplated hereby. Tenant has all necessary power and authority to lease its properties and to conduct its business as now owned and conducted, and as contemplated to be owned and conducted hereunder by Tenant.

22.2.12 Bankruptcy. There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debt or relief laws which have been filed by Tenant or contemplated by Tenant or are pending in current judicial or administrative proceedings against Tenant.

22.2.13 Nonreliance Upon Adjacent Facilities. Tenant acknowledges and represents that Tenant has no right to rely, and is not relying upon, revenue or activities associated with or arising from the operation of adjacent or affiliated facilities or activities, specifically including, but not limited to, the Landlord's Event Center and the Tonto Apache Tribe's Mazatzal Casino and hotel, for any purpose, including, but not limited to, revenue projections, the entry into this Lease, or the construction and operation of the Hotel and Conference Center.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease on the date and year first written above.

ATTEST by:

Town Clerk

LANDLORD:

TOWN OF PAYSON, a municipal corporation

By: _____

Name: _____

Title. Town Manager

APPROVED AS TO FORM:

Town Attorney

TENANT

HOSPITALITY SUPPORT GROUP, LLC,
an Arizona limited liability company

By: _____
Name: _____
Title: _____

Exhibit A

Legal Description of the Land

LEGAL DESCRIPTION
OF
THE HILLSIDE PORTION
OF THE PAYSON EVENT CENTER PROPERTY

A parcel of property located in the South One-Half of Section 9, T10N, R10E, G&SRM, Gila County, Arizona more particularly described as follows:

Commencing at the SW Corner of Section 9, T10N, R10E, G&SRM, Gila County, Arizona;

THENCE, S 89°43'06"E along the south line of said Section 9 a distance of 1,971.25 feet;

THENCE, N 00°02'34" E, 988.70 feet;

THENCE, S 85°57'26"E, 72.91 feet to the TRUE POINT OF BEGINNING, Said point being on a curve concave northeasterly whose radius point bears N 64°14'19"E a distance of 460.00 feet;

THENCE, northwesterly along the arc of said curve through a central angle of 21°48'16" a distance of 175.06 feet to a point of tangency;

THENCE, N 00°02'34" E, 41.62 feet to a point of curvature of a circular curve concave southwesterly with a radius of 520.00 feet;

THENCE, northwesterly along the arc of said curve through a central angle of 22°37'12" a distance of 205.29 feet to a point of non-tangency;

THENCE, N 00°02'34"E, 552.71 feet,

THENCE, S 89°51'56" E, 531.20 feet to a point of curvature of a circular curve concave northwesterly with a radius of 350.00 feet;

THENCE, northeasterly along the arc of said curve through a central angle of 23°53'42" a distance of 145.97 feet to a point of non-tangency;

THENCE, S 89°51'37"E, 368.37 feet;

THENCE, S 43°01'53"W, 78.54 feet;

THENCE, S 37°54'11"W, 93.46 feet;

THENCE, S 09°48'31"W, 61.13 feet;

THENCE, S 67°21'13"W, 281.49 feet;

THENCE, S 31°54'17"W, 117.62 feet;

THENCE, S 43°00'59"W, 212.76 feet;

THENCE, S 26°23'48"W, 64.10 feet;

THENCE, S 83°42'19"W, 70.56 feet;

THENCE, S 42°39'35"W, 182.98 feet;

THENCE, S 51°10'43"W, 149.97 feet;

THENCE, S 16°04'34"W, 148.94 feet to the TRUE POINT OF BEGINNING.

The above described parcel containing 10.42 acres, more or less.

Revised 10-9-07

Exhibit A-1

Approximate Depiction of the Land

(In the event of a conflict between the Legal Description of the Land set forth in Exhibit “A” and the Approximate Depiction of the Land set forth in this Exhibit “A-1”, the legal description set forth in Exhibit “A” shall prevail.)

EXHIBIT B

Bond Requirements

Prior to the commencement of any construction, Tenant shall obtain and furnish Landlord with duplicate originals of the following payment, performance and completion bonds (the "Bonds"):

(a) Mechanics' and materialmen's liens payment bond in accordance with Arizona Revised Statutes § 33-1003, or successor statute, as now or hereafter amended, equal to at least one hundred percent (100%) of all costs of the construction for which such liens could be filed.

(b) Performance and completion bond equal to at least one hundred percent (100%) of the costs of all improvements to be constructed or installed.

Each of the Bonds shall name the Landlord as an obligee or as a co-obligee along with any permitted Leasehold Mortgagee lending funds for such construction. The term of each of the Bonds shall include a one (1) year guaranty period which commences upon completion and final acceptance of the improvements to be constructed. All Bonds shall be executed by sureties licensed to conduct business in the State of Arizona and named in the then current list of sureties holding certificates of authority as acceptable sureties on federal bonds. All Bonds signed by an agent must be accompanied by a certified copy of the agent's authority to so act. Each of the Bonds shall include an automatic renewal provision for an additional one (1) year period unless written notice of intent to terminate such Bond is provided to the Landlord no later than thirty (30) days prior to the expiration of such Bond. If any of the Bonds expires or is terminated prior to the completion of the construction, or if the surety of any of the Bonds is declared bankrupt or becomes insolvent or its right to do business in Arizona is terminated prior to the completion of construction, Tenant shall, within five (5) days thereafter, substitute other Bonds and/or sureties reasonably acceptable to the Town.

EXHIBIT C

Insurance Requirements

Tenant (the term "Tenant" as used in this Insurance Exhibit shall include Tenant's sub-tenants or sub-lessees) shall procure and maintain for the Term of the Lease insurance against claims for injury to persons or damage to property which may arise from or in connection with this Lease by Tenant and Tenant's agents, representatives, employees, contractors.

The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that might arise out of this Lease and Tenant is free to purchase such additional insurance as may be determined necessary. The limits set forth below shall be adjusted every five (5) years by the percentage of change in the Consumer Price Index (the "CPI") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits for any year, the CPI for the month October in the preceding year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States Town Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, shall be compared with the corresponding index number for the month of October one (1) year earlier.

A. Minimum Scope and Limits of Insurance: Tenant shall provide coverage at least as broad with limits of liability not less than those listed below.

Commercial General Liability – Occurrence Form

General Aggregate	\$5,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$50,000 5,000,000 or cost of replacement, whichever is greater
Medical Expenses (Any one person)	\$50,000

Automobile Liability – Any Auto or Owned, Hired and Non-Owned Vehicles

Combined Single Limit Per Accident for Bodily Injury	\$1,000,000
--	-------------

Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$500,000
Disease – Each Employee	\$500,000
Disease – Policy Limit	\$500,000

Garage Keeper's Legal Liability

Coverage	\$50,000
----------	----------

Liquor Liability

This coverage should extend to the entire premises \$50,000 ~~1,000,000~~

Fire Damage

Coverage \$1,000,000 ~~5,000,000~~ for
~~cost of replacement, whichever is greater~~

B. Self-Insured Retentions/Deductibles: Any self-insured retentions and deductibles greater than \$10,000 must be declared to and approved by Landlord.

C. Other Insurance Requirements: The policies are to contain, or be endorsed to contain, the following provisions:

Commercial General Liability and Automobile Liability Coverages:

Landlord, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Lease and activities performed by or on behalf of Tenant including products and completed operations of Tenant; and automobiles owned, lease, hired, or borrowed by Tenant.

Tenant's insurance shall contain broad form contractual liability coverage.

Landlord, its officers, officials, agents, and employees shall be additional insureds to the full limits of liability purchased by Tenant even if those limits of liability are in excess of those required by this Lease. The commercial general liability additional insured endorsement will be at least as broad as the Insurance Services Office, Inc. (ISO) additional insured form B CG 20 10 1185

Tenant's insurance coverage shall be primary insurance with respect to Landlord, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by Landlord, its officers, officials, agents, and employees shall be in excess of the coverage provided by Tenant and shall not contribute to it; nor shall any such insurance or self-insurance maintained by Landlord be available for contribution for any claim made against Tenant.

Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.

The policies shall contain a waiver of subrogation against Landlord, its officers, officials, agents, and employees for losses arising from Tenant's operations, occupancy and use of the Premises that are subject of this Lease. At any time that Tenant is constructing any Improvement upon the Property, Tenant shall provide a "Builder's Risk Policy" to cover the Property in the course of construction. Such insurance shall be written on Inland Marine forms, on an "All Claims" basis and shall apply to property on and off the construction site. The estimated completion value of the Property shall be the limit of coverage.

Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against Landlord, its officers, officials, agents, and employees for losses arising from Tenant's operations, occupancy, and use of the Premises that are the subject of this Lease. Tenant shall provide a "Leased Employee Endorsement" on all workers' compensation policies.

D. Notice of Cancellation: Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Landlord. Such notice shall be sent directly to Landlord's Town Manager, 303 North Beeline Highway, Payson, Arizona, 85541 and shall be sent by certified mail, return receipt requested.

E. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect Tenant from potential insurer insolvency.

F. Verification of Coverage: Tenant shall furnish Landlord with original certificates of insurance (ACCORD form or equivalent approved by Landlord) as required by this Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

All certificates are to be received and approved by Landlord before the Lease Term commences. Each insurance policy required by this Lease must be in effect at or prior to the commencement of the Lease Term and must remain in effect for the duration of the Lease Term. Failure to maintain the insurance policies as required by this Lease or to provide timely evidence of renewal will be considered a material breach of the Lease.

All certificates required by this Insurance Exhibit shall be sent directly to Landlord's Town Manager, 303 North Beeline Highway, Payson, Arizona, 85541. Landlord's Town Department and the lease agreement number and location description are to be noted on the certificate of insurance. Landlord reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Insurance Exhibit at any time.

G. Approval: Any modification or variation from the insurance requirements in Insurance Exhibit must have prior approval from Landlord's Town Attorney's Office whose decision shall be final. Such action will not require formal contract amendment, but may be made by administrative action.

EXHIBIT D

MEMORANDUM OF LEASE

DATE: _____, 2007 (“Execution Date”)

PARTIES: TOWN OF PAYSON, ARIZONA, an Arizona municipal corporation
 (“Landlord”)

HOSPITALITY SUPPORT GROUP, LLC, an Arizona limited liability company
 (“Tenant”)

RECITALS:

A. Landlord and Tenant are parties to that certain Payson Events and Conference Center Development - First Phase Land Lease (“Lease”), dated as of _____, 2007, for the lease of certain land described in Exhibit A attached hereto and made a part hereof, together with all building(s) and other improvements now or hereafter constructed thereon, along with fixtures, furnishings and equipment therein, together with all rights and privileges appurtenant thereto and all future additions thereto or alterations and replacements thereof (collectively, the “Premises”).

B. This Memorandum of Lease is now executed and entered into for the purpose of recording the same and thereby giving notice of the Lease and this Memorandum of Lease.

COVENANTS:

For valuable consideration, receipt of which is hereby acknowledged, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, upon all of the terms, covenants and provisions contained in the Lease and in this Memorandum of Lease, including without limitation the following:

1. Term. The term of the Lease and this Memorandum of Lease shall commence as of _____, 2007 and end at midnight on _____, 2042, subject to the terms and conditions set forth in the Lease

2. Rent. Tenant shall pay to Landlord rents and other amounts as set forth in the Lease.

3. Lease. All of the covenants, conditions, defined terms and provisions of the Lease are, by this reference to the Lease, incorporated herein and made a part hereof, the same as

though expressly set forth herein. If a conflict arises between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall prevail.

4. Quit Claim. Tenant, its successors and assigns, shall execute, acknowledge and deliver to Landlord in recordable form a Quit Claim Deed of the Premises within ten (10) days after the expiration or earlier termination of the Lease and this Memorandum of Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this instrument to be effective as of the day and year first written above.

ATTEST.

LANDLORD

By _____
Town Clerk

TOWN OF PAYSON, a municipal corporation

APPROVED AS TO FORM:

By _____
Name: _____
Title. Town Manager

Town Attorney

TENANT:

HOSPITALITY SUPPORT GROUP, LLC,
an Arizona limited liability company

By _____
Name: _____
Title: _____

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by _____, Town Manager of the Town of Payson, who acknowledged that he/she signed the foregoing instrument on behalf of the Town.

Notary Public

My commission expires:

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by _____, Manager of Hospitality Support Group, L.L.C., an Arizona limited liability company, who acknowledged that he signed the foregoing instrument on behalf of the company.

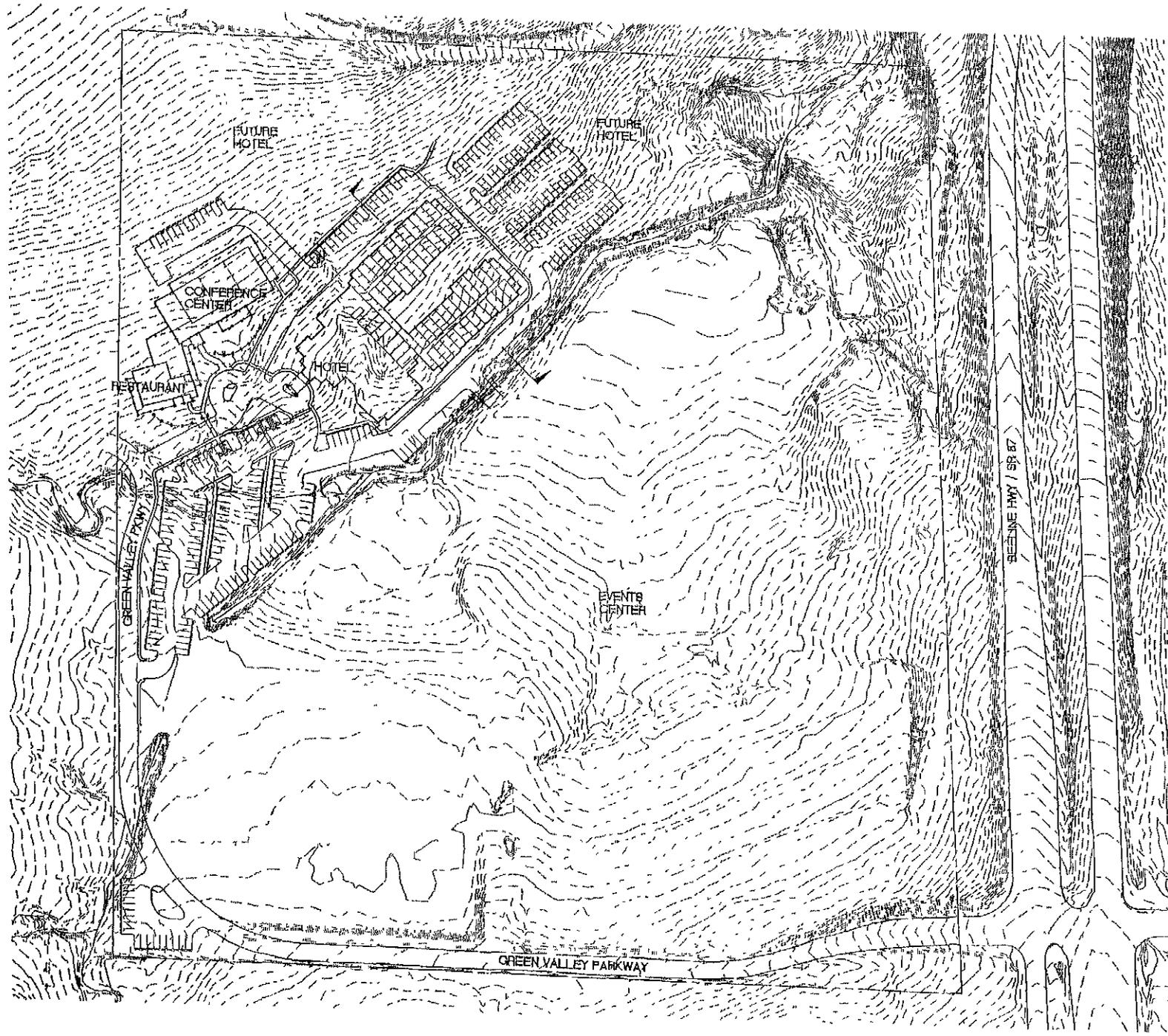
Notary Public

My commission expires:

Exhibit E

Concept Site Plan

The Concept Site Plan sets forth the scope of development for the entire Premises, including depicting the types of basic land uses, buildings and structures on the Property. The prior Conceptual Plan developed by the Town and illustrated in Exhibit J attached to this Lease is a general manifestation of a possible development that could be, with refinement, transferred to the Premises. The Concept Site Plan is a reasonably detailed plan of development for the Property and is to be submitted to the Town for its approval prior to the execution of this Lease.



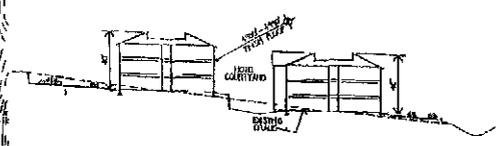
PAYSON HOTEL and CONFERENCE CENTER CONCEPTUAL SITE PLAN

SITE DATA

AREA 12 acres ±
ELEVATION Varies 4927'± to 5004'±

FEATURES

- HOTEL/CONFERENCE CENTER
- 150 Room Hotel
- Conference Center
- Restaurant
- 250 Paved Parking Spaces



HOTEL SITE SECTION
0" = 40'

OCTOBER 16, 2007

Exhibit F

Tenant Performance Schedule

Tenant shall obtain or complete each of the following on or before the respective following dates:

1. Compliance with the requirements of Exhibit C: 12/1/07
2. Completion of arrangements for the providing of utilities, including provisions for extension of utility lines and provision for utility infrastructure and payment of development fees for, among others, water and sewer service: 3/1/08
3. Compliance with requirements of Exhibit K, Conditions of Conditional use permit. 3/1/08
4. Completion of financing arrangements and submittal to Town of Payson for approval: 6/1/08
5. Procurement of building permits: 11/1/08
6. Commencement of Construction: 11/15/08
7. Completion of Construction: 1/15/10
8. Certificate of Occupancy: 2/1/10

Exhibit G

Deed and Bill of Sale for Improvements

(to be supplied by Town)

Exhibit H

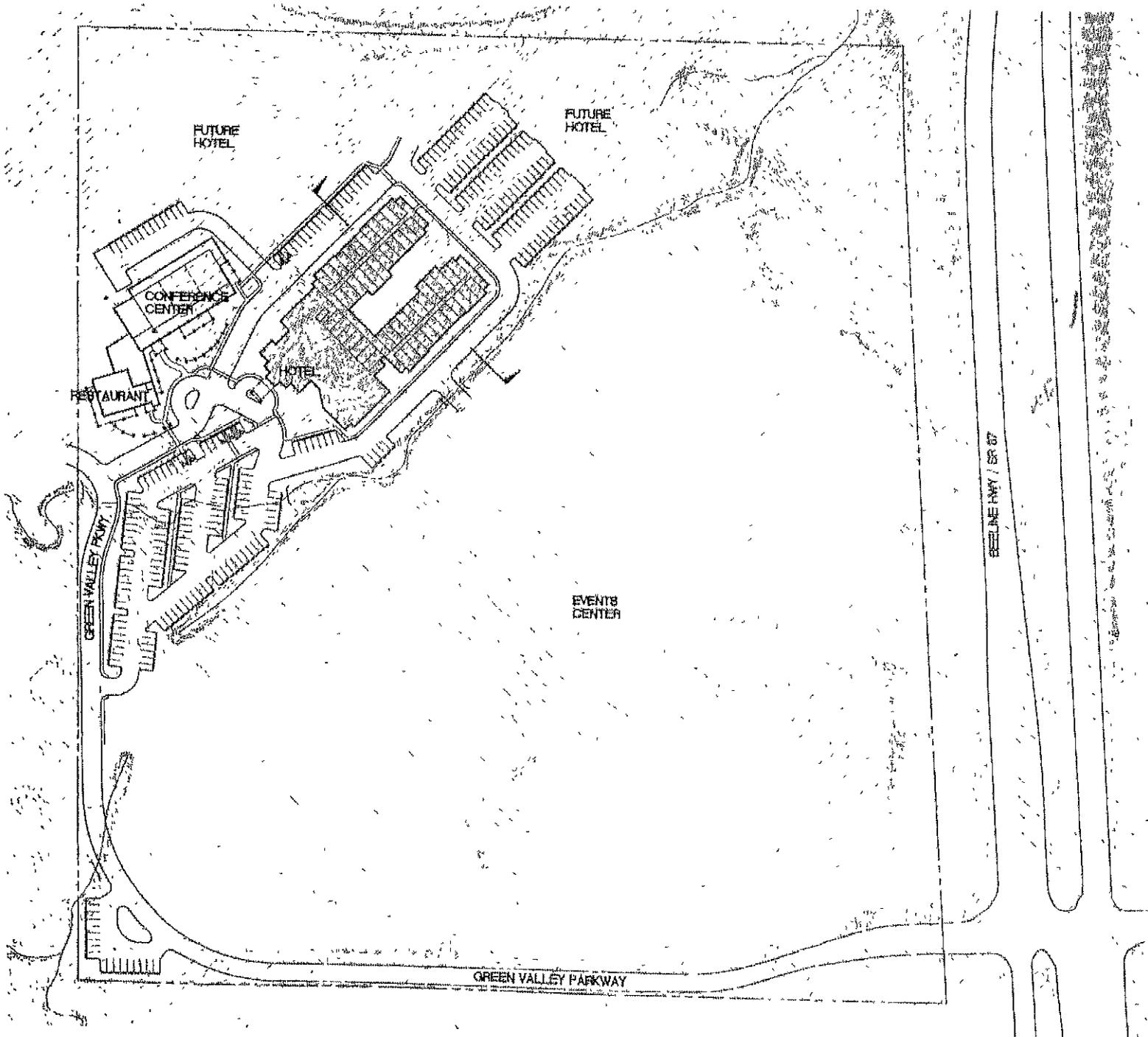
Hotel and Conference Center Development Plan

(Description by narrative and drawing of the plan for how the Hotel and Conference Center will be designed and built upon the Property)

The general design strategy is to create a destination that welcomes families, groups of all kinds, and becomes the leading hospitality attraction in the entire Rim country. The key design criteria includes:

- **General Appearance**
 - Highway presence
 - Entry walls on Beeline Highway
 - Appealing landscape
 - Goal is 100% positive image from highway
 - General comment: The Matazel Casino sets the example of a poorly designed highway image and complete lack of landscaping. This project will show the opposite end of the design spectrum.
 - Arrival
 - Entry from Green Valley Parkway
 - Entry walls from Green Valley
 - Consistent landscape appearance
 - Consistent lighting appearance
 - Parking
 - There are 250 parking spaces on the hotel site
 - There will be a shared parking arrangement with the Event Center
- **1884 Restaurant**
 - 1884 is the personality of the property
 - Friendly eating and drinking atmosphere for Payson area residents
 - Two story building
 - Great views from the dining level (2nd story)
 - Rustic saloon on first floor
 - Casual atmosphere
 - Large outdoor patio
 - 1884 is visible from the Beeline Highway and is the prominent building as guests enter the property from Green Valley Parkway
 - The restaurant is positioned to give the appearance that it is a free standing building
 - The restaurant shares a common kitchen and “back of the house” area with the Conference Center
- **Conference Center**
 - Banquet and Meeting function areas
 - Main Ballroom—6,000 SF
 - Pre-function—+/- 1,500 SF of indoor space

- Hotel function space-- +/- 1,500 SF of general use space in the Hotel
- Outdoor
 - +/- 1,500 SF Patio in front of the Conference Center
 - Potential Steak Fry area behind the conference center on the hill.
- The general design is to create state of the art facilities
 - Chain design standards
 - Excellent ceiling height
 - Full technology package
- **Hotel**—please refer to Exhibit I



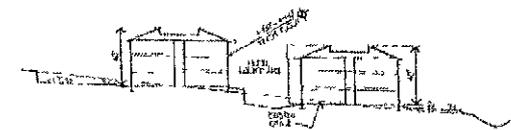
PAYSON HOTEL and CONFERENCE CENTER CONCEPTUAL SITE PLAN

SITE DATA

ARFA, 12 acres ±
ELEVATION Varies 4427' to 5004' ±

FEATURES

- HOTEL/CONFERENCE CENTER
- 150 Room Hotel
- Conference Center
- Restaurant
- 250 Paved Parking Spaces



HOTEL SITE SECTION
OVERALL 140'

OCTOBER 15, 2007
OVERALL 110'

Exhibit I

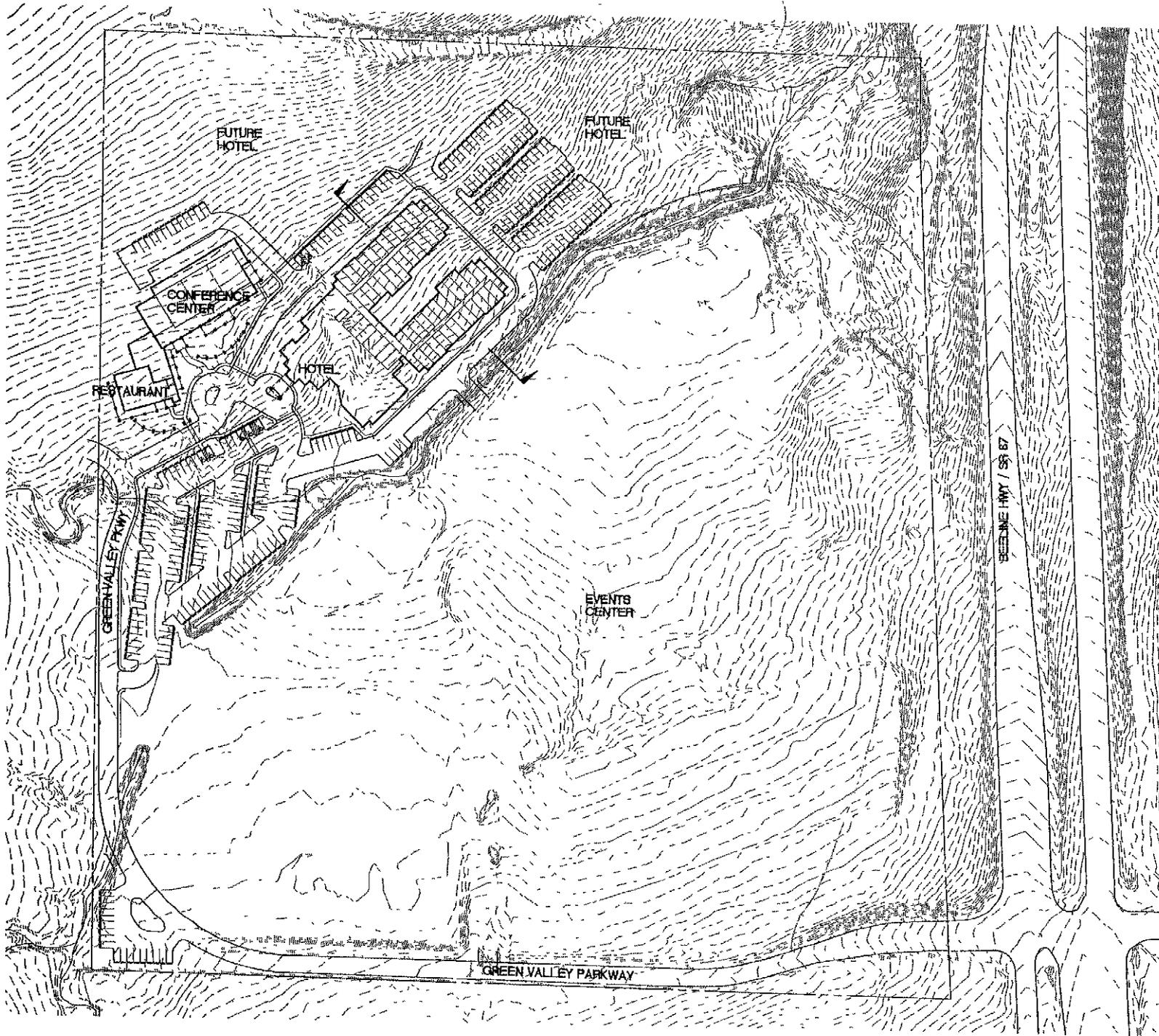
Hotel Site Plan

(Description by narrative and drawing of the layout and spatial relationship to each other of the component parts of the Hotel)

COMPONENT PARTS OF THE HOTEL

- Built to national chain standards “like” a Hilton Garden Inn
- Total Hotel is +/- 70,000 square feet
- Frame construction
- **Guestrooms**
 - +/- 60,000 square feet
 - Three (3) stories
 - Interior guestroom corridors
 - +/- 55% single king bed configuration
 - +/- 35% double queen bed configuration
 - +/- 10% suites
 - Small suite
 - Larger suite made from two guestroom footprint
 - State of the art
 - HD TV
 - Working desk with full technology access
- **Public Space**
 - +/- 10,000 square feet
 - Reception and Check In
 - Self-service snack/gift/sundry shop
 - Café and Lobby Bar
 - Breakfast and lunch (as necessary)
 - Lobby bar for those that do not want to visit 1884 Restaurant
 - +/- 2,000 square feet of meeting/banquet space
 - Business Center
 - Workout Center
 - Indoor Pool
 - Hotel Operations
 - Front Desk
 - Housekeeping and Laundry
 - Engineering support
 - Personnel Lounge
- **Arrival and Entry**

Guests will notice a pleasant sense of arrival starting at the turn-off onto the property from Green Valley Parkway. There will be an upscale landscaping plan for the entire site supporting the goal of having the best hotel in the entire Rim country.



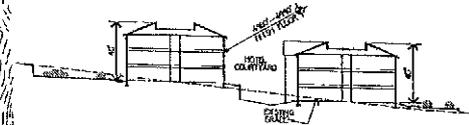
PAYSON HOTEL and CONFERENCE CENTER CONCEPTUAL SITE PLAN

SITE DATA

AREA 12 acres ±
ELEVATION. Varies 4927'± to 5004'±

FEATURES

- HOTEL/CONFERENCE CENTER
- 150 Room Hotel
- Conference Center
- Restaurant
- 250 Paved Parking Spaces



HOTEL SITE SECTION
08.10.07.40'

OCTOBER 18, 2007
08.10.07.40'

Acanthus - Architecture & Planning
P.O. Box 111111, Payson, UT 84651
409.475.1111

Exhibit J

Conceptual Plan

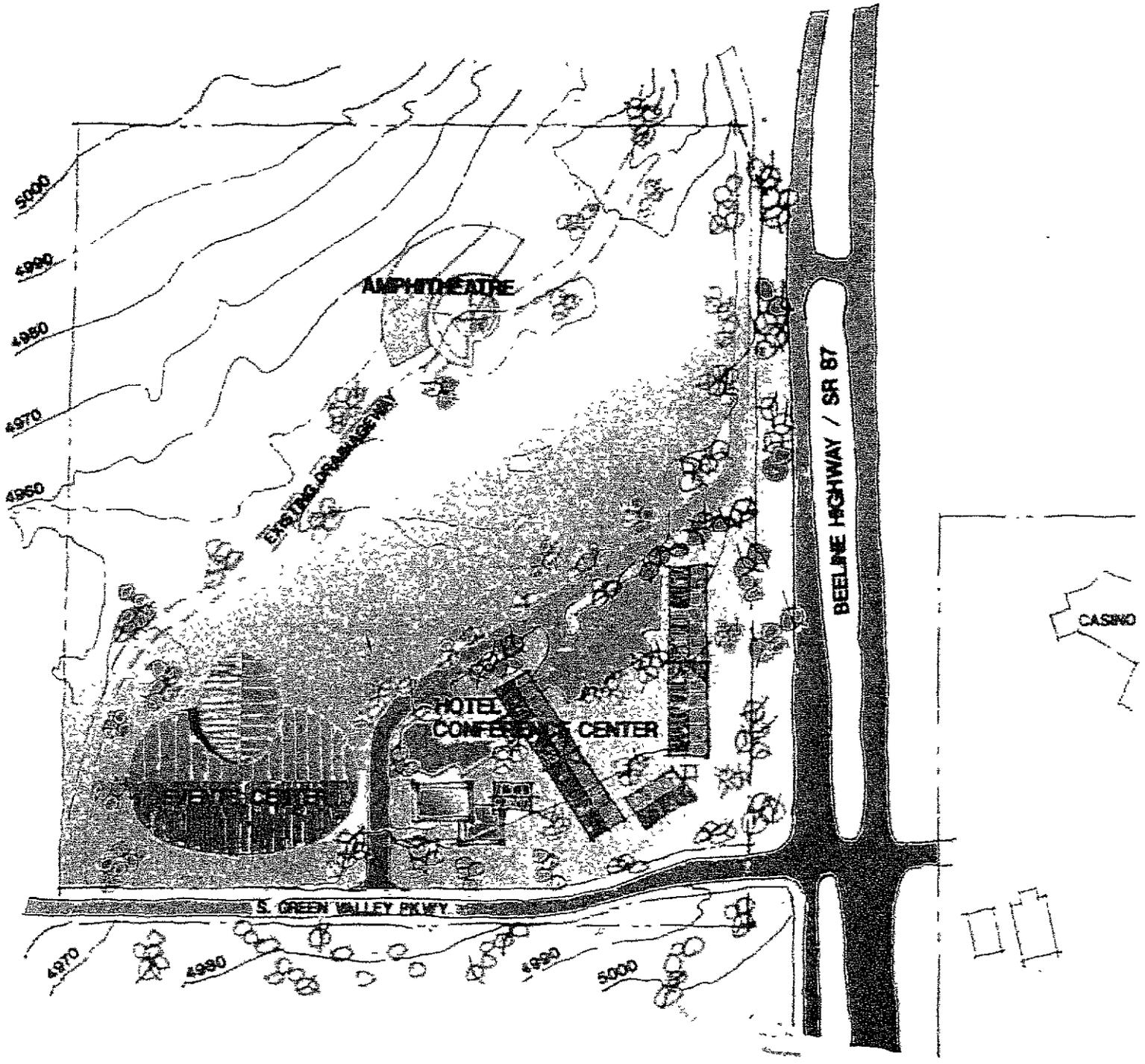
(The plan for the Property originally put forward by the Town)

The attached concept plan projects both the original concept by the Town and the concept as submitted by HSG in the RFQ Response.

Components:

Component	Developed by	Operated by
Hotel RFQ—up to 200 units HSG response—150 units	HSG	HSG
Conference Center RFQ—no specific size HSG—6,000 sf main room	HSG	HSG
Restaurant RFQ—none mentioned HSG—1882 Restaurant	HSG <i>NOT PART OF ORIGINAL RFQ</i>	HSG
Event Center RFQ—Improve for multi- events At a minimum cover Relocate if necessary HSG—improvements per RFQ	HSG	HSG in a partnership with the Town (Recreation Department)
Amphitheater RFQ—suggested HSG—Would look at possibility	HSG	HSG in a partnership with the Town (Recreation Department)
Site 36 Acres in Lease	HSG	HSG

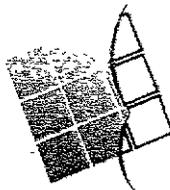
Ultimately the Town and HSG agreed that the Town would move forward with re-development of the Event Center and HSG would move forward with the Hospitality components on the +/-10 acres of hillside land.



CONCEPTUAL SITE PLAN



HOSPITALITY SUPPORT GROUP



arris design group, inc.
architecture and planning

EXHIBIT K

Conditions of Conditional Use Permit

NOTICE OF ACTION

September 11, 2007

Hospitality Support Group
Attn: Bruce Berres
4624 E. Cortez
Phoenix, AZ 85028

Re: CUP-162-07, Conditional Use Permit - 1400 S. Beeline Hwy - Hotel/Conference Center

Dear Mr. Berres:

This letter serves to inform you that the Planning and Zoning Commission approved the conditional use permit (CUP-162-07) for 1400 S. Beeline Hwy on September 10, 2007, subject to the following conditions:

1. The use permit shall be valid if, within one year from the date of approval, all necessary building permits have been issued to allow commencement of the conditional use.
2. Development shall be in substantial conformance with the site plan submitted to staff, dated August 23, 2007.
3. The length of this conditional use permit shall run concurrent with the use of this property. Expansion of the approved use, changes in use, or additional uses shall be subject to review and approval by the Planning and Zoning Commission if not expressly permitted in the R-3 or C-2 zoning district.
4. Development shall be subject to approval by the Design Review Board.
5. The developer shall be responsible for extending any needed utility lines from their present location to the site.
6. Developer shall be required to construct a water booster station to supply adequate pressure to development above the 4980' elevation.
7. The legal definition as provided in the lease agreement shall be modified to include the portion of the 40' exception along the west property line upon which the restaurant is encroaching.
8. The alignment of Green Valley Parkway at the north end of the proposed development needs to be reconfigured so that future traffic on Green Valley Parkway can be shifted to the north-west with the hotel traffic turning off

9. Green Valley Parkway shall be constructed as at least half street improvements (24' wide pavement with curb, gutter and sidewalk) from the southwest corner of the event center property to its northern terminus.
10. All driveways for two-way traffic must be at least 24' wide and all parking stalls must be at least 9' x 19'.
11. Storm water detention shall be provided in accordance with the Town's requirements. If the Town of Payson purchases property for a regional detention basin adjacent to this property, the developer may use that property to meet his storm water detention needs. If the developer uses this option, he will reimburse the Town for a portion of the land cost (approximately \$75,000 to \$80,000) and shall be responsible for the cost of improvements to provide the required storm water detention volume for the Hotel Conference Center.
12. Engineered paving, grading and drainage plans prepared by an Arizona registered professional shall be required.
13. Development shall comply with all applicable town codes in effect at the time of building permit application.

Note: Approval or disapproval of a conditional use permit application is subject to a 30-day appeal period.

If you have any questions, please feel free to contact me at your convenience.

Sincerely,

Jerry Owen
Community Development Director

cc: Mayor and Council
Fred Carpenter, Town Manager
LaRon Garrett, Town Engineer
Ralph Bossert, Tetra Tech