

EXHIBIT A

WHEN RECORDED RETURN TO:

City of Yuma
Office of the City Clerk
One City Plaza
Yuma, AZ 85364

YUMA PIVOT POINT

**PHASE THREE COMPONENT
REAL PROPERTY SALE AND DEVELOPMENT AGREEMENT,
PARTIAL ASSIGNMENT OF MASTER DEVELOPER'S
INTEREST, COVENANTS AND FIFTH AMENDMENT OF
MASTER DDA**

_____, 2017

TABLE OF CONTENTS

	Page
ARTICLE I PURPOSE AND SCOPE OF AGREEMENT, PARTIAL ASSIGNMENT AND FIFTH AMENDMENT OF MASTER DDA	3
1.1 Purpose and Scope	3
1.2 Partial Assignment	4
1.3 Fifth Amendment of Master DDA	4
ARTICLE II DEFINITIONS	5
ARTICLE III COMPONENT PLANNING	11
3.1 Component Planning	11
3.2 Phase Three Conceptual Site Plan	11
3.3 Phase Three Site Plan Approval	12
3.4 Applicable Laws	15
3.5 Permissible Exceptions	16
3.6 Access to Parcels	16
3.7 Data from the City	17
ARTICLE IV CONVEYANCE OF PHASE THREE PROPERTY	17
4.1 Escrow	17
4.2 Conveyance of Title; Water Plant Access	19
4.3 Component Developer's Purchase Price	19
4.4 Condition of Phase Three Property	19
4.5 Title Insurance	19
4.6 Representations and Warranties	19
4.7 Environmental	20
4.8 Closing Documents and Funds	20
4.9 Proration; Closing or Settlement Statement	21
4.10 Closing Conditions	21
4.11 Actions by Escrow Agent	21
4.12 Conflicting Demands	22
4.13 Failure to Close; Cancellation	22
4.14 Post-Closing Taxes and Assessments	22
4.15 Reverter	22

TABLE OF CONTENTS
(cont'd)

	Page
ARTICLE V COMPONENT DEVELOPER'S DEVELOPMENT SCHEDULE, PROCESS, COMPLETION OF IMPROVEMENTS, USE AND MAINTENANCE	24
5.1 Schedule of Performance	24
5.2 Review and Inspection Process.....	24
5.3 Appointment of Representative	24
5.4 Component Developer Assistance	24
5.5 Certificate of Occupancy	24
5.6 Component Parking	25
5.7 Maintenance and Repairs	25
5.8 Renovation	26
5.9 Hotel Use	26
5.10 Use of Third Component Property.....	26
5.11 Covenants Running With the Land.....	26
ARTICLE VI PUBLIC IMPROVEMENTS; ADDITIONAL COMPONENT DEVELOPER UNDERTAKINGS; DEVELOPMENT SURCHARGE	26
6.1 Site Preparation Improvements, Fees & Public Improvements	26
6.2 Design, Construction and Dedication	26
6.3 City Processes	27
6.4 Maintenance of Public Improvements	27
6.5 Additional Component Developer Undertakings.....	27
ARTICLE VII ASSIGNMENT AND TRANSFER	28
7.1 Restrictions on Component Developer Until Completion of Construction	28
7.2 Permitted Transfers	29
7.3 Unrestricted Ability to Transfer.....	29
7.4 Restrictions on City.....	29
ARTICLE VIII INDEMNITY; RISK OF LOSS; INSURANCE	29
8.1 Indemnity by the Component Developer	29
8.2 Indemnity by the City	30
8.3 Risk of Loss	30
8.4 Insurance	30

TABLE OF CONTENTS
(cont'd)

	Page
ARTICLE IX DEFAULT; REMEDIES; TERMINATION	31
9.1 Events of Default by the Component Developer	31
9.2 Events of Default by the City.....	31
9.3 Grace Periods; Notice and Cure.....	31
9.4 Remedies on Default.....	32
9.5 Alternative Dispute Resolution.....	32
9.6 Delays; Waivers	33
9.7 Enforced Delay in Performance for Causes Beyond Control of Party	34
9.8 Rights and Remedies Cumulative.....	34
ARTICLE X REPRESENTATIONS	34
10.1 City Representations	34
10.2 Component Developer Representations.....	35
ARTICLE XI GENERAL PROVISIONS	36
11.1 Cooperation.....	36
11.2 Time of Essence.....	37
11.3 Conflict of Interest	37
11.4 Notices	37
11.5 Governing Law; Choice of Forum.....	38
11.6 Successors and Assigns.....	38
11.7 Waiver.....	38
11.8 Attorneys' Fees	38
11.9 Limited Severability.....	38
11.10 Schedules and Exhibits	38
11.11 Entire Agreement; Amendments.....	39
11.12 Recordation of Agreement.....	39
11.13 Rights of Lenders.....	39
11.14 Successor Laws	40

TABLE OF CONTENTS
(cont'd)

Page

EXHIBITS

A	Legal Description of Phase Three Property
B-1	Project Conceptual Site Plan
B-2	Phase Three Conceptual Site Plan
C	Phase Three Schedule of Performance
D	Special Warranty Deed
E	Component Developer's Ownership Structure
F	Insurance Requirements
G	Memorandum of Reversion Option
H	Phase Two Consent and Agreement

THIS YUMA PIVOT POINT PHASE THREE COMPONENT REAL PROPERTY SALE AND DEVELOPMENT AGREEMENT, PARTIAL ASSIGNMENT OF MASTER DEVELOPER'S INTEREST, COVENANTS AND FIFTH AMENDMENT OF MASTER DDA (this "**Agreement**") is entered into and effective as of this ____ day of _____, 2017 (the "**Effective Date**"), by and between the **CITY OF YUMA**, an Arizona municipal corporation (the "**City**"); **CLARK-LANKFORD, LLC**, a Delaware limited liability company (the successor "**Master Developer**"); and **KESARI PUTRA HOSPITALITY LLC**, an Arizona limited liability company ("**Phase Three Component Developer**" or "**Component Developer**"). The City, the Master Developer and the Component Developer are sometimes referred to herein collectively as the "**Parties**" or individually as a "**Party**".

RECITALS

A. Pursuant to City Council Resolution No. 2318 dated August 17, 1983, the City created the North End Redevelopment Area & Central Business District (the "**North End Redevelopment Area**") of which the Riverfront Redevelopment Area (the "**Riverfront Redevelopment Area**") is a part, as depicted and generally shown on Exhibit A attached to the 2009 DDA as defined in Recital C below.

B. Pursuant to the Request for Qualifications #99075, dated November 6, 1998, for the Component planning and development of the Riverfront Redevelopment Area, the City selected the Master Developer as the prime developer for the Riverfront Redevelopment Area, subject to execution of a Redevelopment and Disposition Agreement acceptable to the City and the Master Developer.

C. The City and the Master Developer entered into that certain Amended and Restated Yuma Riverfront Master and First Phase Development and Disposition Agreement (the "**2009 DDA**") dated January 21, 2009, and Recorded at Fee No. 2009-03198, as amended by a First Amendment dated March 17, 2009 and Recorded at Fee No. 2009-08128 ("**First Amendment**"), a Second Amendment dated May 26, 2010, and Recorded at Fee No. 2010-13305 (the "**Second Amendment**"), a Third Amendment dated May 19, 2011, and Recorded at Fee No. 2011-14282 (the "**Third Amendment**") and a Fourth Amendment (the "**Fourth Amendment**") in Section 1.3 of the Amended and Restated Phase 2 Development and Disposition Agreement, Partial Assignment of Master Developer's Interest and Fourth Amendment of Master DDA, dated March 31, 2016, and re-Recorded at Fee No. 2016-22363 (the "**Phase 2 Agreement**"). The 2009 DDA together with such First Amendment, Second Amendment, Third Amendment and Fourth Amendment are herein collectively called the "**Master DDA**" and in their entirety amended and restated the document Recorded on January 19, 2005 at Fee No. 2005-02309, such latter document having replaced the document Recorded at Fee No. 2004-44007. Capitalized terms in this Agreement which are not defined herein shall have the same meanings as set forth in the Master DDA.

D. The City and the Master Developer prepared a proposed Yuma Riverfront Component Redevelopment Plan (the "**Riverfront Redevelopment Plan**"), approved and adopted by the City Council on November 6, 2001, to provide a guideline for the redevelopment and other activities within the Riverfront Redevelopment Area, as amended and adopted by the City Council as a part of the Ordinance authorizing the 2009 DDA.

E. The City developed, approved and adopted the Yuma Crossing Design Guidelines (the “**Design Guidelines**” or “**Guidelines**”), which are supplementary to the existing design constraints of the City of Yuma Old Town (OT) and Historic (H) Overlay Zoning Districts, to provide assistance to designers and reviewers of proposed development within the Riverfront Redevelopment Area.

F. Pursuant to Section 5.7 of the 2009 DDA, the City and Master Developer acknowledged and agreed that the development of the Project on the Property, as each term is defined in Section 2.63 and Article I, respectively, of the Master DDA, will be accomplished by the Master Developer through a series of sales, leases, joint ventures and/or other agreements between the Master Developer and experienced developers (the “**Component Development Agreements**”).

G. The Component Developer acknowledges that the development of the **Phase Three Component** of the Project on the **Phase Three Property**, as each term is defined in **Section 2.45** and **Article I**, respectively, of this Agreement, is of such significance to the City that the City requires certain assurances concerning the time schedule for the completion of the Phase Three Component of the Project and that the Phase Three Component of the Project be designed and constructed in a manner consistent with the Guidelines and the OT and H Zoning Districts.

H. The City acknowledges that the development of the Phase Three Component is integral to the overall development of the Project and will continue the generation of additional transaction privilege tax revenues and property tax revenues for the City, which would not be generated without such development of the Project or which revenues will exceed those which would be generated by alternative uses of the Project Property. The City also believes that the development of the overall Project and the Phase Three Component is consistent and in conformity with the Riverfront Redevelopment Plan, the Guidelines and OT and H Zoning Districts and will generate substantial non-monetary benefits to the City.

I. The City has agreed to enter into this Agreement in consideration of and in material reliance on the Component Developer’s commitments as described in this Agreement subject to the conditions and provisions of this Agreement. The Component Developer has agreed at its sole cost, and is entering into this Agreement in consideration of and in material reliance on the City’s commitments as described in this Agreement, to pay for the design and construction of all Improvements required for the development of the Phase Three Component of the Project.

J. The City also has determined that the development of the Phase Three Component of the Project pursuant to this Agreement will result in significant planning, economic and other public purpose benefits to the City and its residents by, among other things: (i) providing for the construction of the Public Improvements associated with the Phase Three development; (ii) providing for development of the Phase Three Component of the Property consistent with the City’s Riverfront Redevelopment Plan for the Property; (iii) increasing tax revenues to the City arising from or relating to the Phase Three Improvements to be developed on the Phase Three Property; and (iv) creating new jobs and otherwise enhancing the economic welfare of the residents of the City.

K. The Parties understand and acknowledge that this Agreement is a “Development Agreement” within the meaning of and entered into pursuant to the terms of A.R.S. § 9-500.05, and, as such, is not subject to A.R.S. § 32-2181, as amended, and is consistent with the “General Plan” of the City as defined in A.R.S. § 9-461, as amended, applicable to the Phase Three Property, and shall constitute covenants running with the Phase Three Property as more fully described in this Agreement.

L. The Parties understand and acknowledge that this Agreement is authorized by and entered into in accordance with the terms of A.R.S. § 9-500.11. The actions taken by the City pursuant to this Agreement are for economic development purposes as that term is used in A.R.S. § 9-500.11, will assist in the creation and retention of jobs, and will in numerous other ways improve and enhance the economic welfare of the residents of the City.

M. The City is entering into this Agreement as an administrative act not only to implement the Riverfront Redevelopment Plan legislatively enacted by the City but also to carry out the policy and purposes already declared by the City for the North End Redevelopment Area and under the Riverfront Redevelopment Plan for the Riverfront Redevelopment Area.

NOW THEREFORE, in consideration of the above premises, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

ARTICLE I

PURPOSE AND SCOPE OF AGREEMENT, PARTIAL ASSIGNMENT AND FIFTH AMENDMENT OF MASTER DDA

1.1 **Purpose and Scope.** This Agreement applies to that portion of the Riverfront Redevelopment Area defined as and consisting of the Transfer Land for the Phase Three Hotel Component, determined in accordance with a Lot Tie/Split (the “**Lot Tie/Split**”) prepared by a registered Professional Engineer in the State of Arizona and mutually and reasonably acceptable to the City and Component Developer, and legally described on **Exhibit A** attached hereto (the “**Phase Three Property**”). The Component Developer shall pay the cost of the preparation of the Lot Tie/Split. The Phase Three Property is owned by the City as of the Effective Date of this Agreement. The Parties intend, and the purpose of this Agreement is to achieve, the redevelopment of the Phase Three Property in furtherance of the goals of the Riverfront Redevelopment Plan and the Master DDA. This Agreement is consistent with, and will further the redevelopment goals of, the Slum Clearance and Redevelopment Act in A.R.S. § 36-1471, *et seq.* and the Riverfront Redevelopment Plan for the Riverfront Redevelopment Area.

The following is a general scope of this Agreement, which will be further defined and articulated by the other provisions of this Agreement and is not intended to limit nor be used to construe or interpret the other provisions of this Agreement:

- (i) The City will sell fee title to the Phase Three Property to the Component Developer pursuant to **Article IV** of this Agreement.

(ii) The Component Developer will finance and construct an Extended Stay Hotel on the Phase Three Property in accordance with the Phase Three Schedule of Performance attached hereto as **Exhibit C**.

1.2 **Partial Assignment.** Pursuant to Article VIII of the Master DDA, the Master Developer hereby transfers and assigns to the Component Developer, and the Component Developer hereby accepts and assumes, all of the rights and obligations of the Master Developer under the Master DDA with respect to the Phase Three Property and the Phase Three Property only, the same as if the Component Developer were named in place of the Master Developer with respect to the Phase Three Property (the “**Partial Assignment of Master Developer’s Interest**”); provided, that the Master Developer shall remain responsible for the performance of its obligations under the Master DDA and Component Developer shall only have the rights and obligations of Master Developer under the Master DDA with regard to the Phase Three Property only. The City hereby consents to and approves the foregoing Partial Assignment of Master Developer’s Interest.

1.3 **Fifth Amendment of Master DDA.** Concurrently with the Effective Date of this Agreement, the City and the Master Developer hereby further amend the Master DDA as follows:

(a) The July 29, 2010 Yuma Pivot Point Concept Plan attached as Amended Exhibit F-1 to the Third Amendment of the Master DDA, as amended in its entirety by Page 1 of Exhibit B attached to the Phase Two Agreement (as defined in Recital C hereof) is hereby further amended, with the consent of the Phase Two Component Developer attached as **Exhibit H** hereto, by the Project Conceptual Site Plan attached as **Exhibit B-1** hereto, with the Phase Three Conceptual Site Plan being attached as **Exhibit B-2** hereto.

(b) The description of the Project as defined in Section 2.63 of the Master DDA, and amended in Section 1.3(b) of the Fourth Amendment, is hereby amended in its entirety by the description of the Project, Components and Development Sites set forth in **Section 2.55** of this Agreement.

(c) The Schedule of Performance referenced as Exhibit C in Section 1.3(c) of the Fourth Amendment is hereby further amended, with the consent of the Phase Two Component Developer attached as **Exhibit H** hereto, by the Phase Three Schedule of Performance attached as **Exhibit C** hereto.

(d) Section 4.3 of the Master DDA is hereby partially amended by deleting **Section 4.3.3.2** ab initio, and by requiring the Transfer Land for the Phase Three Hotel Component to be conveyed in fee simple title, rather than by a leasehold interest, with the following amended provisions replacing the requirement for a Transfer Notice and any other inconsistent or contrary provisions in Section 4.3 of the Master DDA:

(i) **Transfer Land for Phase Three Hotel Component.** Fee simple title to the Transfer Land for the Phase Three Hotel Component, which is the same as the Phase Three Property referenced in **Section 1.1** of this Agreement, will be conveyed by the City to the Component Developer pursuant to a special warranty deed executed by the City in a form substantially as shown on **Exhibit D** attached hereto. The City and Component Developer shall enter into an Escrow with the Escrow

Agent for the conveyance of the Phase Three Property pursuant to **Article IV** of this Agreement.

(ii) Component Developer's Purchase Price. The Component Developer's purchase price of the Transfer Land for the Phase Three Hotel Component shall be the fair market value of the unimproved Transfer Land for the Phase Three Hotel Component, which the Parties hereby acknowledge and agree is Six Hundred Forty-Four Thousand Three Hundred Thirty Seven and 10/100 Dollars (\$644,337.10).

(iii) Taxes and Assessments. The GPLET Abatement shall not apply with respect to the Phase Three Hotel Component because it will not be owned by the City.

(iv) Escrow Fees. The City and Component Developer shall each pay one-half (1/2) of all Escrow fees in connection with the conveyance of the Transfer Land for the Phase Three Hotel Component. The City and Component Developer shall bear their own costs, including attorneys' fees, in connection with the negotiation, due diligence, investigation and conduct of the transaction.

Except as specifically and expressly amended hereby, the provisions of Section 4.3 of the Master DDA shall remain in full force and effect with respect to the Phase Three Hotel Component and the other Components of the Project.

ARTICLE II

DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement with respect to the Phase Three Hotel Component, except where the context clearly indicates otherwise.

2.1 **"Additional Component Developer Undertakings"** means those undertakings not required by law, which the Component Developer has committed to perform pursuant to the express terms of this Agreement, which will provide a direct or indirect benefit to the City, and which are described in **Section 6.5**.

2.2 **"Additional Shared Parking Access"** means the vehicular parking areas on Parcel B and C of Amended **Exhibit D** to and referenced in Section 7 of the Third Amendment of the Master DDA.

2.3 **"Affiliate"** as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) **"control"** (including, with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) **"person"** means and includes

natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

2.4 “**Agreement**” means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all Exhibits and Schedules hereto. References to Articles, Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals A through M above, inclusive, are incorporated herein by reference and form a part of this Agreement but are not intended to expand the scope, number or nature of the Component Developer’s obligations beyond those expressly set forth in the numbered Articles and Sections of this Agreement.

2.5 “**Amended Title Report**” means as defined in **Section 4.1.5**.

2.6 “**Applicable Laws**” means as defined in **Section 3.4**.

2.7 “**A.R.S.**” means the Arizona Revised Statutes as now or hereafter enacted or amended.

2.8 “**Building Permit**” means an official permit or certificate issued by the Building Official of the City which authorizes Component Developer to construct the Phase Three Improvements for which the Final Phase Three Site Plan has been approved by the City. A grading or excavation permit is not a Building Permit.

2.9 “**Business Days**” means any day other than a Saturday, Sunday or day that is a legal holiday in the State of Arizona.

2.10 “**Certificate of Occupancy**” means a final written acceptance, of the completed and inspected Phase Three Component Improvements issued by the City Council or appropriate administrative staff member of the City. A Certificate of Occupancy will not be issued until the entire Phase Three Component of the Project is completed in conformance with this Agreement and accepted by the City.

2.11 “**City Representative**” means as defined in **Section 5.3**.

2.12 “**Close of Escrow**” means as defined in **Section 4.1.4**.

2.13 “**Closing Date**” means as defined in **Section 4.1.4**.

2.14 “**Commencement of Construction**” means that the date on which all of the following have occurred: (i) Component Developer has obtained the Building Permit for the construction of the Phase Three Improvements, (ii) a construction contract has been executed by and between Component Developer and the general contractor for the construction of the Phase Three Improvements, and (iii) the pouring of the foundations or footings for the Phase Three Improvements has begun, it being expressly agreed that Component Developer shall have no less than one hundred eighty (180) calendar days from the Closing Date to commence the pouring of foundations or footings for the Phase Three Improvements.

2.15 **“Completion of Construction”** means the date on which all of the following have occurred: (i) a final Certificate of Occupancy has been issued by the City for the Phase Three Improvements, and (ii) the Phase Three Public Improvements have been completed and accepted by the City Council or appropriate administrative staff member of the City for maintenance in accordance with the policies, standards and specifications contained in the applicable City ordinances.

2.16 **“Component Developer”** means Kesari Putra Hospitality, LLC, an Arizona limited liability company, or its permitted assignee, transferee or successor-in-interest with respect to this Agreement.

2.17 **“Component Developer’s Principals”** means as defined in **Section 8.2**.

2.18 **“Component Developer’s Purchase Price”** means as defined in **Section 4.3**.

2.19 **“Component Developer’s Representative”** means as defined in **Section 5.3**.

2.20 **“City’s Surcharge Share”** means the City’s 100% share of the Development Surcharge as set forth in **Section 6.5.2**.

2.21 **“Default”** or **“Event of Default”** means one or more of the events described in **Sections 9.1 or 9.2**; provided, however that such events shall not give rise to any remedy until effect has been given to all grace periods and/or cure periods provided for in this Agreement.

2.22 **“Deferrable Development Fees”** means as defined in **Section 3.3.7**.

2.23 **“Design Guidelines”** or **“Guidelines”** means as set forth in **Recital E**.

2.24 **“Designated Lenders”** means as defined in **Section 11.13**.

2.25 **“Development Surcharge”** means the one percent (1%) commercial surcharge as defined in **Section 6.5.2**.

2.26 **“DHRC”** means Design and Historic Review Commission as defined in **Section 3.3.1**.

2.27 **“Earnest Money”** means as defined in **Section 4.1.2**.

2.28 **“Effective Date”** means the date first set forth above on the first page of this Agreement.

2.29 **“Enforced Delay”** means as defined in **Section 10.7**.

2.30 **“Escrow”** means as defined in **Article IV**.

2.31 **“Expiration of Deferral Benefit Date”** means as defined in **Section 3.3.7**.

2.32 **“Extended Stay Hotel”** means a four story one hundred twelve (112) guest room extended stay hotel totaling approximately eighty-five thousand seven hundred thirty-six (85,736)

square feet of floor area as will be more particularly described by the Phase Three Final Site Plan to be approved by the City pursuant to this Agreement, such hotel to be constructed, maintained and operated as a Marriott Residence Inn, Home2 Suites by Hilton, Hilton Homewood Suites, Hyatt Summerfield Suites or other similar internationally known brand approved by the City, such approval not to be unreasonably withheld, conditioned or delayed if the Hotel Franchisor for such other brand requires a quality of construction, maintenance and repair at least as good as the Hotel Franchise Standard for an originally constructed Home2 Suites by Hilton.

2.33 “**General Plan**” means as defined in **Recital K**.

2.34 “**Hotel Franchise Agreement**” means a franchise or similar agreement, as amended or modified, with a Hotel Franchisor for the construction, use, operation, maintenance, or other activities related to the Extended Stay Hotel.

2.35 “**Hotel Franchisor**” means as defined in **Section 5.7**.

2.36 “**Hotel Franchisor Standard**” means as defined in **Section 5.7**.

2.37 “**Legal Fees Reimbursement Amount**” means as defined in **Section 6.5.1**.

2.38 “**Lender**” means as defined in **Section 11.13**.

2.39 “**Lot Tie/Split**” means as defined in **Section 1.1**.

2.40 “**Master DDA**” means as defined in **Recital C**.

2.41 “**Minor Variance**” means as defined in **Section 3.3.1**.

2.42 “**North End Redevelopment Area**” means as defined in **Recital A**.

2.43 “**North End Reinvestment Fund**” means as defined in **Section 6.5.2**.

2.44 “**Notice of Title Objection**” means as defined in **Section 4.1.6**.

2.45 “**Opening of Escrow**” means as defined in **Section 4.1.2**.

2.46 “**OT and H Zoning Districts**” means the City’s Old Town and Historic Overlay Zoning Districts as referenced in **Recital C**.

2.47 “**Partial Assignment of Master Developer’s Interest**” means as set forth in **Section 1.2**.

2.48 “**Party**” or “**Parties**” means as designated on the first page of this Agreement.

2.49 “**Phase Three**”, “**Phase Three Component**” or “**Phase Three Hotel Component**” means the Phase Three Property and Phase Three Improvements, including without limitation the Extended Stay Hotel.

2.50 “**Phase Three Conceptual Site Plan**” means the Phase Three Conceptual Site Plan attached as **Exhibit B-2** hereto.

2.51 “**Phase Three Final Site Plan**” means as defined in **Section 3.3**.

2.52 “**Phase Three Improvements**” means any and all buildings and other improvements, including without limitation the Extended Stay Hotel and the Phase Three Public Improvements, which may be constructed within or for the Phase Three Property.

2.53 “**Phase Three Property**” means as defined in **Section 1.1** and is used in this Agreement interchangeably with the Transfer Land for the Phase Three Component.

2.54 “**Phase Three Public Improvements**” means as defined in **Section 6.1**.

2.55 “**Project**” means the development of the entire multi-phased, mixed-use development project for the Property pursuant to the Master DDA. The Project is comprised of several sites to be developed by the Master Developer or a Component Developer(s), such sites to include the appurtenant parking areas and such sites being depicted and described by the following lettered numbers on the Master DDA Conceptual Site Plan as amended by the Project Conceptual Site Plan attached hereto as **Exhibit B-1** and the Phase Three Component Conceptual Site Plan attached hereto as **Exhibit B-2**.

Development Site	Description (with Minimum Requirements)
C1	Phase One - Conference Center 18,000 square feet (sq. ft.) Completed 2009 by Master Developer
H1	Phase One - Pivot Point Hotel 150 Rooms - Completed 2009 by Master Developer
Parking Zone 1B	43 surface shared parking spaces - Completed 2009 by Master Developer. Located on Parcel C, now known as Lot 5, of the Additional Shared Parking Areas
O2	Federal Courthouse – Constructed 2014 by others
E4	Existing Historic Heritage Center
R1, R2 & R3	Sub-Phase 2(a) Component – Two-Story Residential Apartments - 64 units – 51,500 sq. ft., shown as buildings R1 and R2 on the Project Conceptual Site Plan. Two Story Residential Apartments Recreation Facilities, approximately 1,200 sq. ft. shown as R3 on the Project Conceptual Site Plan
P2	Sub-Phase 2(b) Component - Fourth Avenue Restaurant 4,500 sq. ft.
P1	Riverfront Restaurant 5,500 sq. ft. to be developed on Parcel B, now known as Lot 2, of the Additional Shared Parking Areas
O1	Two- Story Madison Avenue Office - 18,500 sq. ft., with appurtenant parking.

Development Site	Description (with Minimum Requirements)
L1	Four Story 112-Room Extended Stay Hotel – 85,736 sq. ft., with appurtenant parking.
L2	First Street Commercial & Parking – 5,000 sq. ft. of restaurant/retail space.

The foregoing Development Sites are herein referred to by the following component names (individually, a “**Component**”, or collectively, the “**Components**”) as depicted on the Conceptual Project Site Plan attached hereto as **Exhibit B-1**:

<u>Component</u>	<u>Development Site(s)</u>
Phase One Hotel and Conference Center Component	C1 and H1 - Completed 2009 by Master Developer
Shared Parking Spaces	Parking Zone 1B (Now known as Lot 5 Additional Shared Parking Area). Completed 2009 by Master Developer
Extended Stay Hotel Component	L1
First Street Commercial Component	L2
Madison Avenue Office Component	O1
Sub-Phase 2(a) Residential Apartment and Recreation Facility Component	R1, R2 & R3
Sub-Phase 2(b) 4th Avenue Restaurant Component.	P2
Riverfront Restaurant Component	P1

2.56 “**Project Conceptual Site Plan**” means as defined in **Section 1.3(a)**.

2.57 “**Project Costs**” means all costs expended or to be expended by or on behalf of the Master Developer, Component Developer(s) or the City in connection with developing the Property, remediating (or causing the environmental remediation of) the Riverfront Redevelopment Area, designing and constructing the Public Improvements, and master-planning and designing the Project, including, but not limited to architectural, design, engineering, contractors and consultant fees; tests, studies and reports; filing fees; plan check, inspection and other similar fees; all applicable City development fees; supervision and administration fees; costs of required payment, performance and other bonds; costs of insurance; loan prepayment penalties; labor and material costs, equipment rentals and costs, and other customary “soft” costs and any “hard” costs and expenses incurred directly or indirectly by the Master Developer, Component Developer(s) or the City in connection with the performance of its development and related obligations under the Master DDA and this Agreement.

2.58 “**Project Property**” or “**Property**” means the entire real property of the Project as defined in Article I of the Master DDA.

2.59 “**Recorded**” or “**Recording**” means the recording of a document or instrument in the Official Records of Yuma County, Arizona.

2.60 “**Reversion Option**” means as defined in **Section 4.15**.

2.61 “**Restricted Period**” means as defined in **Section 3.4**.

2.62 “**Riverfront Redevelopment Area**” means as defined in **Recital A**.

2.63 “**Riverfront Redevelopment Plan**” means as defined in **Recital D**.

2.64 “**Schedule of Performance**” means the Phase Three Schedule of Performance attached as **Exhibit C** hereto.

2.65 “**Site Plan**” means as defined in **Section 3.3**.

2.66 “**Study Period**” means as defined in **Section 4.7.1**.

2.67 “**Taxable Activities**” means as defined in **Section 6.5.2**.

2.68 “**Term of Hotel Use**” means the period commencing on the Effective Date of this Agreement and terminating on that date which is fifteen (15) consecutive calendar years following the date of the issuance of a final Certificate of Occupancy by the City for the Phase Three Improvements.

2.69 “**Third Party**” or “**Third Parties**” means (i) any person (as defined in **Section 2.3** above) other than a Party, or (ii) any of the Component Developer’s Principals, or (iii) an Affiliate of any of them.

2.70 “**Title Insurer**” means as defined in **Section 4.1.5**.

2.71 “**Title Report**” means as defined in **Section 4.1.5**.

2.72 “**Triparty Agreement**” means as defined in **Section 12.13**.

ARTICLE III

COMPONENT PLANNING

3.1 **Component Planning**. The Project Conceptual Site Plan, as amended and attached hereto as **Exhibit B-1**, shall be subject to modification from time to time by the City and Master Developer to address market demand, available financing and other similar factors, and only may be amended upon the mutual written consent of the City and Master Developer, which consent may be withheld by either in its sole and absolute discretion. Any amendment of the Riverfront Redevelopment Plan shall be subject to City Council approval.

3.2 **Phase Three Conceptual Site Plan.** The Phase Three Conceptual Site Plan attached hereto as **Exhibit B-2** sets forth the scope of development for the Phase Three Component, including depicting the types of basic land use, buildings and structures on the Phase Three Property.

3.3 **Phase Three Site Plan Approval.** The Phase Three Component as described herein and depicted on the Phase Three Conceptual Site Plan is subject to being refined and finalized through the approval by the City of a final site plan of the Phase Three Component (“**Phase Three Final Site Plan**”). The Component Developer shall submit the proposed Phase Three Final Site Plan application in accordance with applicable City submission requirements for such applications. The City shall process the Component Developer’s application for approval, including review for City approval by the City’s Department of Community Development and by the Design and Historic Review Commission for the City. The Phase Three Final Site Plan also shall be subject to the following:

3.3.1 **Amendments and Modifications.** Any amendment or modification of the City approved Phase Three Final Site Plan, other than those required by Applicable Laws, shall be re-submitted for review and approval by the City’s Department of Community Development and, if deemed necessary by the City’s Department of Community Development, by the Design and Historic Review Commission for the City.

3.3.2 **Appeal of the Decision.** The decision by the City’s Department of Community Development or its Design and Historic Review Commission to deny approval of a proposed Phase Three Final Site Plan or an amendment or modification thereof may be appealed to the City Council. The City Council’s decision shall be final, binding upon the Parties and enforceable by any court of competent jurisdiction.

3.3.3 **Site Plan Conditions and Changes to Landscaping and Screening Requirements.** The Phase Three Property is zoned Yuma Old Town (OT) and Historic (H) Overlay Zoning Districts. The Phase Three Improvements shall be constructed in accordance with the requirements of a Hotel Franchisor for a Home2 Suites by Hilton and, to the extent not inconsistent with such Home2 Suites by Hilton Hotel Franchisor requirements, the provisions of the City’s Zoning Ordinance, the Design Guidelines and approved Phase Three Final Site Plan for the Phase Three Improvements. The development and use constraints placed on the Phase Three Property include the following modifications and special requirements allowing the Phase Three Property to be developed in accordance with the Phase Three Conceptual Site Plan attached hereto as **Exhibit B-2**.

Walls and Landscaping:

- All landscaped plantings including trees and shrubs shall be allowed to grow to their natural height and appropriate shape.
- A minimum eight-foot-wide landscaping or hardscape strip shall be provided between parking aisles and buildings.
- All landscaping shall meet requirements found in the City Landscaping

Code.

Buildings and Minimum Setbacks Distances:

- Buildings shall include articulated wall planes, projections and recesses to provide shadow and depth.
- Wall planes and roof lines shall not run in one continuous direction for more than 50 feet without an offset.
- Exterior of buildings shall not include large expanses of blank walls, but shall include architectural embellishments, colors, building materials and textures that are in harmony with the surrounding area and the Guidelines.
- All buildings shall be located so that paved parking areas or drive aisles (drive-thru excepted) do not directly abut buildings.
- All minimum building setbacks and, subject to **Section 5.6** hereof, vehicular parking shall be based upon the Phase Three Conceptual Site Plan attached hereto as **Exhibit B-2**. Any modifications to the Phase Three Conceptual Site Plan also shall be subject to the review and prior written approval of the Director of the City's Department of Community Development.

Signage:

- All signage shall be placed on monuments, building facades or on low profile walls, no roof mounted signage allowed.
- Proposed signs may vary from the City standard as outlined in the Zoning Code, upon review and approval of the Director of the City's Department of Community Development.
- Signs shall be integrated with the design of the building and site development, reflecting the architecture and the building materials.
- The means of integrating signs with the architecture of the building shall be achieved through replication of architectural embellishments, colors, building materials, texture and other elements found in the building design.
- No off-site signs shall be permitted.

Parking and Access:

- Vehicular driveway access to allow public parking overflow shall be provided at two locations adjacent to the Phase Three Property along Madison Avenue.
- All parking and vehicular driveway access shall comply with Applicable

Laws, including without limitation City Code and ADA requirements.

3.3.4 **Non-Access Restrictions.** The Phase Three Conceptual Site Plan includes non-access restrictions along the street perimeters of the Phase Three Property and shall be subject to City approval as part of the Phase Three Final Site Plan. Such non-access restrictions shall prohibit vehicular access to and from the Phase Three Property except for the City approved driveway locations, but shall allow approved utility and pedestrian access.

3.3.5 **Encroachment and Right-of-Way Permits and Licenses Required.** Any work performed in the public right-of-way, or the construction, installation or maintenance of any facility or other improvement in the public right-of-way requires a permit, license, franchise, or similar authorization issued by the City's controlling agency (the "**Permitting Agency**") through the Permitting Agency's normal and customary process for such issuance. City approval of the Phase Three Final Site Plan for the Phase Three Improvements over all or any portion of the Phase Three Property does not constitute authorization for work or improvements in the public right-of-way or any grant or waiver of any permitting requirements of the Permitting Agency. Component Developer shall meet all permitting requirements of the Permitting Agency, and shall obtain all necessary permits prior to commencing such work or improvements in the public right-of-way.

3.3.6 **Payment and Deferral of City of Yuma Development Fees, and Water and Sewer Capacity Charges.** All City of Yuma Development Fees and water and sanitary sewer capacity charges, including costs associated with installation of water meters (collectively the "**Deferrable Development Fees**") for the Phase Three Hotel Component, shall be due and payable at the rate in existence at the time of issuance of the Building Permit or water meter installation (whichever occurs first for the construction of the Phase Three Improvements), but may be deferred as follows:

3.3.6.1 **Deferral Eligibility.** The Phase Three Property shall be eligible for the deferral benefit for a period of three (3) years following the Effective Date of this Agreement (the "**Expiration of Deferral Benefit Date**").

3.3.6.2 **Vesting.** The deferral benefit shall vest in the Phase Three Property if a City approved footing inspection for the Extended Stay Hotel occurs within one hundred eighty (180) days of the date of issuance of the Building Permit. Time is of the essence. If such footing inspection is not successfully completed and approved by the City within one hundred eighty (180) days of the issuance of the Building Permit, no deferral benefit shall vest, and Component Developer shall either: (i) be issued a refund of eighty percent (80%) of the cost of the Building Permit and the Building Permit shall expire; or (ii) all Deferrable Development Fees shall immediately be due and payable to the City to prevent the Building Permit from expiring. At the Expiration of Deferral Benefit Date, if the deferral benefit has vested in the Phase Three Property, the Phase Three Property shall continue to have the benefit unless construction is abandoned. If the deferral benefit has not vested by the Expiration of Deferral Benefit Date, the right to seek such a benefit shall also expire. An expired Building Permit shall not prohibit Component Developer from

reapplying for the deferral benefit if Component Developer also applies for a new Building Permit.

3.3.6.3 Application. Upon payment of the Five Hundred Dollar (\$500.00) deferral fee to the City, Component Developer shall submit and sign a Request for Deferral of Development Fees and Water and Sewer Capacity Charges. The Deferrable Development Fees shall be calculated, signed by the Component Developer and the City Administrator or the City Administrator's designee, and shall constitute an enforceable contract for the payment to the City of all Deferrable Development Fees. The completed Request for Deferral of Development Fees and Water and Sewer Capacity Charges, together with this Agreement, shall serve as the security required by statute for payment thereof.

3.3.6.4 Period of Deferral. Payment in full of the Deferrable Development Fees shall be made by the Component Developer to the City no later than the date of final inspection or issuance of any Certificate of Occupancy for the Phase Three Improvements, whether temporary or otherwise.

3.3.7 Deferred Amount Due Upon Assignment or Transfer. Notwithstanding any assignment contract, lease or agreement to the contrary between Component Developer and any restricted assignee or transferee (pursuant to **Section 7.1** of this Agreement) of any or all of the Phase Three Property, which has a vested deferral benefit of Deferrable Development Fees, Component Developer shall pay all Deferrable Development Fees to the City prior to the Recording or validity of any assignment contract or agreement or the execution of any lease transferring interest in such Phase Three Property.

3.4 Applicable Laws. The Phase Three Component shall be developed in accordance with all Applicable Laws. For the purposes of this Agreement, the term "**Applicable Laws**" means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, development fees (in accordance with A.R.S. § 9-463.05), and other requirements and official policies of the City, now or hereafter adopted or amended, which apply to the development of the Phase Three Component. However, until the third (3rd) anniversary of the Effective Date (the "**Restricted Period**") with respect to the Phase Three Component, no City moratorium, or future ordinance, resolution or other land use rule or regulation imposing a limitation to the rate, timing or sequencing of the development of the Phase Three Component shall apply to or govern the development of the Phase Three Component, whether such ordinance, rule or regulation affects subdivision plats, building permits, occupancy permits, development fees, or other entitlements to use the Phase Three Component issued or granted by the City, it being further agreed that during the Restricted Period the development of the Phase Three Component will be subject to the 2012 IBC International Building Code, the 2012 IEBC International Existing Building Code, the 2009 IECC International Energy Conservation Code, the 2012 IMC International Mechanical Code, the 2012 IPC International Plumbing Code, the 2012 IFGC International Fuel Gas Code, the 2014 NEC National Electric Code, the 2012 NFPA I National Fire Protection Association Fire Code and the 2010 ADAAG Americans With Disabilities Act Accessibility Guidelines, all of such Codes adopted or to be adopted by the City (including updates in 2018) with some modifications which will not materially impair the Component Developer's ability to develop the Phase Three Component as contemplated by this Agreement.

3.5 **Permissible Exceptions.** Notwithstanding the provisions of **Section 3.4**, the City may enact the following Applicable Laws, and take the following actions, which shall be applicable to and binding on the development of the Phase Three Component:

(i) Future land use ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which are consistent with the express provisions of this Agreement and the Master DDA, and not contrary to the existing land use regulations described in the second sentence of **Section 3.4**; provided that such future land use ordinances, rules, regulations, permit requirements and other requirements and official policies shall not materially impair the Component Developer's ability to develop the Phase Three Component as contemplated in this Agreement;

(ii) Other future land use ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which the Component Developer may agree in writing apply to the development of the Phase Three Component;

(iii) Future land use ordinances, rules, regulations, permit requirements and other requirements and official policies of the City enacted as necessary to comply with mandatory requirements imposed on the City by county, state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the City;

(iv) Future updates of, and amendments to, existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, and similar construction and safety related codes, such as the 2012 IBC International Building Code, which updates and amendments are generated by a nationally recognized construction/safety organization, such as the International Code Council, or by the county, state or federal governments; provided that such updates and amendments shall not materially impair the Component Developer's ability to develop the Phase Three Component as contemplated in this Agreement; and

(v) Amendments to such construction and safety codes generated by the City for the purposes of conforming such codes to the conditions generally existing in the City; provided that such amendments shall not materially impair the Component Developer's ability to develop the Phase Three Component as contemplated in this Agreement.

3.6 **Access to Parcels.** Component Developer, its employees, contractors, agents and representatives shall have the right, at all reasonable times, of access to and entry upon the Phase Three Property for the purpose of obtaining data, making surveys and conducting tests necessary to carry out the transactions and development contemplated by this Agreement. Component Developer shall indemnify, defend and hold the City and its City Council members, officers, employees, contractors, agents and representatives, harmless from any and all injuries, damages, claims, costs, fees (including court costs and witness and attorney's fees), losses, damages and liabilities of any kind, expressly excluding those incurred to the extent of the gross negligence or

willful misconduct of the City or its officers, agents, contractors or employees, but including without limitation mechanics' or materialmen's liens, which may be asserted against or incurred by the City or the Phase Three Property resulting from, or arising out of, such access and entry by Component Developer or its officers, employees, contractors, agents and representatives, pursuant to this **Section 3.6**. Notwithstanding any provision in this Agreement to the contrary, the foregoing indemnification obligations shall survive the Close of Escrow or the rescission, cancellation or termination of this Agreement for any reason.

3.7 **Data from the City.** Upon Component Developer's written request, the City shall provide Component Developer with access to any and all data and information as the City may have pertaining to the Riverfront Redevelopment Area, which is not otherwise confidential, privileged or in any City Attorney files. Component Developer shall not attempt to assert any liability against the City by reason of the City's having furnished any data or information pursuant to the terms of this Agreement or by reason of any such data or information becoming or proving to have been incorrect or inaccurate in any respect unless the City personnel furnishing such information had actual knowledge (without any duty of inquiry) that such information was incorrect or inaccurate at the time of the furnishing of such information to the Component Developer. Any information that has previously been released to the public cannot be considered confidential or privileged.

ARTICLE IV

CONVEYANCE OF PHASE THREE PROPERTY

Effective contemporaneously with the Effective Date of this Agreement, which is subject to approval by ordinance adopted by the City Council, the City and Component Developer shall enter into an escrow for the sale and conveyance of the Phase Three Property from the City to the Component Developer ("**Escrow**"). The term "Parties" or "Party" as used in this **Article IV** means the City and/or the Component Developer and not the Master Developer. Notwithstanding anything in this Agreement to the contrary, if by _____, _____, the Opening of Escrow has not occurred for any reason, or the sale of the Phase Three Property pursuant to this Agreement has not been approved by the City Council, this Agreement shall be null, void and of no further force or effect whatsoever. The Component Developer's purchase of the Phase Three Property is further subject to the following:

4.1 **Escrow.** The Escrow for the sale and conveyance of the Phase Three Property by the City to the Component Developer will be established with Chicago Title Insurance Company, Yuma, Arizona ("**Escrow Agent**") on the following terms and conditions:

4.1.1 **Escrow Instructions.** The terms and conditions set forth in this **Article IV** shall constitute both an agreement between the City and the Component Developer, and Escrow instructions to the Escrow Agent for the Escrow. The City and Component Developer shall promptly execute and deliver to Escrow Agent any separate or additional Escrow instructions requested by Escrow Agent which are consistent with the terms of this Agreement. In no event shall any separate or additional instruction modify or amend the provisions of this Agreement unless authorized in writing by both the City and the Component Developer.

4.1.2 **Opening of Escrow; Earnest Money.** The delivery of a fully executed copy, or counterparts, of this Agreement, together with Component Developer's earnest money deposit ("**Earnest Money**") of Fifty Thousand Dollars (\$50,000.00), to Escrow Agent shall be deemed the date of "**Opening of Escrow.**" The Earnest Money is equal to the maximum amount of the City Legal Fees Reimbursement pursuant to **Section 6.5.1** hereof. On or before the Close of Escrow, the City shall deliver to Escrow Agent and Component Developer the City's statement of the City's Legal Fees Reimbursement amount. Upon the Close of Escrow, if the Legal Fees Reimbursement Amount shown by such statement is less than Fifty Thousand Dollars (\$50,000.00), Escrow Agent shall pay the City such lesser amount from the Earnest Money and apply the difference against Component Developer's Purchase Price; if the Legal Fees Reimbursement Amount shown by such statement exceeds Fifty Thousand Dollars (\$50,000.00), none of the Earnest Money shall be applied against Component Developer's Purchase Price and Escrow Agent shall pay the entire Earnest Money to the City as the maximum Legal Fees Reimbursement Amount.

4.1.3 **Investment of Deposits.** Any sums deposited into Escrow may be placed in an interest-bearing account or invested in interest-bearing securities by Escrow Agent for the benefit of the Party making such deposit in accordance with that Party's further instructions.

4.1.4 **Closing Date.** Unless otherwise extended in writing, signed and agreed to by both the City and Component Developer, the close of the Escrow shall occur on or before the ninetieth (90th) day after the Opening of Escrow (the "**Closing Date**" or "**Close of Escrow**").

4.1.5 **Title Report.** As soon as reasonably possible after Opening of Escrow, the Escrow Agent shall deliver to the Parties a commitment for title insurance to be underwritten by Chicago Title Insurance Company ("**Title Insurer**"), together with copies of all Schedule B items, to the Parties concerning condition of title of the Phase Three Property (the "**Title Report**"). The Escrow Agent also shall deliver to the Parties amendments of the Title Report for any additional or different matters affecting such condition of title (each an "**Amended Title Report**").

4.1.6 **Notice of Title Objection.** If any matters indicated as exceptions in the Title Report or any Amended Title Report (other than the standard printed exclusions) affect the Component Developer's contemplated development or use of the Phase Three Property, the Component Developer may object to such matters by delivering written notice of such objection ("**Notice of Title Objection**") to the City and Escrow Agent on or before ten (10) days after receipt of the Title Report or an Amended Title Report. The Notice of Title Objection shall specify in reasonable detail the matter objected to and the manner in which the objection affects the contemplated development or use of the Phase Three Property. The Component Developer shall be deemed to have approved the condition of title if no Notice of Title Objection is so delivered by such tenth (10th) day. If within thirty (30) days after receipt by the City and Escrow Agent of any Notice of Title Objection, the matter objected to has not been eliminated or insured over by an Amended Title Report, the Component Developer shall be entitled to either: (i) terminate this Agreement by written

notice to the City and Escrow Agent, or (ii) waive its objection by written notice delivered to the City and Escrow Agent. If the Component Developer does not waive its objection, this Agreement shall automatically terminate and the Escrow Agent shall promptly return all monies and other deposits, less the administrative costs of Escrow, to the Parties making such deposit, and the Parties shall have no further obligations to each other, except as otherwise expressly stated with respect to the indemnities set forth in this Agreement. If the matter objected to is eliminated or insured over as aforesaid, or if the Component Developer waives its objection, Close of Escrow shall occur on the later of (i) five (5) Business Days after the Parties' receipt of notification thereof or (ii) the Closing Date.

4.2 **Conveyance of Title; Water Plant Access.** On the Close of Escrow, and subject to the Component Developer's payment of Component Developer's Purchase Price and the other conditions for the Close of Escrow, including without limitation those in **Section 4.8** below, the City shall convey fee title in the Phase Three Property to Component Developer by executing and delivering to Escrow Agent for Recording a special warranty deed for the Phase Three Property, substantially in conformance with the Special Warranty Deed attached hereto as **Exhibit D**, which shall include a non-exclusive easement reserved in favor of the City for ingress and egress to, from and for utility lines related to the adjacent City Water Plant across the north forty (40) feet (the previous Jones Street alignment) of Lot 6 of the Phase Three Property (Lot 6 being designated as Parcel D of the Amended Exhibit D attached to the Third Amendment of the Master DDA).

4.3 **Component Developer's Purchase Price.** The purchase price for the Phase Three Property shall be Six Hundred Forty-Four Thousand Three Hundred Thirty Seven and 10/100 Dollars (\$644,337.10). ("**Component Developer's Purchase Price**").

4.4 **Condition of Phase Three Property.** The City makes no warranty or representation as to the condition of the Phase Three Property, which shall be conveyed by the City to Component Developer in its then "As Is" condition.

4.5 **Title Insurance.** Subject to exceptions not objected to by a Notice of Title Objection described in **Section 4.1.1** of this Agreement, the City shall pay the costs, as of the date and time of Close of Escrow, of insuring title to the Phase Three Property under a Standard Owner's Policy issued by the Title Insurer, provided that any additional costs or requirements for an extended policy or policies or endorsements requested by Component Developer shall be paid for or complied with by Component Developer.

4.6 **Representations and Warranties.**

4.6.1 **Condemnation.** To the City's knowledge, there are no condemnation proceedings threatened or pending with respect to any of the Phase Three Property.

4.6.2 **Commissions.** Each Party represents to the other that it has not dealt with any broker or agent or with any finder concerning sale or conveyance of the Phase Three Property. Each Party shall defend and hold the other harmless from all liability and expense, including without limitation attorneys' fees, arising from any claim by any broker, agent or finder for commissions, finder's fees or similar charges because of any act of such

Party. This indemnity shall survive the Close of Escrow or any termination of this Agreement.

4.7 **Environmental.**

4.7.1 **Study Period.** No later than five (5) Business Days after Opening of Escrow, the City shall deliver all environmental studies, tests, reports and other tangible materials in its possession that pertain to the Phase Three Property. Component Developer shall have the right to conduct various investigations, studies and reviews of the Phase Three Property including any environmental assessment or Phase I or Phase II environmental study during a period of time beginning on the date of Opening of Escrow and ending five (5) Business Days before the Closing Date (“**Study Period**”). If Component Developer in its sole discretion is not satisfied with the environmental condition of the Phase Three Property, Component Developer may terminate this Agreement only by written notice to the City and Escrow Agent at any time prior to the expiration of the Study Period. In the event of such termination, the Escrow Agent shall promptly return all monies and other deposits, less the administrative costs of escrow, free of any interest or claim of the other Party, and the Parties hereto shall have no further obligations to each other, except as otherwise expressly stated with respect to the indemnities set forth in this Agreement.

4.7.2 **Indemnification.** The City shall indemnify, protect, defend and hold the Component Developer harmless for, from and against any and all claims, costs, liabilities, judgments, losses or expenses (including, without limitation, attorneys’ fees and costs) arising out of, resulting from, or connected with any environmental matters or conditions first occurring as a result of the City’s activities (and the activities of the City’s employees, agents, contractors and representatives) on the Phase Three Property prior to the Close of Escrow. Additionally, the Component Developer shall indemnify, protect, defend and hold the City harmless for, from and against any and all claims, costs, liabilities, judgments, losses or expenses (including, without limitation, attorneys’ fees and costs) arising out of, resulting from, or connected with any environmental matters or conditions first occurring as a result of the Component Developer’s activities (and the activities of Component Developer’s employees, agents, contractors and representatives) on the Phase Three Property following the Close of Escrow and during the Component Developer’s ownership of the Phase Three Property. This **Section 4.7.2** shall survive the Close of Escrow or the rescission, cancellation or termination of this Agreement for any reason.

4.8 **Closing Documents and Funds.** Not less than five (5) Business Days prior to the Closing Date, and as additional conditions for the Close of Escrow, the Parties shall deposit the following into Escrow:

(a) The City shall deposit an appropriately executed Special Warranty Deed for the Phase Three Property.

(b) The City shall deposit an affidavit or qualifying statement satisfying the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the Non-Foreign Affidavit).

(c) Component Developer shall deposit written evidence reasonably satisfactory to the City, from the appropriate City Department(s) as proof that the Component

Developer has received all required City Zoning approvals, that the construction plans for the construction of the Phase Three Improvements have been received, that the necessary City plan check process has been completed and that the City is ready for issuance for the Building Permit upon Close of Escrow.

(d) Component Developer shall deposit written evidence reasonably satisfactory to the City, from its Lender stating in effect that all required conditions (other than the Close of Escrow) for the close of financing for the development, and construction of the Phase Three Component have been met and that the closing of any construction financing shall occur within one hundred eighty (180) days after the Close of Escrow for the Phase Three Property.

(e) The Parties shall execute and deposit the Memorandum of Reversion Option.

(f) The Parties shall deposit such other instruments and funds (including Component Developer's Purchase Price) as are reasonably required by the Escrow Agent or otherwise required to close the Escrow and consummate the sale of the Phase Three Property in accordance with the terms of this Agreement.

4.9 **Proration; Closing or Settlement Statement.** Because the City, as an Arizona municipal corporation, is not subject to real estate taxes, the proration of such taxes shall not be required at Close of Escrow. If any other prorations are required or desired by the Parties or the Escrow Agent, such proration shall be made as of 12:01 a.m. on the day the Close of Escrow occurs on the basis of a 365-day year. At least five (5) Business Days prior to the Closing Date, Escrow Agent shall deliver to the Parties a tentative closing or settlement statement showing the itemized amounts due from or credited to each of the Parties for the Close of Escrow.

4.10 **Closing Conditions.** Escrow Agent shall consummate the Close of Escrow on the Closing Date if: (a) Escrow Agent has received in a timely manner all the funds and documents required; (b) Escrow Agent has received the appropriate commitments for the Phase Three Property and there is no pending Notice of Title Objection; and (c) all of the conditions to Close of Escrow have been satisfied.

4.11 **Actions by Escrow Agent.** Upon the Close of Escrow, Escrow Agent as part of its duties shall:

(a) Cause the Special Warranty Deed to be Recorded and thereafter mailed or delivered to the Component Developer, with a copy thereof to be mailed or delivered to the City;

(b) Deliver the Owner's Policy and the Non-Foreign Affidavit to the Component Developer, with copies thereof to be mailed or delivered to the City;

(c) Mail or deliver the final closing or settlement statement to the City and Component Developer;

(d) Cause the Memorandum of Reversion Option to be Recorded and thereafter mailed or delivered to the City, with a copy thereof to be mailed or delivered to the Component Developer;

(e) Deliver the Component Developer's Purchase Price, net of only the City's closing costs, to the City; and

(f) Deliver any excess funds to the appropriate Party depositing such funds.

Also, Escrow Agent agrees to be the designated "reporting person" under §6045(e) of the U.S. Internal Revenue Code of 1986 as amended with respect to the sale of the Phase Three Property and will prepare, file and deliver such information, returns and statements as the U.S. Treasury Department may require by regulations or forms in connection with such requirements, including Form 1099-B.

4.12 **Conflicting Demands.** Should Escrow Agent receive or become aware of conflicting demands or claims with respect to the Escrow, Escrow Agent shall have the right to discontinue any further acts until such conflict is resolved to Escrow Agent's satisfaction.

4.13 **Failure to Close; Cancellation.** If the Escrow Agent is not in a position to close Escrow on the Closing Date designated in or extended pursuant to **Section 4.1.4**, Escrow Agent shall close Escrow as soon thereafter as possible; provided, however, that if the Closing has not occurred by the thirtieth (30th) day following such Closing Date, then subject to **Section 9.4(a)(i)** hereof concerning the payment of the Earnest Money to the City, Escrow Agent shall return to the depositor thereof any funds or other materials previously placed into Escrow (including any interest on any such funds). No such return shall relieve either Party of liability for any failure to comply with the terms of this Agreement and shall be in addition to any other rights such Party may have at law or in equity, subject to **Section 9.4 (a)(i)** hereof.

4.14 **Post-Closing Taxes and Assessments.** All real, personal, and other taxes or assessments of any kind or nature, whether general or special, levied, assessed or imposed upon the Phase Three Property or any portion thereof, or by reason of this Agreement or any rights accruing on the Phase Three Property, from the Close of Escrow shall be borne and paid by the Component Developer, but this shall not preclude Component Developer from protesting the validity or amount of any such tax or assessment. The Component Developer shall have no obligation or liability for taxes and assessments which accrue during any period preceding the Close of Escrow.

4.15 **Reverter.** If, within one hundred eighty (180) days after the Close of Escrow, and for any reason other than an Enforced Delay, the Building Permit has not been issued, or the financing for the development and construction of the Phase Three Improvements has not closed or the Commencement of Construction has not occurred, the City shall have the right and option to reacquire the Phase Three Property (the "**Reversion Option**") on the following terms and conditions:

4.15.1 **Exercise of Reversion Option.** The City may exercise the Reversion Option by giving Component Developer at least ten (10) Business Days prior written notice thereof at any time following such one hundred eighty (180) days after the Close of Escrow until the earlier of (i) one hundred (100) days following such one hundred eighty (180) days after the Close

of Escrow or (ii) the date on which Commencement of Construction occurs for the Phase Three Improvements.

4.15.2 **Restoration.** If the City exercises the Reversion Option, Component Developer at its sole cost and expense shall promptly restore the Phase Three Property to its condition as of the date of the Close of Escrow, except as may be otherwise requested by the City in writing.

4.15.3 **Closing of Reversion.** Within thirty (30) days after the City gives notice of the exercise of the Reversion Option, Component Developer shall deliver to the City Component Developer's Special Warranty Deed for the Phase Three Property conveying title to the Phase Three Property free and clear of all monetary encumbrances and in the same condition of title as when conveyed by the City to Component Developer, except as to nondelinquent property taxes and assessments for the year of such closing, which taxes and assessments shall be prorated between the City and Component Developer to the date of such closing, so that Component Developer bears such taxes and assessments for the period of its ownership of the Phase Three Property. Component Developer agrees to pay all costs and expenses for such closing, including the premium for a standard coverage title insurance policy, insuring that title to the Phase Three Property is vested in the City. If the City requires an extended coverage policy, the City shall pay any additional premium relating thereto. Contemporaneously with the delivery to the City of Component Developer's Special Warranty Deed, the City shall refund to Component Developer an amount equal to Component Developer's Purchase Price less Component Developer's prorated taxes and assessments and all other costs and expenses for such closing, with the City's right to withhold an equitable portion thereof until the City is reasonably satisfied that the restoration of the Phase Three Property required by **Section 4.15.2** above has occurred.

4.15.4 **Evidence of Expiration of Reversion Option.** If the Commencement of Construction of the Phase Three Improvements occurs on or before the tenth (10th) Business Day after the City's notice exercising the Reversion Option, or if the City fails to exercise the Reversion Option within the time and in the manner set forth above, the City shall have no further right to exercise the Reversion Option and the City agrees, upon Component Developer's written request, to deliver promptly to Component Developer a duly executed, acknowledged and recordable release of the City's right to exercise the Reversion Option. Such release shall be in form and substance reasonably acceptable to the Component Developer and the Escrow Agent.

4.15.5 **Memorandum.** At the Closing, a Memorandum of the Reversion Option in the form of **Exhibit "G"** attached hereto shall be executed by the City and Component Developer and Recorded.

4.15.6 **Optionee's Policy.** The Reversion Option shall be insured by an Optionee's Policy issued at Component Developer's sole cost by the Title Insurer at the Close of Escrow in the amount of the Component Developer's Purchase Price.

4.15.7 **Survival.** This **Section 4.15** shall survive the Close of Escrow.

ARTICLE V

COMPONENT DEVELOPER'S DEVELOPMENT SCHEDULE, PROCESS, COMPLETION OF IMPROVEMENTS, USE AND MAINTENANCE

5.1 **Schedule of Performance.** The timing of the planning and development of the Phase Three Component shall be achieved pursuant to the Schedule of Performance attached hereto as **Exhibit C**.

5.2 **Review and Inspection Process.** The Parties acknowledge and agree that it is desirable for Component Developer to proceed rapidly with the implementation of this Agreement and the development of the Phase Three Component and that an expedited review and construction inspection process may be necessary. Accordingly, if at any time Component Developer believes an impasse has been reached with the City staff on any issue affecting the Phase Three Component, Component Developer shall have the right to immediately appeal to the City's Community Development Director for an expedited decision pursuant to this **Section 5.2**.

5.3 **Appointment of Representative.** In order to help expedite decisions by the City relating to the Phase Three Component, the City shall designate a representative ("**City Representative**") of the City to act as a liaison between the City and the Component Developer and between the various departments of the City and the Component Developer. The City Representative shall be available at all reasonable times to serve as such liaison, it being the intention of this **Section 5.3** to provide the Component Developer with one individual as the City's principal representative with respect to the Phase Three Component. The Component Developer shall also designate a representative ("**Component Developer's Representative**") who shall serve as a liaison between the Component Developer and the City. The City Representative shall be the City Administrator or his designee, and the initial Component Developer Representative shall be Mitesh R. Kalthia . Either the City or Component Developer by giving notice to the other Party as provided in **Section 11.4** may change representatives at any time. Any disputes over delay in the review and approval processes will be resolved as provided in **Section 9.5**.

5.4 **Component Developer Assistance.** Notwithstanding anything contained herein to the contrary, the Component Developer acknowledges that the City may not have sufficient number of personnel to implement an expedited development review and/or expedited construction inspection process, faster than the timeframes stated in **Section 3.3** of this Agreement. The Component Developer by notice to the City may elect to have the City implement an expedited review and/or inspection process, in which case the Component Developer shall engage at its cost such private independent consultants and advisors as are approved by and necessary to assist the City in the review and/or inspection process; provided, that such consultants and advisors shall take instruction from, be controlled by, and be responsible to the City rather than the Component Developer; and, provided further, that to the extent the City elects to use its own personnel and overtime and similar charges are incurred by the City, the Component Developer shall be responsible only for incremental overtime costs incurred above the City's ordinary operation expenses for such personnel.

5.5 **Certificate of Occupancy.** Promptly after final completion of the construction of the Phase Three Improvements, in accordance with the Phase Three Final Site Plan approved by

the City, the City shall consider issuing to the Component Developer a Certificate of Occupancy for the Phase Three Improvements. Upon issuance of the Certificate of Occupancy, the Component Developer may Record the Certificate of Occupancy. If the City refuses or fails to provide the Certificate of Occupancy, the City shall, within ten (10) days after written request by the Component Developer, issue a written statement setting forth the reason(s) why the Certificate of Occupancy was not issued by the City and what specific measures or acts the City requires of Component Developer before the City will issue the Certificate of Occupancy.

5.6 **Component Parking.** All on-site surface vehicular parking constructed on Lot 6 described in **Exhibit A** attached hereto, as may be depicted on the City approved Phase Three Final Site Plan, shall be constructed, operated and maintained at the sole cost and expense of the Component Developer. In addition, and pursuant to Sections 5.10 and 5.11 of the Master DDA, (Section 5.11 having been amended by the Third Amendment thereto), after the Close of Escrow Component Developer shall share parking rights to the 21 Shared Parking Spaces described in Section 5.10 of the Master DDA (as modified by the City approved Phase Three Final Site Plan) and the 43 Additional Shared Parking Spaces described for Parking Zone 1B in **Section 2.38** of this Agreement, equal to the shared parking rights of all other Parking Permittees and Shared Parking Permittees, as defined in the Master DDA. In accordance with such Sections 5.10 and 5.11 of the Master DDA, the 21 Shared Parking Spaces and the 43 Additional Shared Parking Spaces shall be constructed, operated and maintained at the sole cost and expense of Master Developer, provided that Master Developer may be reimbursed by Component Developer for a portion of such costs on such terms and conditions as may be set forth in a written agreement between Master Developer and Component Developer for the sharing of such costs.

5.7 **Maintenance and Repairs.** Component Developer, at its sole cost and expense, shall keep and maintain all of the Phase Three Improvements now or hereafter located on the Phase Three Property, together with all additions and alterations thereto, and all fixtures and equipment therein, in good, first-class, attractive and safe condition and repair and shall make all necessary repairs, replacements and renewals, whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary, in order to maintain such state of repair and condition, it being understood and agreed that the City shall have no liability for any of the foregoing. In addition, Component Developer shall cause the Extended Stay Hotel to be maintained in good repair and condition and in conformity with Applicable Laws and not less than the maintenance standards and specifications promulgated from time to time by the franchisor (“**Hotel Franchisor**”) of the hotel brand under which the Extended Stay Hotel is then being operated, but in no event less than if the Extended Stay Hotel were being operated under the Home2 Suites by Hilton brand (the “**Hotel Franchisor Standard**”). If the Home2 Suites by Hilton brand ceases to exist, the Hotel Franchisor Standard shall be no less than the successor brand to the Home2 Suites by Hilton brand or, if no such successor brand then exists, then to the next closest hotel brand as mutually agreed upon in writing by the City and Component Developer or, if the City and Component Developer are unable to reach such agreement in writing within thirty (30) days after written request by either party to the other, then the next closest hotel brand shall be selected by the then presiding judge of the Superior Court of Arizona in and for the County of Yuma, upon application by either the City or Component Developer. Component Developer shall give the City copies of any fully executed Hotel Franchise Agreement and any amendments, extensions or modifications thereof (with any financial terms redacted or obscured) within ten (10) days after their full execution.

5.8 **Renovation.** Component Developer, at its sole cost and expense, shall make such Extended Stay Hotel renovations as may be required to maintain the Extended Stay Hotel in good standing under the Hotel Franchisor brand that the Extended Stay Hotel is then being operated, subject to the provisions relating to the Hotel Franchisor Standard set forth in **Section 5.7** above.

5.9 **Hotel Use.** During at least the fifteen (15) years Term of Hotel Use, Component Developer shall cause the Phase Three Improvements to be continuously operated and used for Extended Stay Hotel purposes, except to the extent beyond the reasonable control of Component Developer, such as during periods of damage or destruction, but financial inability and market conditions excluded.

5.10 **Use of Third Component Property.** Following the expiration of the fifteen (15) years Term of Hotel Use, the Phase Three Property may be used for any hotel or extended hotel purposes (and no other purposes) so long as the hotel or extended hotel is of similar quality of construction, maintenance and repair as the originally constructed Extended Stay Hotel.

5.11 **Covenants Running With the Land.** The above provisions of **Sections 5.6 through 5.10** inclusive are covenants which shall run with the land as a burden on the Phase Three Property for the benefit of the remainder of the Project **for the Term of Hotel Use, as defined in Section 2.68 of this Agreement.**

ARTICLE VI

PUBLIC IMPROVEMENTS; ADDITIONAL COMPONENT DEVELOPER UNDERTAKINGS; DEVELOPMENT SURCHARGE

6.1 **Site Preparation Improvements, Fees & Public Improvements.** Component Developer shall be solely responsible for and pay all costs for the design and construction of on-site and off-site Phase Three Public Improvements required by the City approved Phase Three Final Site Plan. Upon Completion of Construction of the Phase Three Public Improvements, the Component Developer shall convey title to all Phase Three Public Improvements to the City by dedication deed, plat recordation, or otherwise, and Component Developer will, to the extent allowed by Applicable Laws, assign to the City any unexpired warranties relating to the design, construction and/or composition of such Phase Three Public Improvements. Acceptance of the Phase Three Public Improvements shall be conditioned on the City's receipt of a one (1) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to the City, provided however, that such warranty or warranties may be provided by the Component Developer's contractor or contractors directly to the City and are not required from the Component Developer, with any such warranties to extend from the date of Completion of Construction of any such Phase Three Public Improvements, any component thereof, or the work of any specific trade or contractor, as applicable.

6.2 **Design, Construction and Dedication.** All Phase Three Public Improvements shall be designed, constructed and dedicated in accordance with Applicable Laws.

6.3 **City Processes.** Component Developer recognizes that the development and construction of the Phase Three Public Improvements are subject to the City's normal public improvement processes.

6.4 **Maintenance of Public Improvements.** After title to the Phase Three Public Improvements has been transferred to and accepted by the City, the Phase Three Public Improvements shall become public facilities and property of the City and the City shall be solely responsible for all maintenance, replacement or repairs of the Phase Three Public Improvements, subject to the warranties in **Section 6.1.**

6.5 **Additional Component Developer Undertakings.** In addition to Component Developer's design and construction of the Phase Three Public Improvements, Component Developer agrees to perform or comply with the "**Additional Component Developer Undertakings**" set forth in this **Section 6.5.**

6.5.1 **Reimbursement of City Legal Fees.** Component Developer shall reimburse the City for City's legal fees and costs charged by the City's outside legal counsel in an amount not to exceed Fifty Thousand Dollars (\$50,000.00) in connection with the preparation, negotiation and implementation of this Agreement and any City documents or acts which may be required by Component Developer's Lenders ("**Legal Fees Reimbursement Amount**"), such reimbursement to be made from the Earnest Money pursuant to **Section 4.1.2** hereof.

6.5.2 **Public Access.** Component Developer hereby grants the City emergency vehicle access in perpetuity over and through the parking areas, plazas, private roadways, etc. that may exist from time to time within the Phase Three Component of the Project, including without limitation those access ways or easements shown on the Phase Three Final Site Plan approved by the City.

6.5.3 **Development Surcharge.** Component Developer and its permitted successors and assigns shall contractually require the collection of a specific one percent (1%) development surcharge (the "**Development Surcharge**") on all transactions or activities now or hereafter subject to any transaction privilege taxes levied or imposed under the City Tax Code that occur within the Phase Three Component in perpetuity ("**Taxable Activities**"); provided, however, City acknowledges and agrees that a Development Surcharge will not be imposed on any construction activities, materials or costs associated with the construction or repair of the Phase Three Component Improvements or the Phase Three Public Improvements. The Development Surcharge shall be collected and reported to the City not more frequently than monthly and in such manner as the City shall determine from time to time. Component Developer and its permitted successors and assigns shall require that all commercial leases, management contracts, or any other document that implements the leasing, subleasing and operation of the Phase Three Component, contain provisions requiring the payment, collection and reporting of the Development Surcharge to the City. The Parties further agree to develop and execute any additional agreements or documents, including entering into Third Party agreements, necessary to implement this **Section 6.5.3**, including specifically the development of collection and reporting procedures to ensure that the Development Surcharge is collected

and then reported and paid to the City. The Development Surcharge revenues collected by the City shall be deposited in a special fund created by the City (the “**North End Reinvestment Fund**”) that is segregated from other City funds and held in constructive trust for the benefit of and reinvestment in the North End Redevelopment Area, as such reinvestment is from time to time determined by the City in its sole and absolute discretion. The provisions of this **Section 6.5.3** shall be covenants running with the land, shall be binding on and inure to the benefit of the Parties and their respective successors and assigns, and shall survive the Close of Escrow or the rescission, cancellation or termination of this Agreement for any reason.

6.5.4 Cost of Phase Three Component. Except as otherwise expressly and specifically set forth in this Agreement, Component Developer shall pay all Project Costs for or in any way relating to the Phase Three Component, including without limitation the acquisition costs of the Phase Three Property, the costs of the appraisal of the Phase Three Property up to a maximum of Five Thousand and No/100th Dollars (\$5,000.00), the cost of preparing and developing the Phase Three Component of the Phase Three Property, the cost of the Lot Tie/Split up to a maximum of Ten Thousand and No/100th Dollars (\$10,000.00) and the cost of constructing all Phase Three Improvements. The Yuma Crossing National Heritage Area (YCNHA) shall be reimbursed by the Component Developer for any and all of YCNHA’s expenditures relating to sale of the Phase Three Property not to exceed Five Thousand and No/100th Dollars (\$5,000).

6.5.5 Competing Hotel Restriction. In consideration of the agreements of the Component Developer’s agreements contained herein, the City agrees that for a period of five (5) years following the Effective Date of this Agreement, and with the exception of the Hotel currently constructed and operating in the Phase One Component of the Project, the City will not permit any real property currently owned by the City within the Riverfront Redevelopment Area to be used for the development, construction or operation of a Hotel or Extended Stay Hotel nor will the City participate financially or provide financial incentives in the development, construction or operation of a Hotel or Extended Stay Hotel within the Riverfront Redevelopment Area.

ARTICLE VII

ASSIGNMENT AND TRANSFER

7.1 Restrictions on Component Developer Until Completion of Construction. During the fifteen (15) years Term of Hotel Use, and except in connection with (i) obtaining financing or refinancing as provided in **Section 7.2** below, (ii) the exercise of remedies by Lenders referenced in **Section 12.13** with respect to such financing or refinancing which have entered into a nondisturbance agreement with the City, or (iii) as expressly provided otherwise in this **Article VII**, Component Developer shall not transfer or assign all or any part of its rights or obligations under this Agreement without the prior express written consent of the City, which approval may be given or withheld in the City’s sole and absolute discretion. For the purposes of this Agreement, “transfer or assign” shall include a change in the identity of the parties in control of the Component Developer as of the Effective Date of this Agreement, namely the Component Developer’s Principals named in **Section 7.2** below, except as otherwise provided in this

Article VII. The Component Developer shall promptly notify the City of any and all changes in the identity of the parties in control of the Component Developer and the details thereof. No voluntary or involuntary successor in interest of the Component Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

7.2 **Permitted Transfers.** Notwithstanding anything to the contrary contained in **Section 7.1**, until the date of the Completion of Construction, as defined in **Section 2.14** hereof, but subject to not less than fifteen (15) days' prior written notice to the City containing the name and address of each transferee and a detailed description of the interest being transferred, the following transfers shall not require the prior approval of the City: (a) any member may transfer its interest in the Component Developer, provided that after each such transfer Mitesh R. Kalthia or a trust which he controls (the "**Component Developer's Principals**") will continue to own, directly or indirectly, at least fifty-one percent (51%) of the total voting interests in the Component Developer, a description or diagram of such ownership structure being set forth on **Exhibit E**; (b) the Component Developer may transfer this Agreement (and its rights and obligations hereunder, in whole or in part) to Component Developer's Principals, or to any other Affiliate of Component Developer of which at least fifty-one percent (51%) of the total ownership interest is owned or controlled by the members of Component Developer as of the Effective Date of this Agreement; (c) subject to the aforesaid written notice to the City containing the name and address of the Lender (as defined in **Section 11.13**) and a detailed description of the financing or refinancing involved, the Component Developer may pledge, collaterally assign or otherwise encumber all or any part of its rights under this Agreement to a Lender which provides financing or refinancing to the Component Developer in connection with all or any part of the construction, refurbishment, replacement, the repair of all or any part of the Phase Three Improvements; and (d) the Component Developer may assign any interest in this Agreement to any successor in interest to the Component Developer, if the Component Developer remains responsible for the performance of its obligations hereunder (i.e., if the transfer or assignment does not result in a novation).

7.3 **Unrestricted Ability to Transfer.** Following the fifteen (15) years hotel use period described in **Section 5.9** hereof, the Component Developer or its members may transfer any interest in this Agreement, the Phase Three Property, the Extended Stay Hotel, or any portion thereof, without the prior approval of the City; provided, however, not less than fifteen (15) days' prior written notice of such transfer or assignment shall be provided to the City containing the name and address of each transferee and a detailed description of the interest being transferred.

7.4 **Restrictions on City.** The City's rights and obligations under this Agreement shall be non-assignable without the prior express written consent of the Component Developer, which consent may be given or withheld in the Component Developer's sole and absolute discretion.

ARTICLE VIII

INDEMNITY; RISK OF LOSS; INSURANCE

8.1 **Indemnity by the Component Developer.** Component Developer shall pay, defend, indemnify and hold harmless the City and its City Council members, officers, employees and agents from and against all claims, demands, fines, penalties, costs, expenses, damages, losses,

obligations, judgments, liabilities, and suits (including attorney's fees, experts' fees and court costs associated) which arise from or relate in any way to any act or omission by Component Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Component Developer's obligations under this Agreement; provided however, that the provisions of this **Section 8.1** shall not apply to loss or damages or claims which are attributable to acts or omissions of the City, its employees, contractors, subcontractors, agents or representatives, and Component Developer shall have no defense obligations in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of the City, its employees, contractors, subcontractors, agents or representatives. This **Section 8.1** shall survive the Close of Escrow or the rescission, cancellation, or termination of this Agreement for any reason.

8.2 **Indemnity by the City.** The City shall pay, defend, indemnify and hold harmless Component Developer and its partners, shareholders, officers, managers, members, agents and representatives from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities and suits (including attorney's and experts' fees and court costs associated) which arise from or which relate in any way to any act or omission on the part of the City, its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the City's obligations under this Agreement; provided however, that the provisions of this **Section 8.2** shall not apply to loss or damage or claims which are attributable to acts or omissions of Component Developer and/or its affiliates, or their respective agents, employees, contractors, subcontractors or representatives, and the City shall have no defense obligations in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of Component Developer, its employees, contractors, subcontractors, agents or representatives. This **Section 8.2** shall survive the Close of Escrow or the rescission, cancellation, or termination of this Agreement for any reason.

8.3 **Risk of Loss.** Component Developer assumes the risk of any and all loss, damage or claims to (i) the Phase Three Improvements, and (ii) the Phase Three Public Improvements unless and until title to the Phase Three Public Improvements are conveyed to the City and accepted for future maintenance by the City.

8.4 **Insurance.** Upon written request by the City at any time from the Effective Date to the Completion of Construction for the Phase Three Public Improvements, the Component Developer will provide the City with proof of payment of premiums and certificates of insurance showing that the Component Developer is carrying, or causing its prime contractor to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth in **Exhibit F** of this Agreement. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice of cancellation to the City, and will name the City as an additional insured on such policies. The Insurance provisions of this **Section 8.4** shall terminate with the termination of this Agreement.

ARTICLE IX

DEFAULT; REMEDIES; TERMINATION

9.1 **Events of Default by the Component Developer.** “Default” or an “Event of Default” by Component Developer under this Agreement means one or more of the following:

- (a) Any representation or warranty made in this Agreement by the Component Developer was materially inaccurate when made or shall prove to be materially inaccurate during the Term of Hotel Use;
- (b) Component Developer fails to comply with the dates established in the Schedule of Performance for any reason other than an Enforced Delay;
- (c) Foreclosure (or deed in lieu of foreclosure) upon any mechanic’s, materialmen’s or other lien upon any Phase Three Improvements, excluding liens imposed in connection with Component Developer’s financing or refinancing by Lenders which have entered into nondisturbance agreements with the City, but such lien shall not constitute a Default if Component Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion;
- (d) Component Developer transfers or attempts to transfer or assign this Agreement in violation of **Section 7.1**, except as permitted by **Section 7.2**; or
- (e) Component Developer fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

9.2 **Events of Default by the City.** “Default” or an “Event of Default” by the City under this Agreement means one or more of the following:

- (a) Any representation or warranty made in this Agreement by the City was materially inaccurate when made or shall prove to be materially inaccurate during the Term of Hotel Use; or
- (b) The City fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement for any reason other than Enforced Delay.

9.3 **Grace Periods; Notice and Cure.** Upon the occurrence of an Event of Default by any Party, such Party shall, upon written notice from a non-defaulting Party, proceed immediately to cure or remedy such Default and, in any event, such Default shall be cured within thirty (30) days (or twenty (20) days in the event of a monetary default or ninety (90) days if the Default relates to the date for Completion of Construction of the Phase Three Improvements) after receipt of such notice, or, if such Default is of a nature is not capable of being cured within thirty (30) days (or ninety (90) days if the Default relates to the date for such Completion of Construction) shall be commenced within such period and diligently pursued to completion. The foregoing cure periods are subject to the provisions of **Section 9.4(a)(i)** which grant a cure period of one hundred eighty (180) days for the consequences specified in **Section 9.4(a)(i)**.

9.4 **Remedies on Default.** Whenever any Event of Default occurs and is not cured (or cure undertaken) in accordance with **Section 9.3** of this Agreement, the non-defaulting Party may take any of one or more of the following actions:

(a) **Remedies of the City.** The City's exclusive remedies for an Event of Default by Component Developer shall consist of and limited to the following:

(i) If the Component Developer fails to close on the purchase of the Phase Three Property under the terms of this Agreement, City will be entitled to deliver a notice of cancellation to Component Developer and Escrow Agent, and Escrow Agent promptly shall pay City and City shall retain the Earnest Money deposited by Component Developer with Escrow Agent as full, liquidated, and agreed-upon damages. With the fluctuation in land values, the unpredictable state of the economy, the fluctuating money market for real estate loans, and other factors that affect the marketability of the Phase Three Property, City and Component Developer agree that it would be impractical and extremely difficult to estimate the actual damages that City may suffer in the event of a default by Component Developer. This remedy provision has been agreed-upon after specific negotiation, keeping in mind the difficulties in estimating actual damages and City agrees that it shall have no right to specific performance against Component Developer.

(ii) If an Event of Default by Component Developer occurs following the Closing and prior to Completion of Construction of the Phase Three Improvements or with respect to Component Developer's obligation to construct the Phase Three Public Improvements in accordance with the terms of this Agreement, the City may suspend any of its obligations under this Agreement during the period of the Default.

(iii) If an Event of Default by Component Developer occurs at any time, whether prior to or after Completion of Construction of the Phase Three Improvements, the City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Component Developer to undertake and to fully and timely perform its obligations under this Agreement, including, but not limited to, injunctive relief to address a public safety concern or to enjoin any construction or activity undertaken by Component Developer which is not in accordance with the terms of this Agreement.

(b) **Remedies of the Component Developer.** Component Developer's exclusive remedies for an Event of Default by the City shall consist of and shall be limited to seeking special action or other similar relief (whether characterized as mandamus injunction or otherwise), requiring the City to undertake and to specifically perform fully and timely its obligations under this Agreement

9.5 **Alternative Dispute Resolution.**

9.5.1 **Impasse.** If at any time Component Developer believes an impasse has been reached with the City staff on any issue affecting the Phase Three Component which

is not an Event of Default, the Component Developer shall have the right to immediately appeal to the City Representative for an expedited decision pursuant to this Section. If the issue on which an impasse is reached is an issue where a final decision can be reached by the City staff, the City Representative shall give Component Developer a final administrative decision within seven (7) days after Component Developer's request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City Representative shall request a City Council hearing on the issue to take place within thirty (30) days after the Component Developer's request for an expedited decision; provided, however, that if the issue is appropriate for review by the City's Planning and Zoning Commission, the matter shall be submitted to the Planning and Zoning Commission within thirty (30) days, and then to the City Council at its first meeting following the Planning and Zoning Commission hearing and the applicable public notice period. Both the City and Component Developer agree to continue to use reasonable good faith efforts to resolve any impasse pending such expedited decision.

9.5.2 **Mediation.** If there is a dispute hereunder which is not an Event of Default and which the Parties cannot resolve between themselves in the time frame set forth in **Section 9.5.1**, the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association but shall not be under the administration of the American Arbitration Association unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the City and Component Developer. The matter in dispute shall be submitted to a mediator mutually selected by Component Developer and the City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Component Developer shall request that the Presiding Judge of the Superior Court in and for the County of Yuma, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years' experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the City and Component Developer. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238.

9.6 **Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party shall not be considered as a waiver of rights with respect to any other Default by the non-defaulting Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

9.7 **Enforced Delay in Performance for Causes Beyond Control of Party.** Whether stated or not, all periods of time in this Agreement are subject to this Section (except the opening of the Escrow pursuant to **Article IV** and the grace, notice and cure periods in **Section 9.3**), and the grace and cure periods in **Sections 9.3 and 9.4**. Neither the City nor Component Developer, as the case may be, shall be considered in Default of its obligations under this Agreement in the event of enforced delay due to causes beyond its control and without its fault, without its failure to comply with Applicable Laws, or without its negligence, (an “**Enforced Delay**”), including but not limited to (1) acts of God, acts of public enemy, acts of the Federal, state or local government, acts of the other Party, and acts of Third Parties, including Component Developer’s contractors, subcontractors, suppliers, and persons or entities with whom or which Component Developer has a contractual relationship, if the act or omission of such Third Party resulting in the delay was beyond the reasonable control of Component Developer; (2) litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes); (3) bankruptcy, insolvency or similar action (if initiated by a Third Party), or any foreclosure or other exercise of remedies of any Lenders, with respect to Component Developer; and (4) without limiting the foregoing, any action or inaction of the City, its officers, agents, agencies, departments, committees, Council members, board members or commissioners which (without Component Developer’s fault, negligence or failure to comply with Applicable Laws) delays, directly or indirectly, Component Developer’s ability to comply with the Schedule of Performance or other requirement imposed by this Agreement. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability of particular tenants for or purchasers of any or all of the Phase Three Component, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Component Developer in connection with the Phase Three Component, it being agreed that Component Developer will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any Enforced Delay, the time or times for performance of the obligations of the Party claiming Enforced Delay shall be extended for the period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) days after such Party knows or reasonably could have known of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay.

9.8 **Rights and Remedies Cumulative.** The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

ARTICLE X

REPRESENTATIONS

10.1 **City Representations.** The City represents and warrants to Component Developer that:

10.1.1 The City has the full right, power and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and the City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the Yuma City Charter and the Yuma City Code.

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

10.1.3 The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

10.1.4 As of the Effective Date of this Agreement, the City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement, which has not been disclosed in writing to Component Developer.

10.1.5 This Agreement (and each undertaking of the City contained herein), constitutes a valid, binding and enforceable obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. The City will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names the City as a party or which challenges the authority of the City to enter into or perform any of its obligations hereunder and will cooperate with Component Developer in connection with any other action by a Third Party in which Component Developer is a party and the benefits of this Agreement to Component Developer are challenged. The severability and reformation provisions of **Section 11.9** shall apply in the event of any successful challenge to this Agreement.

10.1.6 The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

10.1.7 The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

10.2 **Component Developer Representations.** Component Developer represents and warrants to the City that:

10.2.1 Component Developer has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of Component Developer under this Agreement, and the execution, delivery and performance of this Agreement by Component Developer has been duly authorized and agreed to in compliance with the organizational documents of Component Developer.

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

10.2.3 Component Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

10.2.4 As of the Effective Date of this Agreement, Component Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Component Developer, which could have a material adverse effect on Component Developer's performance under this Agreement, which has not been disclosed in writing to the City.

10.2.5 This Agreement (and each undertaking of Component Developer contained herein) constitutes a valid, binding and enforceable obligation of Component Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Component Developer will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Component Developer as a party or which challenges the authority of Component Developer to enter into or perform any of its obligations hereunder and will cooperate with the City in connection with any other action by a Third Party in which the City is a party and the benefits of this Agreement to the City are challenged. The severability and reformation provisions of **Section 11.9** shall apply in the event of any successful challenge to this Agreement.

10.2.6 The execution, delivery and performance of this Agreement by Component Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Component Developer is a party or to which Component Developer is otherwise subject.

10.2.7 Component Developer has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

10.2.8 Component Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

ARTICLE XI

GENERAL PROVISIONS

11.1 **Cooperation.** The City and Component Developer hereby acknowledge and agree that they shall cooperate in good faith with each other and use best efforts to pursue the economic development of the Phase Three Component as contemplated by this Agreement.

11.2 **Time of Essence.** Time is of the essence of each and every provision of this Agreement.

11.3 **Conflict of Interest.** Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

11.4 **Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted: (i) by personal delivery; or (ii) by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at the addresses set forth below, or at such other address as a Party may designate in writing or (iii) by any express or overnight delivery service [e.g. Federal Express], delivery charges prepaid:

If to the City:

City Administrator
City of Yuma
One City Plaza
P.O. Box 13014
Yuma, AZ 85366-3014

With copies to:

City Attorney
City of Yuma
One City Plaza
P. O. Box 13014
Yuma, AZ 85366-3014

and

Snell & Wilmer L.L.P.
400 S. Van Buren
One Arizona Center
Phoenix, Arizona 85004-2202

If to Master Developer or
Component Developer: Craig W. Clark
C.W. Clark, Inc.
11772 Sorrento Valley Road, Suite 100
San Diego, CA 92121

and

Kesari Putra Hospitality LLC
445 Hotel Circle South
San Diego, California 92108
Attn: Mitesh R. Kalthia

With copies to:

Charles J. Riekema
Charles J. Riekema, PLC
310 East Thomas Road
Phoenix, AZ 85012

11.5 **Governing Law; Choice of Forum.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Yuma (or, as may be appropriate, in the Justice Courts of Yuma County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this **Section 11.5**.

11.6 **Successors and Assigns.** This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

11.7 **Waiver.** No waiver by either Party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

11.8 **Attorneys' Fees.** In the event of any actual litigation between the Parties in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

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

11.10 **Schedules and Exhibits.** All Schedules and Exhibits referred to herein or attached hereto are incorporated herein by this reference as though fully set forth herein.

11.11 **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, and all other prior and contemporaneous agreements, representations, negotiations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein. This Agreement shall not be amended or modified except in writing executed by all the Parties or their successors and assigns, any such amendment to be Recorded within ten (10) days after its approval and execution by the City.

11.12 **Recordation of Agreement.** This Agreement shall be Recorded within ten (10) days after its approval and execution by the City. However, this Agreement shall not become effective until the Effective Date as defined by **Section 2.27** above.

11.13 **Rights of Lenders.** The City is aware that financing or refinancing for acquisition, development and/or construction of the Phase Three Component may be provided, in whole or in part, from time to time, by one or more Third Parties (individually a “**Lender**”, and collectively the “**Lenders**”). In connection with such financing, such Lender or Lenders will have the right to assume Component Developer’s, or its permitted assignees’ position, with respect to this Agreement. In such event, and if there is more than one Lender, it will be necessary for the Lenders to enter into an agreement among themselves, Component Developer and/or its permitted assignees, acknowledging the various rights of the Lenders and Component Developer and/or its permitted assignees (the “**Triparty Agreement**”). The City agrees that it shall execute such Triparty Agreement only for the purpose of acknowledging the rights of such Lenders in this Agreement, provided that such Triparty Agreement imposes no additional obligations upon nor diminishes any rights of the City other than those contained within this Agreement. In the event of an Event of Default by Component Developer, the City shall provide notice of such Event of Default, at the same time notice is provided to Component Developer, to not more than two (2) of such Lenders for the Phase Three Component, as previously designated by Component Developer to receive such notice (the “**Designated Lenders**”) whose names and addresses were provided by written notice to the City in accordance with **Section 11.4**. The City shall give Component Developer copies of any such notice provided to such Designated Lenders and, unless Component Developer notifies the City that the Designated Lenders names or addresses are incorrect (and provides the City with the correct information) within three (3) business days after Component Developer receives its copies of such notice from the City, the City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Component Developer may provide notices to other Lenders. If a Lender is permitted, under the terms of its nondisturbance agreement with the City, or under a Triparty Agreement executed by the City, to cure the Event of Default and/or to assume the Component Developer’s position with respect to this Agreement, the City agrees to recognize such rights of the Lender or Lenders under the Triparty Agreement, and to otherwise permit each such Lender to assume all of its respective rights and obligations of Component Developer under this Agreement. In any event, any of the Designated Lenders after receiving notice in accordance with this **Section 11.13** will have forty-five (45) days more than is given the Component Developer to remedy such Event of Default by Component Developer. The City shall, at any time upon reasonable request by the Component Developer, provide to any Lender an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no Event of Default by Component Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon request by a Designated Lender, the City will enter into a separate nondisturbance agreement

with each such Designated Lender, consistent with the provisions of this **Section 11.13** and in form acceptable to the City and the Designated Lender.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first set forth above.

THE CITY:

CITY OF YUMA, an Arizona municipal corporation

By: _____
City Administrator

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, City Administrator of the City of Yuma, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:

KESARI PUTRA HOSPITALITY LLC,
an Arizona limited liability company

STATE OF _____)
) ss.
County of _____)

Notary Public

42

CLARK-LANKFORD, LLC,
a Delaware limited liability company

By: _____
C. W. Clark, President

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by C. W. Clark, President of C. W. Clark, Inc., a California corporation, as Manager of Clark-Lankford, LLC, a Delaware limited liability company, who acknowledged that he signed the foregoing instrument on behalf of the corporation as manager of the limited liability company.

Exhibit A
Legal Description of Phase Three Property

See attached legal description of proposed Lot 6A (proposed Lot 6B not included)

**PIVOT POINT YUMA SUBDIVISION
PROPOSED LOT 6A
LEGAL DESCRIPTION**

That portion of Lot 6, PIVOT POINT YUMA, according to the Plat of Record in the Office of the County Recorder of Yuma County, Arizona, in Book 26 of Plats, Pages 92 through 96, being located in Section 35, Township 16 South, Range 22 East, San Bernardino Base and Meridian, Yuma County, Arizona more particularly described as follows:

Beginning at the northwest corner of said Lot 6;

Thence North 85°11'00" East along a North line of said Lot 6 a distance of 166.19 feet;

Thence South 04°32'00" East along a line of said Lot 6 a distance of 40.00 feet;

Thence North 85°11'00" East along a North line of said Lot 6 a distance of 158.16 feet;

Thence South 04°54'00" East along an East line of said Lot 6 a distance of 173.75 feet;

Thence North 86°36'38" East along a line of said Lot 6 a distance of 20.51 feet;

Thence South 04°54'00" East along an East line of said Lot 6 a distance of 85.48 feet;

Thence South 85°06'00" West perpendicular to the East line of said Lot 6 a distance of 125.50 feet;

Thence South 04°54'00" East parallel with and 125.00 feet westerly of the East line of said Lot 6 a distance of 115.71 feet to the South line of said Lot 6;

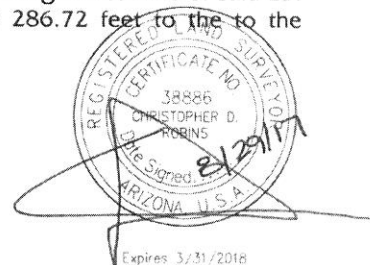
Thence South 86°36'38" West along the South line of said Lot 6 a distance of 227.16 feet;

Thence North 47°20'41" West along a line of said Lot 6 a distance of 34.71 feet;

Thence North 01°18'00" West along a West line of said Lot 6 a distance of 98.97 feet to the beginning of a tangent curve to the right having a radial bearing South 88°42'00" West;

Thence along said curve to the right of radius 5,694.65 feet along a West line of said Lot 6 through a central angle of 02°53'05" an arc distance of 286.72 feet to the POINT OF BEGINNING;

Said parcel contains 124,630 square feet, more or less.



Z:\Dra2017\17233\documents\17233 legal descriptions.doc

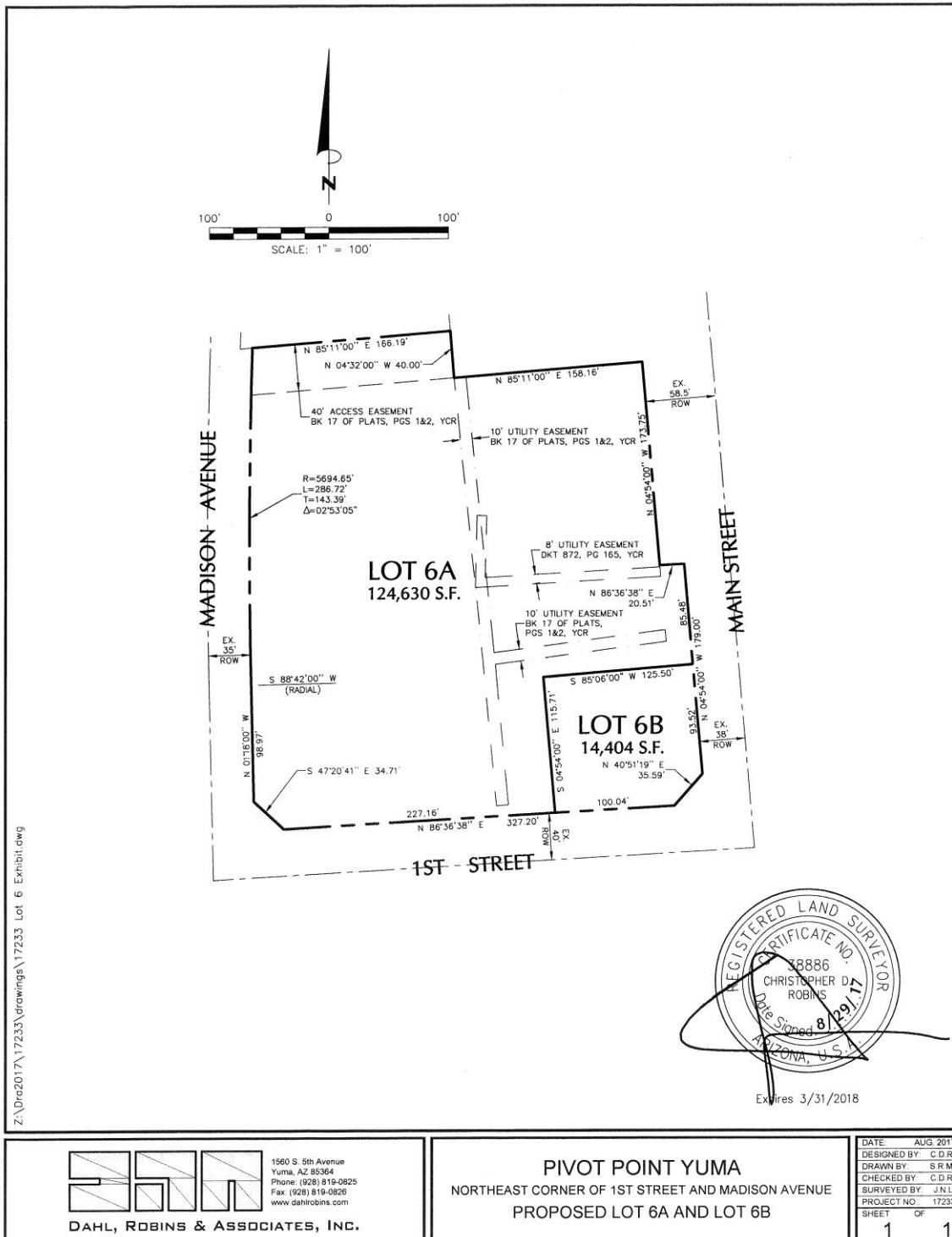
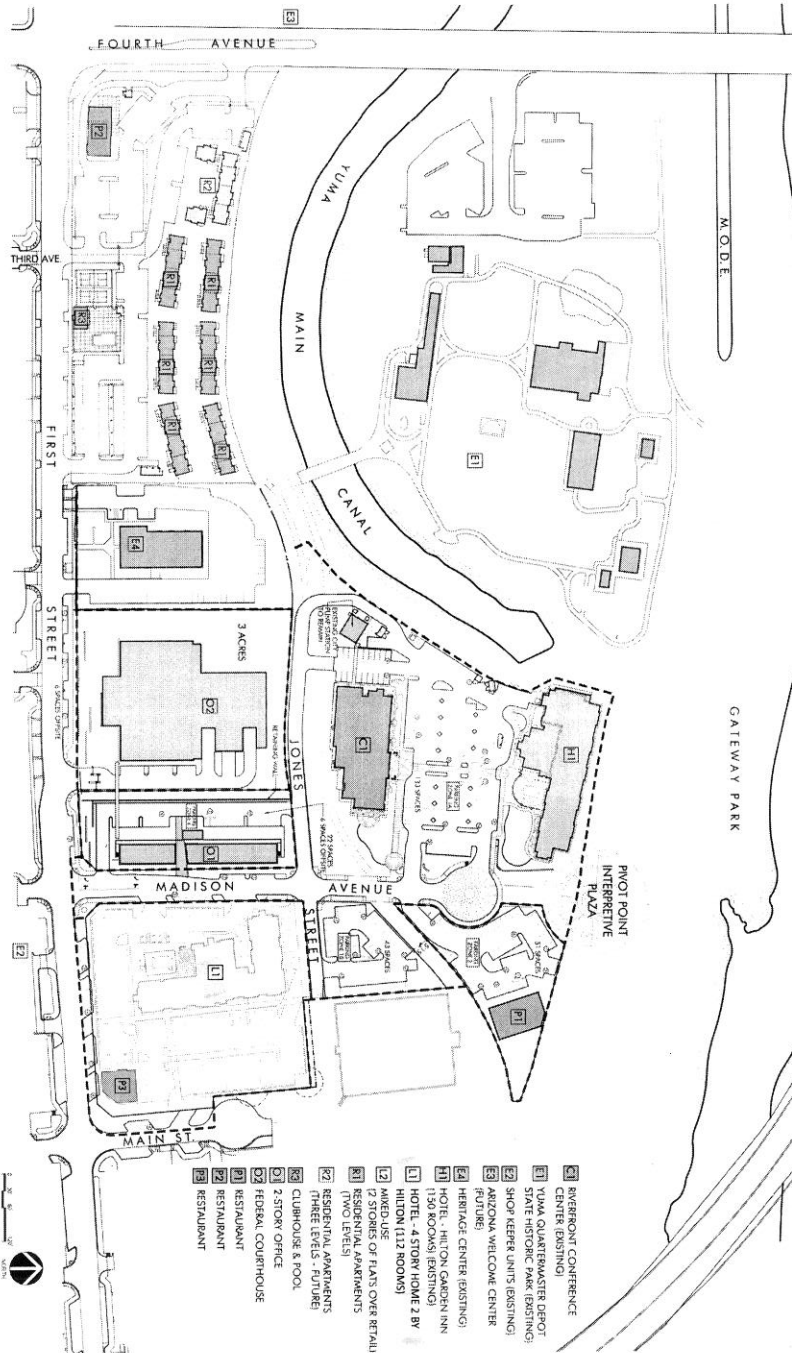


Exhibit B-1 Project Conceptual Site Plan



YUMA PIVOT POINT
Yuma, Arizona

SGPA ARCHITECTURE
PROJECT MANAGER: JESSICA WOOD
ARCHITECT: JESSICA WOOD



The site plan illustrates the layout of the Hilton Hotel and its immediate surroundings. The hotel building is a large, rectangular structure with a central entrance area. To the left of the hotel is a parking lot with several spaces marked. To the right is a larger parking lot with many more spaces. The plan also shows the hotel's connection to the surrounding streets and the location of the hotel's entrance. The text 'HOTEL, 4-STORY HOME 2 BY HILTON (112 ROOMS)' is printed on the plan. A north arrow and a scale bar are also present.



C.W. Clark, Inc.

517 ARCHITECTURE AND PLANNING
1001 17th St. N.W. Suite 200
San Diego, CA 92103
Tel: 619 594 1111
Fax: 619 594 1111
Email: info@517.com

—

ZONING: OLD TOWN LOT, HISTORIC (H) BED & BREAKFAST OVERLAY (HBO)
HEIGHT: 42'-0" TOP OF ROOF
ACTUAL: 35'-0"
ALLOWABLE: 35'-0"
SITE AREA: 12566 S.F. (2.87 AC.)
LANDSCAPING AREA PROVIDED: 2000 S.F. (22 JAWOR SITE AREA)

PARADE ON HOOD STREET 112 HOTEL	
(13 STALLS/ROOM, PER SECTION 154-16.033V)	
HOTEL PARKING REQUIRED	123 STALLS
(112 ROOMS/11 STALLS)	
ACCESSIBLE PARKING STALLS REQUIRED	3 STALLS
(123 STALLS * 2%)	
TOTAL HOTEL PARKING	123 STALLS

RESTAURANT PARKING REQUIRED: 42 STALLS
SERVING AREA 2,100 SF±50 SF
(1 SPACESO SOL.FT. PER SECTION 154-16.03.3.M)
ACCESSIBLE PARKING STALLS REQUIRED 1 STALL
(42 STALLS x 7%)

• 10% OFF-STREET PARKING FOR EMPLOYEES. 4 STALLS

TOTAL RESTAURANT PARKING	46 SPACES
TOTAL PARKING REQUIRED	799 STALLS
TOTAL PARKING PROVIDED (10/18)	560 STALLS

PROPERTY LINE
PARKING STRIP
CENTER LINE
BLDG LINE

Exhibit C

PHASE THREE SCHEDULE OF PERFORMANCE

Any prior Schedule of Performance for the Project attached as an Exhibit to the Master DDA is hereby amended by replacing any contrary or inconsistent provisions of such prior Schedule of Performance with the following provisions:

Development Site	Sub-Phase	Description of Sub-Phase Components	Target Size of Phase Components	Event	Performance Criteria and Deadlines
				Effective date of Phase Three Component Real Property Sale and Development Agreement, etc. (“Phase Three DDA”) of which this Exhibit C is a part.	December 1, 2017.
				Close of Escrow and Commencement of Construction of Phase Three Improvements pursuant to Phase Three DDA.	Within nine (9) full calendar months after the Effective Date of the Phase Three DDA.
L1	3(a)	Four story 112-Room Extended Stay Hotel	85,736 sq. ft.	Completion of Construction of Phase Three Improvements.	Within eighteen (18) full calendar months after the date of Commencement of Construction of the Phase Three Improvements

Exhibit D

**SPECIAL WARRANTY DEED
(With Reserved Easements and Covenants)**

**RECORDING REQUESTED BY
Chicago Title Insurance Company
AND WHEN RECORDED MAIL TO:**

445 Hotel Circle South
San Diego, California 92108
Attn: Mitesh R. Kalthia

ESCROW NO:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

For the consideration of Ten Dollars, and other valuable consideration, the CITY OF YUMA, an Arizona municipal corporation ("Grantor") hereby grants and conveys to _____, LLC, an Arizona limited liability company ("Grantee") certain real property ("Property") situated in Yuma County, Arizona, legally described as follows:

See Exhibit A attached hereto and by this reference made a part hereof.

SUBJECT TO current taxes and other assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record, and matters which a correct and accurate survey of the Property would disclose, Grantor warrants title against its own acts and none other.

PROVIDED, that Grantor hereby reserves for itself, its successors and assigns, and its and their respective employees, agents, contractors, invitees and licensees, the following easements ("Reserved Easements"):

(a) Access Easement. A perpetual non-exclusive easement (the "Access Easement") for vehicular, pedestrian and roadway access purposes upon, over and across the north forty (40) feet (the previous Jones Street alignment) of Lot 6 described on Exhibit A attached hereto (the "Easement Area"), for vehicular and other access to and from Grantor's property described on Exhibit B attached hereto (the "Water Treatment Plant Property").

(b) Utility Easement. A perpetual exclusive easement (the "Utility Easement") for the use, repair, maintenance, replacement and operation of a main water line, sludge line, communication conduits, chemical disinfectant line and other utility lines, manholes and related utility facilities now or hereafter existing and used in connection with the Water Treatment Plant Property, it being understood and agreed that, with the exception of

manhole covers and electrical, telephone and related utility facilities, no portion of such utility lines shall be located above the ground.

The Reserved Easements are subject to the following clauses (i), (ii) and (iii):

(i) Grantee, its successors and assigns, and its and their respective employees, agents, invitees and licensees shall retain the non-exclusive ground surface use of the Easement Area for vehicular, pedestrian and roadway access purposes, such retained rights to be exercised in a reasonable manner which will not interfere with Grantor's Reserved Easements.

(ii) No walls, fences or barriers of any kind shall be constructed or permitted in the Easement Area by any person or entity which prevents or impairs the use or exercise of any of the rights in the Reserved Easements.

(iii) Grantor and Grantee each (the "Indemnifying Party") shall indemnify, defend and hold the other party (the "Indemnified Party"), and their respective successors and assigns, from and against all third party claims, demands, finds, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities and litigation (including reasonable attorneys' fees, reasonable experts' fees and court costs), excluding any loss of profits or other consequential damages, to the extent arising from or relating in any way to any act or omission by the Indemnifying Party, its employees, contractors, agents or representatives in the use of the Easement Area.

PROVIDED FURTHER, this conveyance and the Property is subject to the covenants, conditions and provisions ("Covenants") in the Yuma Pivot Point Phase Three Component Real Property Sale and Development Agreement, Partial Assignment of Master Developer's Interest, Covenants and Fifth Amendment of Master DDA, dated _____, 20____ and recorded at Fee No. _____ (the "Phase Three DDA") including without limitation the Covenants in Sections 5.6 through 5.10 inclusive of the Phase Three DDA, which by this reference are made a part hereof. The Covenants shall run with the land and shall be binding upon and inure to the benefit of Grantor, Grantee and their respective successors and assigns.

Dated this _____ day of _____, 201____.

[Signatures of Grantor and Grantee on following pages]

GRANTOR:

CITY OF YUMA, an Arizona municipal corporation

By: _____
City Administrator

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, City Administrator of the City of Yuma, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:

_____**LLC,**
an Arizona limited liability company

By: _____
Its: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, Manager of _____, LLC, an Arizona limited liability company, who acknowledged that he signed the foregoing instrument on behalf of the company.

My commission expires: _____

Exhibit E
Component Developer's Ownership Structure

Mitesh Kalthia owns 100% of Component Developer (Kasari Putra Hospitality LLC, an Arizona limited liability company) and is Component Developer's manager and sole member

**Exhibit F
Insurance**

**INSURANCE PROVISIONS CURRENTLY BEING REVIEWED BY COMPONENT
DEVELOPER'S INSURANCE BROKER- COMMENTS TO FOLLOW**

Pursuant to **Section 8.4** of the Agreement in which this Exhibit is a part, Component Developer shall procure and maintain insurance against claims for injury to persons or damage to property which may arise from or in connection with the development of the Phase Three Property by the Component Developer, its agents, representatives, employees, contractors.

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

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

Commercial General Liability – Occurrence Form

General Aggregate	\$5,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$50,000
Medical Expenses (Any one person)	Optional

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

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

Workers' Compensation and Employer's Liability

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

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

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

Commercial General Liability and Automobile Liability Coverages:

City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of the use and/or occupancy of the Property subject to the Agreement and activities performed by or on behalf of Component Developer including products and completed operations of Component Developer and automobiles owned, lease, hired, or borrowed by Component Developer.

Component Developer's insurance shall contain broad form contractual liability coverage.

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

Component Developer's insurance coverage shall be primary insurance with respect to City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents, and employees shall be in excess of the coverage provided by Component Developer and shall not contribute to it.

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

Coverage provided by Component Developer shall not be limited to the liability assumed under the indemnification provisions of the Agreement.

The policies shall contain a waiver of subrogation against City, its officers, officials, agents, and employees for losses arising from Component Developer's operations, occupancy and use of the Phase Three Property that are subject of the Agreement.

Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against City, its officers, officials, agents, and employees for losses arising from Component Developer's operations, occupancy, and use of the Phase Three Property that are the subject of the Agreement.

D. Notice of Cancellation: Each insurance policy required by the insurance provisions of the Agreement shall not be suspended, voided, cancelled, reduced in coverage of in limits except after thirty (30) days' prior written notice has been given to City. Such notice shall be sent directly to the City Administrator, One City Plaza, P.O. Box 13014, Yuma, Arizona, 85364 and shall be sent by certified mail, return receipt requested.

E. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed of approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less

than A-VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Component Developer from potential insurer insolvency.

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

All certificates are to be received and approved by City before the Commencement of Construction (as defined in the Agreement). Each insurance policy required by this Agreement must be in effect at or prior to such Commencement of Construction and must remain in effect at least until the Completion of Construction (as defined in the Agreement). Failure to maintain the insurance policies as required by the Insurance Exhibit or to provide timely evidence of renewal will be considered a material breach of the Agreement.

All certificates required by this Insurance Exhibit shall be sent directly to the City Administrator, One City Plaza, and P.O. Box 13014, Yuma, Arizona 85364. City Department and the Agreement description are to be noted on the certificate of insurance. City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Insurance Exhibit at any time.

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

Exhibit G

MEMORANDUM OF REVERSION OPTION

DATE: _____, 20__ (“Execution Date”)

PARTIES: CITY OF YUMA, ARIZONA, an Arizona municipal corporation

(“City”)

KESARI PUTRA HOSPITALITY LLC, an Arizona limited liability company

(“Component Developer”)

RECITALS:

A. City, Component Developer and Clark-Lankford, LLC are parties to that certain Yuma Pivot Point Phase Three Component Real Property Sale and Development Agreement, Partial Assignment of Master Developer’s Interest, Covenants and Fifth Amendment of Master DDA, dated _____, 20__ and recorded at Fee No. _____ (the “Phase Three DDA”), which includes a Reversion Option described in Section 4.15 of the Phase Three DDA (the “Reversion Option”) of the Phase Three Property described on Exhibit A attached to the Phase Three DDA, which by this reference is made a part hereof.

B. This Memorandum of Reversion Option is executed and entered into for the purpose of recording the same and thereby giving notice of the Reversion Option.

COVENANTS:

For valuable consideration, receipt of which is hereby acknowledged, the City shall have the right and option to reacquire the Phase Three Property on the terms and conditions set forth in the Phase Three DDA. All of the terms and conditions of the Phase Three DDA pertaining to the Reversion Option are, by this reference, incorporated herein and made a part hereof, the same as if expressly set forth herein. If a conflict arises between the provisions of this Memorandum of Reversion Option and the Phase Three DDA, the provisions of the Phase Three DDA shall prevail.

IN WITNESS WHEREOF, the City and Component Developer have executed this instrument to be effective as of the Execution Date first written above.

CITY:

CITY OF YUMA, an Arizona municipal corporation

By: _____
City Administrator

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, City Administrator of the City of Yuma, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:

KESARI PUTRA HOSPITALITY LLC,
an Arizona limited liability company

By: _____
Its: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, Manager of Kesari Putra Hospitality LLC, an Arizona limited liability company, who acknowledged that he signed the foregoing instrument on behalf of the company.

My commission expires: _____

Exhibit H

PHASE TWO CONSENT AND AGREEMENT

DATE: _____, 20__ (“Execution Date”)

PARTIES: CITY OF YUMA, ARIZONA, an Arizona municipal corporation

(“City”)

YUMA RIVERVIEW APARTMENTS LLC, an Arizona limited liability company

(“Phase Two Component Developer”)

CLARK-LANKFORD, L.L.C., a Delaware limited liability company

(“Master Developer”)

RECITALS:

A. City, Phase Two Component Developer and Master Developer are parties (the “Parties”) to that certain Amended and Restated Yuma Pivot Point Phase Two Component Development and Disposition Agreement, Partial Assignment of Master Developer’s Interest and Fourth Amendment of Master DDA, dated March 31, 2016, and re-recorded at Fee No. 2016-22363, official records of Yuma County, Arizona (the “Phase Two DDA”), to which is attached that certain Yuma Pivot Point Phase Two Amended and Restated Land and Improvements Lease between the City, as Landlord, and the Phase Two Component Developer, as Tenant (the “Phase Two Lease”) which by this reference is made a part hereof.

B. This Phase Two Consent and Agreement (“Consent and Agreement”) is executed and entered into for the purposes hereinafter set forth.

COVENANTS:

For valuable consideration, receipt of which is hereby acknowledged, and in further consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

1. The Phase Two Component Developer hereby consents to and is in agreement with the Project Conceptual Site Plan, Phase Three Conceptual Site Plan and the Phase Three Schedule of Performance attached as Exhibits B-1, B-2 and C attached to the Yuma Pivot Point Phase Three Component Real Property Sale and Development Agreement, Partial Assignment of Master Developer’s Interest, Covenants and Fifth Amendment of Master DDA, effectively dated _____, 2017.

2. The date of December 15, 2017 for the deposit by the City of the first Guaranteed Installment Payment, as set forth in Section 7.1.4.1 of the Phase Two DDA, is hereby changed to December 15, 2019, subject to Section 3 hereof.

3. The Phase Two DDA and the Phase Two Lease automatically shall be rescinded and of no force or effect whatsoever, the same as if the Phase Two DDA and Phase Two Lease never existed, if for any reason (including without limitation an Enforced Delay) the Commencement of Construction of the Residential Apartment Component and the 4th Avenue Restaurant Component (the “Phase Two Component Improvements”) has not occurred by December 31, 2018, as shall be conclusively evidenced by the Recording of a Notice of Rescission executed by the City. For the purposes of the immediately preceding sentence, the “Commencement of Construction” means the date on which all of the following have occurred:

(i) The Phase Two Component Developer has obtained the Building Permit for the construction of the Phase Two Component Improvements,

(ii) A construction contract has been executed by and between the Phase Two Component Developer and the general contractor for the construction of the Phase Two Component Improvements, and

(iii) The pouring of foundations or footings for the Phase Two Component Improvements has begun.

4. The provisions of this Consent and Agreement shall prevail over any conflicting provisions in the Phase Two DDA or the Phase Two Lease. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Phase Two DDA.

IN WITNESS WHEREOF, the Parties have executed this Consent and Agreement effective as of the Execution Date first written above.

CITY:

CITY OF YUMA, an Arizona municipal corporation

By: _____
City Administrator

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, City Administrator of the City of Yuma, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:

MASTER DEVELOPER:

CLARK-LANKFORD, LLC,
a Delaware limited liability company

By: C. W. Clark, Inc.,
a California corporation,
as Manager

By: _____
C. W. Clark, President

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by C. W. Clark, President of C. W. Clark, Inc., a California corporation, as Manager of Clark-Lankford, LLC, a Delaware limited liability company, who acknowledged that he signed the foregoing instrument on behalf of the corporation as manager of the limited liability company.

Notary Public

My commission expires:
