

## HOTEL DEVELOPMENT INCENTIVE AGREEMENT

This Hotel Development Incentive Agreement ("Agreement"), dated for reference purposes only as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_\_, is by and between THE CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California ("City"), and BESPOKE HOSPITALITY, LLC, a Delaware limited liability company, its permitted successors and assigns ("Developer"). City and Developer are also sometimes referred to individually as a "Party" and together as the "Parties".

### RECITALS

This Agreement is made with reference to the following facts:

A. Pursuant to that certain Lease Agreement between Developer and The Hearst Corporation, a Delaware corporation ("Landlord"), dated March 26, 2024 (the "Lease"), Developer has a leasehold interest in the real property known as 5 Third Street and 17-29 Third Street, also known as APN No. 3707-057 and further described on Exhibit A attached hereto (the "Property"). The term of the Lease commenced on March 26, 2024, and is currently set to expire on March 26, 2089 (unless extended by Developer pursuant to the terms of the Lease).

B. The Property is currently improved with three buildings that share an internal connection: (i) a 13-story mixed-use office building that was constructed in 1911 by William Randolph Hearst as the headquarters for the San Francisco Examiner newspaper, (ii) an adjacent eight-story commercial building, and (iii) an adjacent three-story commercial building. The three buildings, which are collectively known as the "Hearst Building", have an approximately 74% vacancy rate. The Hearst Building is designated as a "Significant Building: Category 1" under Article 11 of the Planning Code, which means that the building is judged to be individually important and have excellent or very good architectural design for historic preservation purposes.

C. On June 27, 2017, Landlord submitted development applications to the Planning Department for a proposal to rehabilitate and convert the Hearst Building to consist of the following (collectively, the "Project"): (i) a mixed-use hotel with a ground floor lobby and up to 170 guest rooms located on the 2<sup>nd</sup> through 12<sup>th</sup> floors (with the portion of the Hearst Building used for a hotel being the "Hotel" and the Hotel portion of the Property being the "Hotel Site"), (ii) modifications to the rooftop to include new event space and a rooftop bar and patio, (iii) 5,920 square feet of office space, (iv) approximately 11,393 square feet of retail space, (iv) approximately 4,005 square feet of restaurant/bar uses, (v) the rehabilitation and repair of the Hearst Building's historic façade cladding, cast-iron storefront surrounds, and window elements, (vi) seismic and structural building system upgrades, and (vii) retention of and minor upgrades to the publicly accessible ground-floor lobby that was designed by Julia Morgan.

D. On March 5, 2019, the Planning Department issued a Final Mitigated Negative Declaration ("FMND") for the Project pursuant to the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) ("CEQA"). The FMND complies with CEQA, the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*), and Chapter 31 of the San Francisco Administrative Code.

E. On March 20, 2019, the City's Historic Preservation Commission approved, through Motion No. 0372, a Major Permit to Alter under Article 11 of the Planning Code for the Project's proposed modifications to the Hearst Building.

F. On April 25, 2019, the City's Planning Commission approved, through Motion Nos. 20436 and 20437, a Downtown Project Authorization and Conditional Use Authorization for the Project (as amended, the "**Approvals**"). Due to the COVID-19 pandemic, and pursuant to a Letter of Determination issued by the Zoning Administrator on March 16, 2021 (Planning Department Case No. 2021-001320OTH), the term of the Approvals was initially extended by 364 days until April 24, 2023. On March 2, 2023, the Planning Commission approved Motion Nos. 21262 and 21263, further extending the term of the Approvals until April 24, 2026.

G. Following the COVID-19 pandemic and the shift toward remote work, the demand for office space in San Francisco has declined and commercial vacancy rates have increased. These impacts persist even as public health threats have waned, and are particularly acute in the San Francisco's downtown neighborhoods. Between the first quarter of 2019 and the first quarter of 2024, downtown's office sector experienced a fivefold increase in the total vacancy rate, and high vacancy rates persist.

H. Downtown-based businesses have historically generated nearly half of the City's sales tax revenue and ninety-five percent (95%) of the City's business tax revenue. This revenue funds many key services such as public safety, cleaning, open space, and transportation. Downtown's high commercial vacancy rates and consequent reduction in office workers and foot traffic have adversely impacted both downtown and other sectors of San Francisco's economy, including retail and small business, and more broadly has impacted use and activation of downtown public space, transportation, and public safety.

I. To address the high downtown commercial vacancy rates and the resulting impacts on the larger economy, the City approved a variety of programs to incentivize the conversion of downtown's commercial properties to housing, including waivers from inclusionary housing requirements, impact and development fees, and certain Planning Code requirements and taking actions to create a tax increment financing district, and San Francisco voters approved a real estate transfer tax exemption that applies to those conversions (collectively, the "**Downtown Adaptive Reuse Programs**").

J. The conversion of the Hearst Building's commercial space to hotel use would, similar to the Downtown Adaptive Reuse Programs and recent Heart of the City Mayoral Executive Directive, activate underutilized parcels and diversify downtown land use and activities.

K. In addition to restoring and reactivating the historic Hearst Building, the Project is anticipated to create an annual average of approximately 250 jobs during the construction period and, upon completion, support between approximately 100 and 150 net new permanent on-site jobs. The Project will also support further economic development and activity benefiting the downtown community and San Francisco as a whole. The Project's mix of uses will generate both daytime and nighttime activity in the downtown neighborhoods.

L. Due to the significant proposed investment required to restore and reactivate the historic Hearst Building, Developer has received a tax credit allocation from the State Historic Rehabilitation Tax Credit program, which allocates tax credits to incentivize the rehabilitation of historic buildings that are eligible for listing on the California Register of Historic Places or National Register of Historic Places. This program requires the commencement and completion of rehabilitation work within a certain time frame, and the financing needed for the rehabilitation work is contingent on the Developer achieving Project feasibility.

M. City's Office of Economic and Workforce Development ("OEWD") retained, at Developer's expense, an independent and experienced development and financial analyst (the "**Financial Analyst**") to evaluate the Project and advise City with regard to the financial feasibility of the Project and the net fiscal impact the Project would have on City's revenues and expenditures. Based on a detailed review of the Project's pro forma, the Financial Analyst estimated that the Project would not be feasible to develop without financial assistance from the City. OEWD and the Financial Analyst evaluated varying levels and durations of financial assistance to measure their impact on the Project's feasibility and determined that providing financial assistance in the amount of the Incentive Payment Cap (as defined below) should allow the Project to reach financial feasibility based upon an industry-acceptable rate of return, and would provide the public benefits described in Recitals K and O. In consultation with the Financial Analyst, City has made the reasoned determination that the public benefits to be accrued to City under this Agreement and the Project exceed the value of the Incentive Payment Cap.

N. Pursuant to the terms of this Agreement, after the Hotel Completion Date, City will make quarterly payments to Developer for a period of twenty (20) years. The measurement of the quarterly payments will be eighty-nine and three-tenths percent (89.3%) of the Transient Occupancy Taxes that City actually receives from occupancy of the Hotel guest rooms pursuant to Article 7 of the Business and Tax Regulations Code up to the Incentive Payment Cap.

O. Providing the payments will support the feasibility of developing the Project and allow the Project to leverage State historic tax credits. The Project will serve many public purposes by (i) promoting economic development and significantly contributing to San Francisco's economy and downtown recovery, (ii) activating a prominent intersection and street frontage in the downtown core, (iii) diversifying downtown land use and activities, (iv) rehabilitating and preserving the historic Hearst Building, and (v) creating well-paying construction and permanent jobs through the development of the Project on underutilized parcels.

NOW, THEREFORE, in consideration of the foregoing and the covenants, promises and agreements set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and City incorporate the above Recitals and agree as follows:

## **ARTICLE 1** **PURPOSE OF AGREEMENT AND DEFINITIONS**

### **1.1 Purpose of Agreement**

This Agreement is entered into for the public purposes and benefits derived from the construction of the Project (including the preservation and rehabilitation of the historic Hearst Building) and the economic and fiscal benefits the Hotel will provide to City. This Agreement is not intended for land speculation or to provide an undue benefit to Developer. The provision of City Financial Assistance is subject to all applicable laws and Developer's compliance with this Agreement.

Developer would not enter into this Agreement but for City's obligations under this Agreement to disburse the appropriated Incentive Payments to Developer on the Disbursement Dates. City agrees that Developer's reliance is reasonable and that City's disbursement obligation is valuable consideration for this Agreement. City acknowledges and agrees that (i) construction of the Project would not be financially feasible but for the City Financial Assistance and (ii) the construction and successful long-term operation of the Project is expected to significantly contribute to San Francisco's economy and downtown recovery. City will take all steps necessary to seek the timely appropriation of the Incentive Payments and will timely submit sufficient budget requests each year as described in Section 2.1. City's obligations under this Agreement to disburse appropriated Incentive Payments to Developer shall survive the expiration or termination of this Agreement (except if the Agreement is terminated as a result of a Developer Event of Default) until the expiration of the applicable statute of limitation or statute of repose (and all relevant and applicable provisions of this Agreement will remain effective as reasonably necessary in the construction, interpretation, or enforcement of this Agreement as to any such surviving obligations). As described in Article 6 and without limiting City's rights under the City Charter or the State Constitution, the Parties agree that monetary damages are an appropriate remedy for a City Event of Default resulting from City's failure to pay appropriated sums to Developer as and when due under this Agreement.

## 1.2 Definitions

As used in this Agreement, the following terms have the following meanings:

"Affiliate" means any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common Control with Developer, which, in the case of a partnership, includes each of the constituent general partners thereof and, in the case of a limited liability company, includes each of the constituent members thereof.

"Agreement" means this Hotel Development Incentive Agreement.

"Approvals" is defined in Recital F.

"Assignment and Assumption Agreement" is defined in Section 4.2(a).

"Board of Supervisors" means the San Francisco Board of Supervisors.

"Business Day" means a calendar day which is not a weekend day or a federal or State holiday in which City is open for business.

"CEQA" is defined in Recital D.

"City" is defined in the preamble.

"City Deposit" is defined in Section 2.1(a).

"City Event of Default" means any Event of Default by City pursuant to Section 6.2.

"City Financial Assistance" means the Incentive Payments to be made by City to Developer to assist the financial feasibility to develop the Project over the City Financial Assistance Term.

"City Financial Assistance Term" means the period commencing on the Hotel Completion Date and ending on the earlier of (a) the twentieth (20<sup>th</sup>) anniversary of the Hotel Completion Date, and (b) the date on which this Agreement terminates pursuant to the terms of this Agreement.

"City Parties" is defined in Section 8.3.

"Construction Work" means the initial construction of the Project to be carried out by a Developer, but does not include the delivery of materials to or from a construction site.

"Control" and "Controlling" means with respect to a corporation, the right to exercise, directly or indirectly, fifty percent (50%) or more of the voting rights attributable to the shares of the controlled corporation and, with respect to a person that is not a corporation, the possession directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person, whether through the ability to exercise voting power, by contract or otherwise, which power may be subject to approval of customary major decisions by one or more other parties.

"Cumulative Incentive Payment Amount" is defined in Section 2.2(b).

"Developer" is defined in the preamble.

"Developer Event of Default" means any Event of Default by Developer pursuant to Section 6.2.

"Director of Joint Development" shall mean the Director of Joint Development at OEWD.

"Disbursement Date" is defined in Section 2.2(a).

"Disbursement Payment Period" means a period of three (3) consecutive calendar months commencing on January 1, April 1, July 1, and October 1 of each year of the City Financial Assistance Term, except that (a) the first Disbursement Payment Period will commence on the Hotel Completion Date and may be fewer than three (3) months, and (b) the last Disbursement Payment Period will end on the last day of the last calendar month of the City Financial Assistance Term and may be fewer than three (3) months.

"Downtown Adaptive Reuse Programs" is defined in Recital I.

"Effective Date" is defined in Section 8.20.

"Estoppel Outside Date" is defined in Section 8.5.

“Excusable Delay” is defined in Section 8.4.

“Financial Analyst” is defined in Recital M.

“First Certificate of Occupancy” means, with respect to the Hotel, the first certificate of occupancy (such as a temporary or final certificate of occupancy) issued by the City’s Department of Building Inspection for public use of the guest rooms.

“FMND” is defined in Recital D.

“Foreclosed Property” is defined in Section 5.4.

“Government Code Disclosure Requirements” means the public hearing and disclosure requirements applicable to economic development subsidy payments set forth in Section 53083 of the California Government Code, as may be amended from time to time and which are applicable to the City Financial Assistance.

“Hearst Building” is defined in Recital B.

“Hotel” is defined in Recital C, as may be refined through specifications and plans and any other matter approved by City in its regulatory capacity for the Hotel.

“Hotel Completion Date” means the first day of the calendar month following the calendar month in which the Hotel opens for business to the general public, which shall be no earlier than the issuance of the First Certificate of Occupancy.

“Hotel Operating Covenant” means a hotel operating covenant substantially in the form attached as Exhibit B.

“Hotel Operator” means any “Operator,” as defined in Section 501(a) of the San Francisco Business and Tax Regulations Code, that operates any portion of the Hotel.

“Hotel Site” is defined in Recital C.

“Hotel Standard” is defined in Section 2.1(d).

“Incentive Account” means a designated account established by City into which City will make City Deposits for the exclusive use of Incentive Payments.

“Incentive Account Schedule” is defined in Section 2.1(a).

“Incentive Payment” is defined in Section 2.1(a).

“Incentive Payment Cap” means \$40,000,000 in net present value, as may be adjusted pursuant to Article 2.

“Landlord” is defined in Recital A.

“Law(s)” means, individually or collectively as the context requires, the laws of the United States, the State of California, the City, and any other governmental or regulatory authority with jurisdiction, any codes, statutes, rules, regulations, or executive mandates under any of the foregoing, and any State or Federal court decision (including any order, injunction or writ) with respect to any of the foregoing, in each case to the extent applicable to the matter presented.

“Lease” is defined in Recital A.

“Lender” means any party or parties who are beneficiaries of a Security Instrument, or any designee or affiliate of the foregoing.

“Losses” is defined in Section 8.17.

“Material Change” means any modification to this Agreement that would (i) materially alter the rights, benefits or obligations of City or Developer under this Agreement, or (ii) extend the term of this Agreement.

“Notice of Default” is defined in Section 6.2.

“OEWD” is defined in Recital M.

“OEWD Director” means City’s Executive Director of the Office of Economic and Workforce Development.

“Parties” is defined in the preamble.

“Person” means an individual, corporation, partnership, limited liability company, joint venture, association, firm, joint stock company, trust, unincorporated association, or other entity.

“Project” is defined in Recital C.

“Property” is defined in Recital A.

“Required Certifications” is defined in Section 8.5.

“Schedule of Milestones” means the Schedule of Milestones attached as Exhibit C.

“Security Instrument” means any of the following: (i) a mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits, that constitutes a lien on all or a part of the Property (or any interest therein) to secure an obligation made by the applicable property owner or ground lessee, and/or (ii) any pledge of a direct or indirect equity interest in Developer (including mezzanine loans and preferred equity investments), to secure repayment of any loan or investment to, and associated obligations of, a direct or indirect equity-interest holder in Developer.

“State” means the State of California.

“Target Completion Date” is defined in Section 2.1(e).

"Tax Confidentiality Waiver" means a limited confidentiality waiver, in substantially the form attached as Exhibit E to be executed by each Hotel Operator and authorizing City to review and report tax data for purposes of compliance with the Government Code Disclosure Requirements, to calculate the Incentive Payments, or as otherwise may be required by City for compliance with the terms of this Agreement.

"Transfer" is defined in Section 4.2.

"Transferee" is defined in Section 4.2.

"Transient Occupancy Tax" or "TOT" means the transient occupancy taxes that are imposed pursuant to Article 7 of the San Francisco Business and Tax Regulations Code or successor provision, excluding any penalties, interest, or fees imposed with respect to such taxes.

"TOT Received" is defined in Section 2.2(b).

## ARTICLE 2 CITY FINANCIAL ASSISTANCE

### 2.1 Establishment and Payments to Incentive Account by City.

(a) Incentive Account and Schedule. City will establish the Incentive Account prior to the Hotel Completion Date from which to disburse appropriated payments to Developer ("Incentive Payments") pursuant to this Agreement. Subject to the terms and conditions of this Agreement, at least once per City fiscal year, City will make a deposit from City's General Fund into the Incentive Account (each, a "City Deposit") unless the Incentive Account already has sufficient funds to make the Incentive Payments for that fiscal year. The amount of each City Deposit will be a reasonable estimate of the amount of the Incentive Payments payable for that fiscal year as calculated under Section 2.2(b) and based on the Schedule of Projected Incentive Payments attached as Exhibit D (the "Incentive Account Schedule"); provided that (1) at least once per year Developer and City shall meet and confer to discuss reasonable adjustments to the Incentive Account Schedule based upon the historical, anticipated and actual occupancy of the Hotel (as such occupancy relates to the amount of Transient Occupancy Tax revenues generated by the Hotel) and the then-current balance of the Incentive Account; and (2) in any given year City will retain the flexibility to adjust the amount of the City Deposit pursuant to the California Constitution, City's Charter requirements, and Chapter 3 of the City's Administrative Code. If the amount of the City Deposit for any fiscal year exceeds the amount of the Incentive Payments paid by City to Developer during such fiscal year, the excess amount will remain in the Incentive Account and will be carried over and used to make the Incentive Payments in City's next fiscal year, and the amount of the City Deposit for the next fiscal year will be commensurately reduced. If the Incentive Account does not have adequate funds for City to make the full amount of the Incentive Payments due in any given fiscal year pursuant to Section 2.2, City will adjust the proposed budgeted amount of the City Deposit in the next fiscal year to include any shortfall for the following fiscal year as necessary to ensure full payment of the Incentive Payments due.

(b) TOT as Measurement Only. Developer acknowledges that this Agreement uses Transient Occupancy Tax revenues that City actually receives from occupancy of guest rooms in the Hotel solely to measure the amount of the Incentive Payments and that no provision of this

Agreement is intended to or will be deemed to be a designation of any Transient Occupancy Tax revenue for any purpose other than the deposit of such tax revenue in accordance with Article 7 of the San Francisco Business and Tax Regulations Code. The Transient Occupancy Tax revenues will continue to be deposited and used in accordance with Article 7 of the San Francisco Business and Tax Regulations Code.

(c) City Obligation. Each fiscal year, City's Mayor will include a request for budget appropriations in its proposed budget sufficient to make the City Deposits shown on the Incentive Account Schedule, as the same may have been adjusted pursuant to Section 2.1(a) or Section 2.1(d). After City has paid all Incentive Payments to be paid for the Disbursement Payment Periods that occur during the City Financial Assistance Term, this Agreement and the Incentive Account will expire and any surplus funds will be deposited in the General Fund.

(d) Change in Hotel Size. The Incentive Account Schedule is based on a Project design with 113 Hotel guest rooms (the "**Hotel Standard**"); however, City and Developer agree that a Project design that stays within 15% of the number of rooms in the Hotel Standard (approximately 96 – 130 rooms) would not be anticipated to materially change the Incentive Account Schedule. If (1) Developer constructs fewer than 96 Hotel guest rooms, or if (2) the number of Hotel guest rooms is later reduced to fewer than 96 after the initial construction of the Project, but prior to the end of the City Financial Assistance Term, then Developer and City will agree on an amended Incentive Account Schedule so that the amount of each future City Deposit is reduced proportionally to account for the reduced number of Hotel guest rooms. For example, if there are only 80 Hotel guest rooms, then each future City Deposit will be calculated by multiplying the figures in the original Incentive Account Schedule by 80/113 (i.e., 80 rooms ÷ 113 rooms = 70.8%). The calculation of each Incentive Payment will remain the same as described in Section 2.2. Developer and City will also agree on a reduced Incentive Payment Cap, using the same calculation method as the original Incentive Account Schedule and utilizing the updated City Deposit amounts. If the number of Hotel guest rooms is increased to exceed 130 Hotel guest rooms, neither the Incentive Account Schedule nor the Incentive Payment Cap will be increased and the amount of Incentive Payments will be adjusted in accordance with Section 2.2(c).

(e) Schedule of Milestones; Notice Obligations. For the convenience of the Parties, certain notable dates and milestones for the Project are listed in Exhibit C. On or before the first anniversary of the Effective Date, City will designate the City department or agency that will administer and serve as the primary point of contact for this Agreement. At least eighteen (18) months prior to the Hotel Completion Date, Developer will provide written notice to City of the anticipated Hotel Completion Date. City will establish the Incentive Account prior to the Hotel Completion Date. The Parties anticipate the Hotel will receive a First Certificate of Occupancy on or before the fifth (5<sup>th</sup>) anniversary of the Effective Date (the "**Target Completion Date**"), as such date may be extended for any Excusable Delay that prevents Developer from obtaining a First Certificate of Occupancy by the Target Completion Date.

If the Hotel receives a First Certificate of Occupancy between the Target Completion Date and the first anniversary of the Target Completion Date (as such date may be extended for any Excusable Delay that prevents Developer from obtaining a First Certificate of Occupancy by the first anniversary of the Target Completion Date), the Incentive Payment Cap shall be reduced by twenty percent (20%). If the Hotel receives a First Certificate of Occupancy between the first

anniversary of the Target Completion Date and the second anniversary of the Target Completion Date (as such date may be extended for any Excusable Delay that prevents Developer from obtaining a First Certificate of Occupancy by the second anniversary of the Target Completion Date), the Incentive Payment Cap shall be reduced by thirty percent (30%). If the Hotel does not receive a First Certificate of Occupancy by the second anniversary of the Target Completion Date (as such date may be extended for any Excusable Delay that prevents Developer from obtaining a First Certificate of Occupancy by the second anniversary of the Target Completion Date), this Agreement shall automatically terminate as of the second anniversary of the Target Completion Date.

## 2.2 Incentive Payments

(a) Disbursement of Incentive Payments. Subject to the terms and conditions of this Agreement, commencing on the Disbursement Date for the first Disbursement Payment Period and continuing until the Disbursement Date for the final Disbursement Payment Period, City will disburse Incentive Payments to Developer from the Incentive Account on a quarterly basis as follows: (i) once on March 1 for the preceding three-month Disbursement Payment Period of October 1 through December 31, (ii) once on June 1 for the preceding three-month Disbursement Payment Period of January 1 through March 31, (iii) once on September 1 for the preceding three-month Disbursement Payment Period of April 1 through June 30, and (iv) once on December 1 for the preceding three-month Disbursement Payment Period of July 1 through September 30 (March 1, June 1, September 1 and December 1 each being a “**Disbursement Date**”), except that the first and last Disbursement Dates may include Disbursement Payment Periods that include fewer than three months. The payments to Developer will be made in arrears solely from amounts on deposit in the Incentive Account and City’s liability or obligation during any given fiscal year for any Incentive Payment will not exceed the City Deposit for such fiscal year or the amount on deposit in the Incentive Account (whichever is greater). So long as City is only required to make payments to a single entity, Developer may assign its right to receive disbursements of Incentive Payments, or direct the payment of Incentive Payments, to a Hotel Operator in connection with the operation of the Hotel.

(b) Amount of Incentive Payments. The amount of the Incentive Payment for a given Disbursement Payment Period during the City Financial Assistance Term will equal eighty-nine and three-tenths percent (89.3%) of the Transient Occupancy Tax City (or any other party to whom City directs payment) actually receives during the applicable Disbursement Payment Period with respect to the occupancy of guest rooms in the Hotel, regardless of the actual date of such occupancy (“**TOT Received**”). For purposes of determining the Incentive Payment, the TOT Received during any Disbursement Payment Period will not include any amounts City receives as a result of any audit, deficiency determination, or other demand for payment by City outside of the standard return filing process, and will not be offset by any refunds of Transient Occupancy Tax City pays to the operator or occupant of the Hotel. Within thirty (30) days after each Disbursement Date, Developer will provide City a schedule demonstrating the cumulative net present value of all Incentive Payments received by Developer showing the total amount of the Incentive Payments received by Developer for each Disbursement Payment Period during the City Financial Assistance Term, with each Incentive Payment discounted from the date paid at an annual rate of nine percent (9%) to the Hotel Completion Date (the sum of such discounted values being the “**Cumulative Incentive Payment Amount**”).

For the avoidance of doubt, if the City Financial Assistance Term ends prior to the completion of any applicable three (3) month period, City will disburse to Developer an Incentive Payment on the immediately following Disbursement Date in an amount that includes only the calendar months within the City Financial Assistance Term. City reserves the right to retain the services of a trustee (which will be a trust department of a national bank with a branch in San Francisco, California) to make the disbursements from the Incentive Account. If City retains a trustee to make disbursements, all references in this Agreement to City making the payment or disbursements of the Incentive Account will include the trustee making the payment or disbursement. For the avoidance of doubt, if City retains a trustee it will not be released from City's obligations under this Agreement. The provisions of this Section 2.2(b) will survive the expiration or earlier termination of this Agreement.

(c) Increase in Hotel Size. As described in Section 2.1(d), if the number of Hotel guest rooms is increased to exceed 130 guest rooms, neither the Incentive Account Schedule nor the Incentive Payment Cap will be increased. In such event, each future Incentive Payment will be calculated using the method in Section 2.2(b), with the resulting amount then reduced proportionally to account for the increased number of Hotel guest rooms. For example, if there are 150 Hotel guest rooms, then each future Incentive Payment will be calculated using the method in Section 2.2(b), and then multiplying the result by 113/150 (75.33%).

(d) Cooperation. Developer will cooperate with City in calculating the Incentive Payment amounts by making available to City any information and/or waivers, whether from Developer or a Hotel Operator, which City determines in its reasonable discretion are necessary to calculate the Incentive Payment amounts. Developer will ensure that each Hotel Operator is aware of the need to waive confidentiality with respect to such information to the extent it would otherwise be confidential taxpayer information. Further, Developer will require that each Hotel Operator provide tax or financial information to the extent reasonably necessary to calculate the Incentive Payment amounts. Not more than once per calendar year, Developer has the right, at all reasonable times during normal business hours and upon ten (10) Business Days' prior written notice, to inspect on a confidential basis the books, records and all other documentation of City pertaining to the City Deposit, funds in the Incentive Account, and calculation of the Incentive Payments under this Agreement, except that Developer will not have the right to inspect any records of the Office of the Treasurer and Tax Collector that are confidential under Section 6.22-1 of the San Francisco Business and Tax Regulations Code or otherwise, other than information specifically subject to the confidentiality waivers provided pursuant to this Agreement.

2.3 Incentive Payment Cap. In light of the significant public benefits derived from this Agreement and the construction and operation of the Project by the second anniversary of the Target Completion Date (as such date may be extended for any Excusable Delay that prevents Developer from receiving the First Certificate of Occupancy by the second anniversary of the Target Completion Date), Developer will receive Incentive Payments pursuant to Section 2.2 up to the Incentive Payment Cap. In entering this Agreement, City expressly acknowledges and agrees that it has made the reasoned determination that the public benefits to be accrued to City under this Agreement and by construction of the Project exceed the value of the Incentive Payment Cap.

2.4 Conditions to City Obligation. City's obligation to make Incentive Payments to Developer will be tolled without the accrual of interest for any time period during which (i) a notice of default

of this Agreement has been given to Developer by City and remains uncured, (ii) a Hotel Operator is not in substantial compliance with the Hotel Operating Covenant, or (iii) a Hotel Operator has not executed and delivered to City a valid Tax Confidentiality Waiver.

## **ARTICLE 3**

### **OBLIGATIONS BEFORE AND AFTER THE COMPLETION OF CONSTRUCTION**

3.1 Prevailing Wages and Working Conditions During Construction. Developer agrees that all persons performing Construction Work on the initial construction of the Project will be (i) paid not less than the Prevailing Rate of Wages as defined in Labor and Employment Code Section 101.1 and established under Labor and Employment Code Section 103.2, and (ii) provided the same hours, working conditions, and benefits as in each case are provided for similar work performed in the City under the requirements of Labor and Employment Code Articles 101 through 107, but excluding Labor and Employment Code Sections 103.1, 103.3(a)-(d), 103.3(f), 104.1, 104.2, 104.3, 106.1, 106.2, 106.4, and 106.6 to the extent otherwise applicable to the Project. Developer shall include this requirement in any contract for Construction Work entered into by Developer for the Project. Any contractor or subcontractor performing Construction Work for the Project shall utilize the City's web-based payroll system to submit certified payroll reports on a weekly basis and must make certified payroll records and other records required under Labor and Employment Code Section 103.3(e) available for inspection and examination by the City with respect to all workers performing covered labor. The City's Office of Labor Standards Enforcement enforces applicable labor laws on behalf of the City, and shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the Construction Work (including the issuance of any Determination of Violation for violations under Labor and Employment Code Section 106.3, which sets forth the basis of determination and orders payment of back wages due plus penalties in amounts consistent with Section 106.1), all to the extent required hereunder.

3.2 Maintenance. Developer agrees that after completion of construction of the Hotel, the Hotel will be maintained in a neat and orderly condition to the extent practicable and in accordance with applicable industry health and safety standards.

3.3 Limited Tax Confidentiality Waiver.

(a) Waiver Required. Developer will ensure that each Hotel Operator executes and submits a Tax Confidentiality Waiver to City's Office of the Treasurer and Tax Collector, which provides for the release of tax information to the extent reasonably necessary to comply with the Government Code Disclosure Requirements, to calculate the Incentive Payments, and to otherwise comply with the terms of this Agreement.

(b) Review of Waiver. Developer will meet with the appropriate City departments, including City's Office of the Treasurer and Tax Collector and OEWD (or such other office designated as the department to administer the Incentive Payments) not less than three (3) months prior to the Hotel Completion Date to review the Tax Confidentiality Waiver so as to ensure that the appropriate parties responsible for executing the Tax Confidentiality Waiver are identified and notified of their requirement to execute and deliver to City the Tax Confidentiality Waiver and review the administrative steps required to implement the Government Code Disclosure

Requirements and calculate the Incentive Payments. City shall provide Developer with reasonable notice before disclosing any information provided in a Tax Confidentiality Waiver to the public.

(c) Authority. All Tax Confidentiality Waivers will be executed by an individual with authority to execute such waiver on behalf of the Hotel Operator.

3.4 Government Code Disclosures. Developer acknowledges that Section 53083 of the California Government Code requires City to hold periodic public hearings and to provide certain information in written form to the public and through its internet website for each recipient of an economic development subsidy. Developer agrees that it will cause any Hotel Operator with respect to the Hotel to provide information or written reports to City which will include all information within Hotel Operator's reasonable control that City determines is reasonably necessary to comply with the Government Code Disclosure Requirements, as such may be amended from time to time. Developer will cooperate with City in complying with the Government Code Disclosure Requirements by providing information and/or written reports to City which includes all information within Developer's reasonable control that City determines is reasonably necessary to comply with the Government Code Disclosure Requirements, as such may be amended from time to time.

3.5 Other Agreements. Each Party represents that it has not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Agreement. During the term of this Agreement, neither Party will enter into any agreement that is inconsistent with the terms of this Agreement without an express written waiver by the other Party.

## ARTICLE 4 ASSIGNMENTS AND TRANSFERS

4.1 Purpose of Restrictions on Transfer. This Agreement is entered into for the purpose of the development of the Project and operation of the Hotel, in accordance with the terms of this Agreement and the Approvals. It is because of the qualifications and identity of Developer that City is entering into this Agreement with Developer and that Transfers of all or any portion of Developer's interest in the Hotel Site are permitted only as provided in this Agreement, in view of (i) the importance of the development of the Project and operation of the Hotel to the general welfare of the community, (ii) the financial resources, reputation, and experience of Developer in development of similar development projects, and (iii) the fact that a Transfer is for practical purposes a transfer or disposition of the Hotel.

4.2 Permitted Transfer of this Agreement. Subject to the requirements of Section 4.2(a), at any time and from time to time, Developer may convey, assign or transfer (each, a "Transfer") all of its right, title and interest in this Agreement to any Person (a "Transferee") without the City's prior consent or approval so long as Developer contemporaneously transfers all of its interest with respect to the Hotel Site to such Transferee. Subject to the requirements of Section 4.2(a), Developer may also, at any time and from time to time, Transfer a portion of its right, title and interest in either this Agreement or the Hotel Site to a Transferee with the prior written approval of the Director of Joint Development, which approval will not be unreasonably withheld, conditioned, or delayed. Prior to a proposed Transfer requiring approval of the Director of Joint Development, Developer will submit to City such documentation as the Director of Joint

Development reasonably determines is sufficient to evaluate the relevant experience, financial capacity, and reputation of the proposed transferee necessary to fulfill the Developer's obligations under this Agreement. Any Transfer made in contravention of this Section 4.2 will be void and will be deemed to be a material default under this Agreement, subject to Developer's right to cure such default in accordance with this Agreement.

(a) Assignment and Assumption Agreement. No Transfer may be permitted unless at the time of the Transfer the Transferee expressly agrees to assume, perform and observe, from and after the date of such Transfer, all or the applicable portion of the obligations, terms, and conditions of this Agreement Transferred by an agreement reasonably satisfactory to City (an "**Assignment and Assumption Agreement**"). A Transferee will be deemed "Developer" under this Agreement to the extent of the rights, interests and obligations assigned to and assumed by such Transferee under the applicable Assignment and Assumption Agreement. Upon execution and delivery of any Assignment and Assumption Agreement, the assignor thereunder will be automatically released from any prospective obligation or liability under this Agreement to the extent the Transferee assumes such obligations. The Transferee under an Assignment and Assumption Agreement will not have any liability or obligation under this Agreement prior to the time of the Transfer, and the assignor will remain liable for such obligations until such Transfer. City may terminate this Agreement, upon thirty (30) days prior written notice, if any Transferee (other than City) fails to assume the Developer's obligations under this Agreement. Developer must deliver to City notice of any Transfer, together with the final Assignment and Assumption Agreement, within thirty (30) days of each Transfer. If there is more than one Developer at any time during the City Financial Assistance Period, then City's obligation to pay the appropriated Incentive Payments shall be conditioned on the Developers unanimously selecting the Developer entitled to receive the Incentive Payments on behalf of all the Developers and delivering written notice to City of such selection, which notice shall be duly signed by all the Developers. Following City's receipt of such notice, City shall deliver the appropriated Incentive Payments to the designated Developer.

(b) Exclusions from Transfers. Provided that Developer's indemnity obligations hereunder are not transferred, a "Transfer" under this Article 4 does not include any of the following types of transactions: (i) granting easements or permits affecting the Hotel Site to facilitate the development of the Project; (ii) entering into occupancy agreements, subleases, licenses or permits for portions of the Hotel Site; (iii) encumbering the Developer's interest in this Agreement or in the Hotel Site or any portion of the improvements thereon with any Security Instrument; (iv) entering into agreements with third parties to fulfill Developer's obligations under this Agreement (so long as Developer is not released from such obligations); (v) transferring all or any portion of the Developer's interest in the Hotel Site or the improvements thereon to a Lender pursuant to a conveyance in lieu of foreclosure or other remedial action in connection with a Security Instrument; (vi) transferring all or any portion of Developer's interest in the Hotel Site or the improvements thereon to an Affiliate; (vii) selling or transferring any membership or ownership interest (direct or indirect) in the entity that is Developer; or (viii) the transfer of all or a portion of the Developer's interest in the Hotel Site or the improvements thereon pursuant to a foreclosure (judicial or pursuant to the power of sale). Developer must give written notice to City of any conveyance of all or any portion of Developer's interest in the Hotel Site or the improvements thereon to a Lender pursuant to a conveyance in lieu of foreclosure or other remedial action in connection with a Security Instrument within thirty (30) days of such conveyance.

## ARTICLE 5

### LENDER AND LANDLORD PROTECTIONS

#### 5.1 Lender Protections.

(a) Developer Right to Finance. Nothing in this Agreement limits the right of Developer (or any direct or indirect interest holder of Developer) to mortgage, pledge, or otherwise encumber all or any portion of its interest in the Property or this Agreement for the benefit of any Lender as security for one or more loans.

(b) Copy of Notice of Default and Notice of Failure to Cure to Lender. Whenever City delivers any notice or demand to Developer with respect to any Developer Event of Default, City will at the same time forward a copy of such notice or demand to each Lender having a Security Instrument on (directly or indirectly) the Hotel Site that previously made a written request to City therefor, to the last address of such Lender specified by that Lender in such notice. In addition, if such breach or default remains uncured for the period permitted under this Agreement, City will deliver a notice of such failure to cure such breach or default to each such Lender at such applicable address. If City delays or fails to provide such notice required by this Section, the time allowed for a Lender to cure shall be extended by the number of days until such notice is given. In accordance with Section 2924b of the California Civil Code, City requests that a copy of any notice of default and a copy of any notice of sale under any Security Instrument be mailed to City at the address for notices under this Agreement. Any Lender relying on the protections set forth in this Article 5 must send to City a copy of any notice of default and notice of sale.

(c) Lender's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 5.1(b), each Lender will have the right, at its option, to commence within the same period as Developer to remedy or cause to be remedied any Developer Event of Default, plus an additional period of: (a) sixty (60) days to cure a monetary Event of Default; and (b) one hundred twenty (120) days to cure a non-monetary Event of Default which is susceptible of cure by the Lender without obtaining possession to the applicable property. If a Developer Event of Default is not cured within the applicable cure period, City nonetheless will refrain from exercising any of its remedies with respect to the event of default if, within the Lender's applicable cure period: (i) the Lender notifies City that it intends to proceed with due diligence to foreclose the Security Instrument or otherwise obtain possession of the subject property; and (ii) the Lender commences foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining possession, the Lender diligently proceeds to cure those events of default: (A) which are required to be cured by the Lender and are susceptible of cure by the Lender, and (B) of which the Lender has been given notice by City.

(d) Lender Benefits and Obligations with Respect to the Hotel Site. Notwithstanding anything to the contrary in this Agreement, no Lender will have any obligations or other liabilities under this Agreement unless and until it acquires a leasehold interest by any method to all (and not just a portion) of the real property comprising the Hotel Site (referred to hereafter as "**Foreclosed Property**"). A Lender that, by foreclosure under a Security Instrument, acquires a leasehold interest to the Foreclosed Property will take such interest subject to all of the

terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and will have all of the rights and obligations of Developer under this Agreement as to the Foreclosed Property. In no event will City have an obligation to make Incentive Payments to more than one Lender. Upon the occurrence and continuation of an uncured Developer Event of Default by a Lender or Transferee in the performance of any of the obligations to be performed by such Lender or Transferee pursuant to this Agreement, City will be afforded all its remedies for such uncured Developer Event of Default as provided in this Agreement.

(e) No Impairment of Security Instrument. No Developer Event of Default will invalidate or defeat the lien of any Security Instrument. No foreclosure of any Security Instrument or other lien will defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.

(f) Cured Defaults by Lender. Upon the curing of any Developer Event of Default by any Lender within the time provided in this Article 5, City's right to pursue any remedies with respect to the cured Developer Event of Default will terminate.

(g) Collateral Assignment of Agreement. Developer will have the right to collaterally assign to any Lender all of its rights under this Agreement, and within twenty (20) days following Developer's written request, City will execute such documents (to the extent such documents are reasonably acceptable to City) as may be reasonably required by such Lender to perfect such collateral assignment and to allow such Lender to enforce the terms and conditions of this Agreement applicable to the Hotel Site, subject to such Lender acquiring a leasehold interest in the Property, and delivering to City an executed Assignment and Assumption Agreement reasonably acceptable to City that assumes Developer's obligations under this Agreement as they relate to the Property.

## 5.2 Landlord Protections.

(a) Termination of Lease. If the Lease terminates and Landlord takes possession of the Hotel Site during the term of this Agreement, Landlord may elect (but shall not be obligated) to assume all of Developer's right, title and interest in this Agreement, including any claims for payment or performance of obligations which are due after such assumption as a condition to enjoying the benefits of this Agreement and all of the rights and obligations of Developer under this Agreement, without City's consent as long as within the sixty (60) day period immediately following such termination of the Lease, Landlord (i) delivers a duly executed Assignment and Assumption Agreement to City, and (ii) records a new Hotel Operating Covenant against the Property pursuant to Section 8.15. Such Assignment and Assumption Agreement shall include Landlord's express agreement to assume, perform and observe, from and after the date of such assumption, all of the obligations, terms, and conditions of this Agreement, and shall be effective as of the date that the delivery and recording conditions in the foregoing sentence are both satisfied.

(b) Copy of Notice of Default and Notice of Failure to Cure to Landlord. Whenever City delivers any notice or demand to Developer with respect to any Developer Event

of Default, City will at the same time forward a copy of such notice or demand to Landlord if Landlord has previously made a written request to City for a copy of such notice or demand, at the last address of Landlord specified by Landlord in such notice. In addition, if such breach or default remains uncured for the period permitted under this Agreement, City will deliver a notice of such failure to cure such breach or default to Landlord at such applicable address if Landlord has previously made a written request to City for a copy of such notice. If City delays or fails to provide such notice required by this Section, the time allowed for Landlord to cure shall be extended by the number of days until such notice is given.

(c) Landlord's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 5.2(b), Landlord will have the right, at its option, to commence to remedy or cause to be remedied any Developer Event of Default within the same period as Developer, plus an additional period of: (a) sixty (60) days to cure a monetary Event of Default; and (b) one hundred twenty (120) days to cure a non-monetary Event of Default which is susceptible of cure by Landlord without obtaining possession to the Hotel Site. If a Developer Event of Default is not cured within the applicable cure period, City nonetheless will refrain from exercising any of its remedies with respect to the event of default if, within the Landlord's applicable cure period: (i) Landlord notifies City that it intends terminate the Lease or otherwise obtain possession of the Property; and (ii) the Lease terminates within sixty (60) days after Landlord giving such notice; and (iii) after obtaining possession, Landlord diligently proceeds to cure those events of default: (A) which are required to be cured by Landlord and are susceptible of cure by Landlord, and (B) of which the Landlord has been given notice by City.

(d) Cured Defaults by Landlord. Upon the curing of any Developer Event of Default by Landlord within the time provided in this Article 5, City's right to pursue any remedies with respect to the cured Developer Event of Default will terminate.

## ARTICLE 6 DEFAULT AND REMEDIES

6.1 Impossibility of Performance. The lack of performance by either Party shall not be deemed a default where performance is prevented due to a court order or final judgment is rendered in a lawsuit and all applicable appeal periods have expired.

6.2 Event of Default. For purposes of this Agreement, the following will constitute an event of default (an "**Event of Default**") under this Agreement: (i) the failure to make any payment within ninety (90) calendar days of when due, and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder, and the continuation of such failure for a period of thirty (30) or more calendar days following a written notice of default that specifies the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all), and a demand for compliance (a "**Notice of Default**"); provided that if a cure of a non-monetary default cannot reasonably be completed within thirty (30) calendar days, then it will not be considered an Event of Default if a cure is commenced within that thirty (30) calendar day period and diligently prosecuted to completion thereafter. If before the end of the applicable cure period the failure that was the subject of a Notice of Default is cured to the reasonable satisfaction of the Party that delivered such notice, such Party will issue a written acknowledgement to the other Party of the cure of such failure.

6.3 Remedies Upon Default; Specific Performance. Subject to, and as limited by, the provisions of Sections 6.3(a), upon the occurrence of an Event of Default, the non-defaulting party may seek any remedy available at law or in equity, including specific performance of this Agreement.

(a) Limited Damages. Developer agrees that City will not be liable to Developer for damages under this Agreement, and City agrees that Developer will not be liable to City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party will have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party when due under this Agreement, and (2) City will have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement. In no event shall any remedy include recovery of attorneys' fees. Both Parties maintain an obligation to mitigate damages to the extent reasonably possible.

(b) No Waiver; Rights and Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, will not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including an Event of Default, will be effective or binding upon such Party unless made in writing by such Party, and no such waiver will be implied from any omission by a Party to take any action with respect to such failure. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default. If either Party fails to pay any amount due hereunder or commences (or becomes the subject of) any insolvency, liquidation, receivership, or any similar action, case or proceeding, the other Party shall have the right to exercise any remedies available to it at law or in equity (including, without limitation, the right of Developer to apply amounts in the Incentive Account to any such payments or any damages incurred by Developer as a result of such default or failure).

(c) Joint and Several Liability. If there is more than one Person that comprises any Person that is Developer (i.e., if more than one Person executes an Assignment and Assumption Agreement as Developer), the obligations and liabilities under this Agreement imposed on each such Person will be joint and several.

## ARTICLE 7 REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 Interest of Developer; Due Organization and Standing. Developer represents and warrants that (i) the Lease was duly and validly executed and delivered by Developer and remains in full force and effect, (ii) the Lease has not been modified or amended in any way, and (iii) to Developer's actual knowledge, Developer is not in default under the Lease nor has any event occurred that, with the giving of notice and passage of time, would become an event of default by Developer under the Lease, (iv) Developer is a Delaware limited liability company, (v) Developer

has all requisite power and authority to conduct its business as presently conducted, (vi) Developer has made all required state filings required to conduct business in the State of California and is in good standing in the State of California, (vii) Developer has extensive experience in developing commercial real estate projects, and (viii) there are no liens encumbering the Developer's leasehold interest in the Property. For purposes hereof, the phrase "to Developer's actual knowledge" shall mean the actual knowledge of Todd Chapman and includes information obtained by Todd Chapman. Developer represents that this is the person within Developer's organization that has the most knowledge of the Lease and therefore is in the best position to give these representations.

7.2. No Conflict with Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or Law in any way prohibits, limits, or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. No consent, authorization, or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery, and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

7.3. No Inability to Perform; Valid Execution. Developer warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid, and binding obligation of Developer, enforceable against Developer in accordance with its terms.

7.4. Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the Term.

7.5. Notification of Limitations on Contributions. Through its execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur

in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by City and the contractor. Negotiations are terminated when City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract. Developer acknowledges that (i) the prohibition on contributions applies to Developer, each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Developer, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Developer, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Developer certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

7.6. Other Documents. No document furnished or to be furnished by Developer to City in connection with this Agreement contains or will contain to Developer's actual knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement will have been made.

7.7. No Suspension or Debarment. Neither Developer, nor any of its officers, have been suspended, disciplined, or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state, or local governmental agency.

7.8. No Bankruptcy. Developer represents and warrants to City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

## **ARTICLE 8 GENERAL PROVISIONS**

8.1 Notices Demands and Communications. Any notice or communication required or authorized by this Agreement will be in writing and may be delivered personally or by registered mail, with return receipt requested. Notice, whether given by personal delivery or registered mail, will be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person or address which such notice or communication will be given. Such notices or communications will be given to the Parties at their addresses or email addresses set forth below:

To City:

Anne Taupier  
Executive Director  
Office of Economic and Workforce Development  
1 Dr. Carlton B. Goodlett Place, Room 448  
San Francisco, California 94102  
Re: Hearst Hotel Incentive Agreement

with a copy to:

David Chiu, Esq.  
City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Attn: RE/Finance Team  
Re: Hearst Hotel Incentive Agreement

To Developer:

Bespoke Hospitality, LLC  
c/o JMA ventures  
5 Third Street, Suite 900  
San Francisco, CA 94103

with a copy to:

Jim Abrams, Esq.  
J. Abrams Law, P.C.  
538 Hayes Street  
San Francisco, California, 94102

8.2 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

8.3 Non-Liability of Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City (collectively, the "**City Parties**") will be personally liable to Developer, its successors and assigns, in the event of any City Event of Default, or for any amount which may become due to Developer, its successors and assigns, under this Agreement.

8.4 **Excusable Delay.** In the event of changes in State or Federal Laws or regulations, City's failure to issue building permits or other approvals necessary to construct the Project in its regulatory capacity within the City's standard or customary time period for such issuance following Developer's submittal of a complete permit or approval application together with any required materials, delays in Developer's receipt of allocated tax credits under the State Historic Rehabilitation Tax Credit program that are not caused by Developer's failure to comply with all requirements for such allocation, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, government shutdowns, tariffs, trade embargos, epidemics, pandemics, or quarantine restrictions, or other circumstances that are beyond the reasonable control of a Party, not proximately caused by the acts or omissions of that Party, and substantially interfere with that Party's performance of any of its obligations under this Agreement (each, an "**Excusable Delay**"), then the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that it may result in an Excusable Delay, describing the manner in which it substantially interferes with the delayed Party's ability to perform under this Agreement. Commencing upon such notice, the time or times for performance of the delayed obligation described in that notice will be extended for the remaining period of the Excusable Delay.

8.5 **Estoppel Certificates.** Either Party to this Agreement will, promptly upon the written request of the other Party, execute, acknowledge, and deliver to or for the benefit of the other party a certificate certifying: (i) that this Agreement is in full force and effect, (ii) that this Agreement has not been amended or modified either orally or in writing, or if so amended or modified, identifying the amendments or modifications and stating their date and, if applicable, recording information, (iii) whether there is any existing City Event of Default or Developer Event of Default in the performance of its obligations under this Agreement on the part of the Party requesting the certificate, or if there is such an event of default, a description of the nature and amount of that event of default, and (iv) such other matters as may be reasonably requested. The OEWD Director shall issue any estoppel on behalf of City. If Developer requests that City certify as to any additional reasonably-requested matters, City will confer and work expeditiously and in good faith with Developer to provide such certification that is reasonably satisfactory to Developer and any Lender, provided that the OEWD Director shall certify only as to their actual knowledge, and City shall not have any obligation to certify as to any such matters that are unreasonable, overly broad, inconsistent with this Agreement, involve legal conclusions, or are subjective in nature. The OEWD Director, acting on behalf of City, shall execute and return a certificate addressing items (i)-(iii) (the "**Required Certifications**") within thirty (30) days following receipt of the request (the "**Estoppel Outside Date**"). If the OEWD Director fails to execute and return such certificate on or before the Estoppel Outside Date, the OEWD Director, acting on behalf of City, shall be deemed to have certified to Developer and any Lender that the Required Certifications as stated in the submitted certificate are true and correct as of the Estoppel Outside Date. Each Party acknowledges that any Lender, acting in good faith, may rely upon such a certificate. A certificate provided by City under this Section shall, at the Lender's request, be in recordable form and may be recorded with respect to the affected portion of the Property subject to that Lender's security interest by the requesting Lender at its expense.

8.6 **Applicable Law and Venue.** This Agreement has been executed and delivered in and will be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in

the City and County of San Francisco. The Superior Court for the City and County of San Francisco will be the venue for any legal action or proceeding that may be brought, arise out of, in connection with, or by reason of, this Agreement, provided neither party waives its right to remove a case to the appropriate federal court.

8.7 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement will continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

8.8 Binding Upon Successors; Covenants to Run With Leasehold Interest. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Article 4 above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring Developer's interest in the Hotel Site, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All provisions of this Agreement shall be enforceable during the term of this Agreement as equitable servitudes and constitute covenants and benefits running with Developer's leasehold interest in the Property pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

8.9 Relationship of Parties. City has no interest in, responsibility for, or duty to third persons concerning the Project. Developer will exercise full dominion and control over the Hotel Site, subject only to the limitations and obligations of Developer contained in this Agreement and the Lease. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, will be construed as creating a joint venture or partnership between City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder. There are no third -party beneficiaries to this Agreement.

8.10 Entire Understanding of the Parties. This Agreement, including the ancillary agreements attached to this Agreement, constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof. There are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein.

8.11 Discretion Retained By City. City's approval in its proprietary capacity under this Agreement in no way limits the regulatory discretion of City in the permit and approval process in connection with the Hotel.

8.12 Counterparts. This Agreement may be executed in counterparts and multiple originals.

8.13 Survival. Following expiration of the term of this Agreement, this Agreement will be deemed terminated and of no further force and effect, except for any provision that, by its express terms, survives the expiration or termination of this Agreement.

8.14 Amendments. This Agreement may only be amended in writing and signed by both Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the OEWD Director, after consultation with City's Controller and the City Attorney. Any amendment that is a Material Change will require the approval of the OEWD Director, City's Controller, and the Board of Supervisors. The determination of whether a proposed change constitutes a Material Change shall be made, on City's behalf, by the OEWD Director following consultation with the City Attorney's Office. Any amendments, modifications, or supplements to this Agreement required as a matter of tax law compliance for City or Developer will be made as a matter of the Parties performing a ministerial duty, and is subject to any approval that may be required from the City's Board of Supervisors.

8.15 Recordation of Hotel Operating Covenant. Developer shall obtain Landlord's consent to record the Hotel Operating Covenant against Developer's leasehold interest in the Property in the Official Records of City and County of San Francisco, in the form of Exhibit B attached hereto and incorporated herein by this reference. Developer shall cause the Hotel Operating Covenant to be recorded in the Official Records of San Francisco County prior to the Hotel Completion Date. If the Lease terminates and Landlord assumes this Agreement pursuant to Section 5.2, then on or before the effective date of such assumption, Landlord shall record a new Hotel Operating Covenant in the Official Records of San Francisco County, modified to (i) reflect Landlord's fee ownership of the Property and (ii) be between City and Landlord.

8.16 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement, and its terms and provisions have been reviewed and revised by legal counsel for both City and Developer. Accordingly, no presumption or rule that ambiguities will be construed against the drafting Party will apply to the interpretation or enforcement of this Agreement and the Parties waive the effect of Section 1654 of the California Civil Code. Language in this Agreement will be construed as a whole and in accordance with its true meaning. Wherever in this Agreement the context requires, references to the masculine will be deemed to include the feminine and the neuter and vice-versa, and references to the singular will be deemed to include the plural and vice versa. Unless otherwise specified, whenever in this Agreement, including its Exhibits, reference is made to any Recital, Article, Section, Exhibit, Schedule or defined term, the reference will be deemed to refer to the Recital, Article, Section, Exhibit, Schedule or defined term of this Agreement. Any reference in this Agreement to a Recital, an Article or a Section includes all subsections and subparagraphs of that Recital, Article or Section. Article, Section and other headings and the names of defined terms in this Agreement are for the purpose of convenience of reference only and are not intended to, nor will they, modify or be used to interpret the provisions of this Agreement. Each Exhibit to this Agreement is incorporated in this Agreement and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement will mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement. Except as otherwise explicitly provided herein, the use in this Agreement of the words "including", "such as" or words of similar import when accompanying any general term, statement or matter will not be construed to limit such term, statement or matter to such specific terms, statements or matters. In the event of a conflict between the Recitals and the remaining provisions of this Agreement, the remaining provisions will prevail. Statements and calculations in this Agreement beginning with the words "for example" or words of similar import are included for the convenience of the Parties only, and in the event of a conflict between such statements or calculations and the remaining provisions of this Agreement, the remaining provisions will prevail.

Words such as “herein”, “hereinafter”, “hereof,” “hereby” and “hereunder” and the words of like import refer to this Agreement, unless the context requires otherwise.

8.17 Indemnity.

(a) Developer will, to the maximum extent permitted by law, indemnify, defend, reimburse, and hold harmless City and the City Parties from and, if requested, will defend them against any and all actual losses, out-of-pocket costs (including but not limited to City staff time), damages (excluding punitive damages), injury, liability, and claims (collectively, “**Losses**”) arising or resulting directly or indirectly from (i) any challenge to any portion of this Agreement, including but not limited to any challenge to City's action regarding the approval of this Agreement or the funding under this Agreement, including the Tax Confidentiality Waivers and Government Code Disclosure Requirements; (ii) any third-party claim arising from a Developer Event of Default under this Agreement; (iii) injury to or death of a person, including members of the public, at the Hotel; and (iv) any dispute between Developer and any Lender, Transferee, Hotel Operator, or any subsequent lessee of the Property relating to any assignment of this Agreement, the obligations that run with the Developer's leasehold interest in the Property, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on City or any of City Parties, except to the extent that (1) any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, (2) such Loss is the result of the sole negligence, willful misconduct, or fraud of any City Party, or (3) such Loss is the result of a City Event of Default to the extent Developer is the prevailing party in any legal action brought by Developer against City for that City Event of Default.

(b) All indemnifications set forth in this Agreement will survive for a period lasting the later of two (2) years after the expiration or termination of this Agreement or the expiration of the statute of limitations or statute of repose applicable to a particular third-party claim, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications will survive for the term of the applicable obligation plus two (2) years.

(c) In the event of any action or proceeding subject to indemnification, reimbursement, hold harmless or defense under this Agreement, the Parties shall cooperate in defending against such action or proceeding. The City shall promptly notify Developer of any such action or proceeding instituted against City.

(d) The indemnity in Section 8.18(a) shall include reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties.

8.18 MacBride Principles. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

Developer acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

8.19 Tropical Hardwood and Virgin Redwood. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

8.20 Effectiveness of this Agreement. This Agreement is dated for convenience only and will only become effective on the date on which this Agreement is executed and delivered (the “**Effective Date**”).

8.21 Controller’s Certification of Funds. The terms of this Agreement are governed by and subject to Article XVI, section 18 of the California Constitution and the budgetary and fiscal provisions of City’s Charter. City’s obligations for the payment or expenditure of money by City under this Agreement are subject to the requirement under Section 3.105 of the City’s Charter that the Controller of the City and County of San Francisco first certifies that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

8.22 Further Assurances. Each Party will execute and deliver such further documents, papers and instruments and take such further action as is necessary, appropriate or helpful as the other Party may reasonably request in order to carry out the purposes, effect and intent of this Agreement.

8.23 Time of the Essence. Time is of the essence for each provision of this Agreement of which time is an element.

8.24 Effect on Other Party’s Obligation. If Developer’s or City’s performance is excused or the time for its performance is extended under any extension of time permitted in this Agreement, the performance of the other Party that is conditioned on such excused or extended performance is excused or extended to the same extent.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

CITY

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

Anne Taupier  
Executive Director,  
Office of Economic and Workforce Development

Approved on \_\_\_\_\_  
Board of Supervisors Ordinance No. \_\_\_\_\_

Approved as to form:

David Chiu, City Attorney

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

Carol Wong  
Deputy City Attorney

DEVELOPER

BESPOKE HOSPITALITY, LLC, a Delaware limited  
liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibits**

- Exhibit A Legal Description of Property
- Exhibit B Form of Hotel Operating Covenant
- Exhibit C Schedule of Milestones
- Exhibit D Schedule of Projected Incentive Payments
- Exhibit E Form of Tax Confidentiality Waiver

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

THE LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Beginning at a point on the Northeasterly line of Third Street, distant thereon 40 feet Northwesterly from the Northwesterly line of Stevenson Street; running thence Northwesterly along the Northeasterly line of Third Street 63 feet and 3-1/4 inches to an angle point therein; thence Northerly along the Easterly line of third Street 69 feet and 11 inches to the Southeasterly line of Market Street; thence Northeasterly along the Southeasterly line of Market Street 56 feet and 7-3/4 inches to a point distant thereon 142 feet and 6 inches Southwesterly from the Southwesterly line of Annie Street; thence at a right angle Southeasterly 160 feet to the Northwesterly line of Stevenson Street; thence Southwesterly along said line of Stevenson Street 40 feet to a point distant thereon 57 feet and 6 inches Northeasterly from the Northeasterly line of Third Street; thence at a right angle Northwesterly 40 feet; thence at a right angle Southwesterly 57 feet and 6 inches to the point of beginning.

Parcel Two:

Commencing at the Northeast corner of Stevenson and Third Streets, running thence Northwest along Third Street forty (40) feet; thence Northeast at right angles fifty-seven feet and six inches (57 feet and 6 inches); thence Southeast at right angles forty (40) feet to Stevenson Street; thence Southwest along Stevenson Street fifty-seven feet and six inches (57 feet and 6 inches) to the place of beginning.

Being a portion of One Hundred Vara Lot Number Twenty-Four.

**EXHIBIT B**

**FORM OF HOTEL OPERATING COVENANT**

RECORDING REQUESTED BY  
CLERK OF THE BOARD OF SUPERVISORS OF  
THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees Pursuant to  
Government Code Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo, Clerk of the Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

---

Assessor's Parcel Numbers:

**HOTEL OPERATING COVENANT**

This HOTEL OPERATING COVENANT (this "**Covenant**") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_\_, by and between THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City") and \_\_\_\_\_, a \_\_\_\_\_ ("Developer"), pursuant to that certain Hotel Development Incentive Agreement dated as of \_\_\_\_\_, 202\_\_\_\_\_(the "Agreement") by and between the City and Developer. The Agreement is a component of a mixed-use hotel development project in San Francisco. Unless otherwise specified in this Covenant, definitions and rules of interpretation are as provided in the Agreement.

Developer is the ground lessee of the real property described in the attached Exhibit A (the "**Hotel Site**"). The Agreement provides monetary incentives to Developer from City in connection with development of the Project, including the Hotel, and requires that this Covenant be recorded against the Hotel Site prior to the Hotel Completion Date. In consideration of the rights and obligations pursuant to the Agreement, the monetary incentives provided pursuant to the Agreement, and for other good and valuable consideration, Developer hereby enters this Covenant to restrict the use and operation of the Hotel Site and to provide notice to interested parties of the following restrictions:

- Any Hotel Operator, as defined in Section 501(a) of the San Francisco Business and Tax Regulations Code (each, a "**Hotel Operator**"), that operates any portion of the Hotel shall maintain the Hotel in good and clean condition, repair and working order, including any walkways, driveways, parking areas, and landscaping that are within the Hotel Site or within the reasonable control of the Hotel Operator,

and from time to time make all necessary and proper repairs, renewals, and replacements commensurate with a high-quality hotel.

- Any Hotel Operator shall comply in all material respects with the obligations of Developer and Hotel Operator relating to Tax Confidentiality Waivers and Government Code Disclosures pursuant to Section 3.4 of the Agreement.
- Any Hotel Operator shall not discriminate against any employee, City employee working with Hotel Operator's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

Notwithstanding the foregoing, the obligations of this Covenant shall not apply to Hotel Operator if the Hotel is damaged or destroyed or there occurs an event of Excusable Delay as described in the Agreement (including, without limitation, a condemnation event) that precludes the operation of the Hotel and Developer takes commercially reasonable steps to repair and restore the Hotel (to the extent that insurance proceeds are available for such restoration) or to address the force majeure event within a reasonable period of time.

All provisions of this Covenant shall be enforceable against the applicable Hotel Operator during the City Financial Assistance Term as equitable servitudes and constitute covenants and benefits running with Developer's leasehold interest in the Property pursuant to applicable law, including but not limited to California Civil Code Section 1468. This Covenant shall be binding upon and inure to any successor or assigns of Developer that is a Hotel Operator. This Covenant may not be modified by Developer (including any Hotel Operator) without the express written consent of City pursuant to Section 8.15 of the Agreement. Upon Hotel Operator's assignment of its right, title, or interest in the Hotel Site, such Hotel Operator shall be automatically released from any prospective obligation or liability under this Covenant to the extent the transferee assumes such obligations. Upon the termination of the City Financial Assistance Term, this Covenant shall terminate and be of no further force or effect. Upon Developer's written request and following the expiration of the City Financial Assistance Term, City shall execute and deliver a notice of termination of this Covenant, in recordable form and substance reasonably acceptable to Developer and City.

This Covenant may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

IN WITNESS WHEREOF, City and Developer have caused this Covenant to be executed by their duly authorized representatives.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

Anne Taupier  
Executive Director, Office of  
Economic and Workforce Development

Approved as to form:  
David Chiu, City Attorney

Approved on \_\_\_\_\_  
Board of Supervisors Ordinance No. \_\_\_\_\_

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

Carol Wong  
Deputy City Attorney

DEVELOPER:

[\_\_\_\_\_], a [\_\_\_\_\_] limited  
liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A TO HOTEL OPERATING COVENANT**

**LEGAL DESCRIPTION OF HOTEL SITE**

THE LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Beginning at a point on the Northeasterly line of Third Street, distant thereon 40 feet Northwesterly from the Northwesterly line of Stevenson Street; running thence Northwesterly along the Northeasterly line of Third Street 63 feet and 3-1/4 inches to an angle point therein; thence Northerly along the Easterly line of third Street 69 feet and 11 inches to the Southeasterly line of Market Street; thence Northeasterly along the Southeasterly line of Market Street 56 feet and 7-3/4 inches to a point distant thereon 142 feet and 6 inches Southwesterly from the Southwesterly line of Annie Street; thence at a right angle Southeasterly 160 feet to the Northwesterly line of Stevenson Street; thence Southwesterly along said line of Stevenson Street 40 feet to a point distant thereon 57 feet and 6 inches Northeasterly from the Northeasterly line of Third Street; thence at a right angle Northwesterly 40 feet; thence at a right angle Southwesterly 57 feet and 6 inches to the point of beginning.

Parcel Two:

Commencing at the Northeast corner of Stevenson and Third Streets, running thence Northwest along Third Street forty (40) feet; thence Northeast at right angles fifty-seven feet and six inches (57 feet and 6 inches); thence Southeast at right angles forty (40) feet to Stevenson Street; thence Southwest along Stevenson Street fifty-seven feet and six inches (57 feet and 6 inches) to the place of beginning.

Being a portion of One Hundred Vara Lot Number Twenty-Four.

**EXHIBIT C****SCHEDULE OF MILESTONES**

Milestone	Timing
Effective Date of Incentive Agreement	_____, 20__
City designates administrating department for Incentive Agreement	One (1) year anniversary of Incentive Agreement Effective Date
Developer provides notice to City of anticipated Hotel opening	At least eighteen (18) months prior to the Hotel opening to the general public, which shall be no earlier than the issuance of the First Certificate of Occupancy
Hotel opens to the general public	
Hotel Completion Date	The first day of the calendar month following the calendar month in which the Hotel opens for business to the general public
Target Completion Date	_____ [5 years after agreement execution]
City Financial Assistance Term	Begins on the Hotel Completion Date and continues for a period of twenty (20) years
First Disbursement Payment Period	Begins on the Hotel Completion Date, and ends on the next occurring December 31 <sup>st</sup> , March 31 <sup>st</sup> , June 30 <sup>th</sup> , or September 30 <sup>th</sup>

**EXHIBIT D**  
**SCHEDULE OF PROJECTED INCENTIVE PAYMENTS**

<b>Year After Hotel Completion Date</b>	<b>Projected Incentive Payments *</b>
1	<b>\$1,130,922</b>
2	<b>\$3,135,342</b>
3	<b>\$3,427,110</b>
4-20 **	Escalate 3% each year from Year 3 projected payment
<b>Incentive Payment Cap (NPV @ 9%)</b>	<b>\$40,000,000</b>

\* City Deposit and Incentive Payment Amounts to be adjusted as described in Article 2.

\*\* City Financial Assistance Term will expire prior to twenty (20) years if Incentive Payment Cap is reached as described in Section 2.3.

**EXHIBIT E**  
**FORM OF TAX CONFIDENTIALITY WAIVER**

**WAIVER OF CONFIDENTIALITY**

Taxpayer Name: [Hotel Operator]

Business Account Number: [Business Account Number]

Location Identification Number: [Identification Number]

Hotel Address: [Address]

The taxpayer identified above hereby waives confidentiality under San Francisco Business and Tax Regulations Code Section 6.22-1 and any other law of the amount of Transient Occupancy Taxes remitted to the Office of the Treasurer and Tax Collector between [DATE] and [DATE], for the purposes described in the Hotel Development Incentive Agreement ("Agreement"), attached as Exhibit A, including without limitation, for the purpose of calculating the Incentive Payments under the Agreement and the purpose of satisfying the requirements applicable to economic development subsidy payments set forth in Section 53083 of the California Government Code. The Office of the Treasurer and Tax Collector may disclose such information to any individual or entity that City and County of San Francisco determines requires the information to satisfy the purposes in the Agreement.

I certify under penalty of perjury that I have the authority to execute this form on behalf of the taxpayer.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Taxpayer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title