

PUBLIC NOTICE

With respect to a proposed capital lease in a total principal amount expected not to exceed \$17,750,000 between the City and Hunt Services, Inc.

Publication Date

July 12, 2019

NOTICE OF PUBLIC HEARING
 CITY COUNCIL OF THE CITY OF
 ROCKY MOUNT, NORTH CAROLINA
 NOTICE IS HEREBY GIVEN pursuant to
 Section 160A-19 of the General Stat-
 utes of North Carolina that the City
 Council of the City of Rocky Mount,
 North Carolina (the "City") will hold
 a public hearing on Monday, July 22,
 2019 at 4:00 p.m. (or as soon thereaf-
 ter as the hearing is held), in the City
 Council Chambers, 331 S. Franklin St,
 Rocky Mount, NC 27804, with respect
 to a proposed capital lease in a total
 principal amount expected not to ex-
 ceed \$17,750,000 to be entered into
 between the City and Hunt Services,
 Inc., or an affiliated or related entity,
 with respect to a structured parking fa-
 cility providing approximately 700 spac-
 es which will be constructed on land
 owned by the City bounded by Albe-
 marle Avenue, Goldleaf Street, Atlantic
 Avenue and Ivy Street that is current-
 ly used as a parking lot for the Rocky
 Mount Event Center. All interested
 parties are invited to present comments
 at the public hearing regarding the ex-
 ecution and delivery of such lease.
 BY ORDER OF THE CITY COUNCIL
 Pamela O. Casey, City Clerk
 7/12/19

MCG Draft/7-17-2019

**PROJECT DEVELOPMENT
AND COOPERATION AGREEMENT**

between

THE CITY OF ROCKY MOUNT, NORTH CAROLINA

and

HUNT SERVICES, INC.

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION.....	2
SECTION 1.1 Definitions.....	2
SECTION 1.2 Effect of Heading and Table of Contents.....	5
SECTION 1.3 Severability Clause.....	5
SECTION 1.4 Governing Law.....	5
SECTION 1.5 Counterparts.....	5
SECTION 1.6 Approval of the City or the Developer.....	6
 ARTICLE 2 PURPOSE AND PLAN OF FINANCE.....	 6
SECTION 2.1 Purpose.....	6
SECTION 2.2 Plan of Finance for the Project.....	6
 ARTICLE 3 CONSTRUCTION OF THE PROJECT.....	 7
SECTION 3.1 Construction.....	7
SECTION 3.2 Site Plans; Project Construction Plans.....	7
SECTION 3.3 Construction of the Project.....	8
SECTION 3.4 Completion of the Project.....	9
SECTION 3.5 Cooperation.....	9
SECTION 3.6 Description of the Hotel, Parking Facility, and Mixed-Use Building.....	10
SECTION 3.7 Capital Lease.....	10
SECTION 3.8 Grant of Exclusive Option to Ground Lease the City Land.....	11
 ARTICLE 4 CONDITIONS TO CLOSING; TERMINATION.....	 11
SECTION 4.1 Conditions Precedent to the Closing.....	11
SECTION 4.2 Termination.....	12
 ARTICLE 5 REPRESENTATIONS AND WARRANTIES.....	 13
SECTION 5.1 Representations and Warranties of the City.....	13
SECTION 5.2 Representations and Warranties of the Developer.....	13
 ARTICLE 6 MISCELLANEOUS.....	 14
SECTION 6.1 Notices.....	14
SECTION 6.2 Cost and Expense.....	15
SECTION 6.3 Amendments.....	15
SECTION 6.4 Successors and Assigns.....	15
SECTION 6.5 Assignment.....	15
SECTION 6.6 Benefit of Agreement.....	16
SECTION 6.7 Further Assurances.....	16
SECTION 6.8 Counterparts.....	16
SECTION 6.9 Term.....	16
SECTION 6.10 Prior Agreements.....	16
SECTION 6.11 Project Delivery Method.....	16
SECTION 6.12 Compliance with Applicable Laws.....	16
SECTION 6.13 Compliance with Iran Divestment Act of 2015.....	17
 EXHIBIT A – Site Plan	
EXHIBIT A-1 – Legal Description of the City Land	
EXHIBIT B – Form of Capital Lease	
EXHIBIT C – Form of Ground Lease	

PROJECT DEVELOPMENT AND COOPERATION AGREEMENT

This **PROJECT DEVELOPMENT AND COOPERATION AGREEMENT** (this “Agreement”) is made and entered as of [July 22], 2019 by and between the **CITY OF ROCKY MOUNT, NORTH CAROLINA**, a municipal corporation duly created under the laws of the State of North Carolina (the “City”), and **HUNT SERVICES, Inc.**, a Tennessee corporation authorized to do business in North Carolina (as more particularly described below, the “Developer”).

RECITALS

WHEREAS, the City has determined that the development of a hotel, retail, residential and parking facilities in the area around the Rocky Mount Event Center is critical to the revitalization of downtown Rocky Mount, and has determined to develop a critically needed parking facility under the provisions of N.C.G.S. Section 143-128.1C that permit public-private partnerships to construct certain capital improvement projects (the “PPP Act”); and

WHEREAS, the Developer is experienced in the development of hotels, retail, residential and parking facilities in urban areas; and

WHEREAS, the City reviewed the qualifications of the Developer to serve as its development partner to develop a critically needed parking facility as part of a mixed-use project, referred to by the Developer as Event Center Village, consisting of the Hotel, the Mixed-Use Building and the Parking Facility (each as defined below, and collectively hereinafter referred to as the “Project” as more particularly described herein) to be developed on certain real property located within the corporate limits of the City, including an approximately 2.45 acre parcel owned by the City (as more particularly described below, the “City Land”), including review of the Developer’s (i) financial stability, (ii) experience in constructing developments such as the Project, (iii) experience and that of its project team and its proposed method of design and construction of the Project, and (iv) proposed timeline for construction; and

WHEREAS, after conducting such review, the City has determined to enter into this Agreement with the Developer in order to accomplish the purposes set forth herein; and

WHEREAS, the City and the Developer have agreed to cooperate with each other in order to facilitate the planning, design, financing, construction, and operation of the Project; and

WHEREAS, as part of the Project, the Developer will construct the Parking Facility, and will lease it to the City pursuant to the Capital Lease (as defined below) between the City and the Developer; and

WHEREAS, the Mixed-Use Building is expected to contain approximately 20,000 square feet of retail space on the ground floor as more particularly described below (the “Retail Space”), and approximately 60 residential units (which may be condominiums or apartments) located above the Retail Space as more particularly described below (the “Residential Space”); and

WHEREAS, it is the intent of the City and the Developer that the development of that portion of the Project consisting of the Parking Facility, the Retail Space and the Hotel and the design, construction and leasing of the Parking Facility constitute a public-private project (the “PPP Project”) and that this Agreement be a “development contract” under the PPP Act; and

WHEREAS, the parties hereto have common and compelling interests in developing the Project in order to foster the success of the Rocky Mount Event Center and the revitalization of downtown Rocky Mount.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows:

ARTICLE 1

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.1 Definitions.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in the recital paragraphs above shall have the meanings assigned to them in such paragraphs. The terms defined in this Article have the meanings assigned to them in this Article. Singular terms shall include the plural as well as the singular, and vice versa. All defined terms shall include any and all amendments, modifications, replacements, supplements or substitutions thereof or thereto.

(b) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to “generally accepted accounting principles” refer to such principles as they existed on the Date of Delivery.

(c) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(d) The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(e) The term “person” shall include any individual, corporation, partnership, joint venture, association, trust, unincorporated organization and any government or any agency or political subdivision thereof.

“**Affiliate**” of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For purposes of this definition, “control” when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting rights, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Approved Hotel Flag**” means a hotel mark, trademark, tradename, logotype, brand and/or “flag” approved by the City. For purposes of this Agreement, any hotel operated under either the Hilton or Marriott brands shall automatically be considered to be a hotel operated under an Approved Hotel Flag.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which banking institutions in the State of North Carolina are authorized to be closed.

“**Capital Lease**” means a capital lease agreement, substantially in the form attached hereto as Exhibit B and as further described in Section 3.7, with a term of approximately 20 years pursuant to which the Developer will (i) lease the Parking Facility to the City and (ii) grant an option to the City whereby, at the expiration of the term of such lease, the City will have the option to purchase the Parking Facility for a fixed price equal to \$[1.00].

“**City**” means the City of Rocky Mount, North Carolina, or any municipal corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

“**City’s Cost of Capital**” means the prevailing rate of interest at which the City could borrow money on a tax-exempt basis (with respect to that portion of the Parking Facility that the City could finance on a tax-exempt basis) or a taxable basis (with respect to that portion of the Parking Facility providing spaces dedicated to the Hotel that the City could finance on a taxable basis) to construct the Parking Facility if it financed the construction and development of such facility itself, as certified by the City’s municipal advisor as of the Date of Delivery.

“**City Financing Documents**” means, collectively, the Capital Lease, the Ground Lease, the SNDA and each other document executed and delivered by the City at the time of Closing.

“**City Land**” means the approximately 2.45 acre parcel of land owned by the City specifically described in Exhibit A-1 of this Agreement on which substantial portions of the Improvements will be constructed. The City Land is located on the block bounded by Albemarle Avenue, Goldleaf Street, Atlantic Avenue and Ivy Street in Rocky Mount, North Carolina, and is across Albemarle Avenue from the Rocky Mount Event Center.

“**Closing**” means the closing which marks the execution and delivery of all of the City Financing Documents, which will occur after each of the conditions set forth in Section 4.1 have been fully satisfied.

“**Completion of the Project**” means completion of construction of the Project pursuant to Section 3.4(a).

“**Construction Lender**” means, collectively, whether one or more, any entity providing a Construction Loan to the Developer secured by a Leasehold Deed of Trust.

“**Construction Loan**” means, collectively, whether one or more, any construction loan obtained by the Developer to fund the Developer’s obligations for the construction of the Project.

“**Construction Loan Documents**” means any notes, agreements, leasehold deeds of trust, including the Leasehold Deed of Trust, between the Developer and any Construction Lender relating to a Construction Loan.

“**Date of Delivery**” shall mean one (1) Business Day following the date on which the governing body of the City executes this Agreement, subject to LGC approval, or other date mutually acceptable to the City and the Developer.

“**Developer**” means Hunt Services, Inc., a Tennessee corporation, and includes its successors and assigns permitted hereunder and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party, as permitted hereunder.

“**Developer Documents**” means, collectively, this Agreement, the Capital Lease, the Construction Loan Documents, the Ground Lease, the SNDA and any other documents executed and delivered by the Developer at the time of Closing. For purposes of Article 5 and the representations made therein as of the Date of Delivery, “Developer Documents” means this Agreement.

“**Developer Land**” means the land on which any portion of the Project is located that is owned by the Developer.

“**Final Parking Facility Costs**” has the meaning assigned in Section 3.7 below.

“**Ground Lease**” means the ground lease, substantially in the form attached hereto as Exhibit C, with an initial term of at least sixty-five (65) years pursuant to which the City will lease the City Land to the Developer.

“**Hotel**” means an approximately 110 room, limited service hotel to be constructed on the City Land in the approximate location depicted on the Site Plan and to be operated under an Approved Hotel Flag. The Hotel shall meet the minimum requirements set forth in Section 3.6 of this Agreement.

“**Improvements**” means, collectively, the Hotel and the Parking Facility.

“**Leasehold Deed of Trust**” means, collectively, whether one or more, any leasehold deeds of trust given by the Developer to secure any Construction Loans.

“**LGC**” means the North Carolina Local Government Commission, or any successor entity with similar jurisdiction over the City.

“**Mixed-Use Building**” means, collectively, one or more buildings consisting of the Retail Space and the Residential Space as depicted on the Site Plan. The Mixed-Use Building shall meet the minimum requirements set forth in Section 3.6 of this Agreement.

“**Parking Facility**” means a structured parking facility providing at least 700 parking spaces available for off-street parking for the benefit of the Project, the Rocky Mount Event Center and other existing and future local attractions as depicted on the Site Plan. The Parking Facility shall meet the minimum requirements set forth in Section 3.6 of this Agreement.

“**Partial Lease Termination Agreement**” means an agreement, whether one or more, in recordable form and content reasonably acceptable to the Developer, by and among the City and Rocky Mount DCF, LLC and any other parties that may be necessary or convenient in order to effect the termination as to the City Land of (i) that certain Ground Lease dated May 24, 2017 between the City and Rocky Mount DCF, LLC, (ii) that certain Operating Lease Agreement dated as of May 24, 2017 between the City and Rocky Mount DCF, LLC and (iii) that certain Operating Lease Agreement dated as of May 24, 2017 between Rocky Mount DCF, LLC and Opportunities Industrialization Center, Incorporated.

“**Partial Release of Leasehold Deed of Trust**” means an agreement, in recordable form and content reasonably acceptable to the Developer, by and among the City and Rocky Mount DCF, LLC and any other parties that may be necessary or convenient in order to effect the release of the City Land from that certain leasehold deed of trust recorded in Book 1662, Page 473 of the Edgecombe County Registry.

“**PPP Act**” has the meaning assigned to it in the recitals to this Agreement.

“**PPP Project**” has the meaning assigned to it in the recitals to this Agreement.

“**Project**” means, collectively, the Hotel, the Mixed-Use Building and the Parking Facility.

“**Project Construction Plans**” means the plans and specifications for the Project in sufficient detail for the construction of the Project as the same may be amended and modified from time to time.

“**Project Costs**” means all costs and expenses of any kind or nature whatsoever paid or incurred by or on behalf of the Developer for or in connection with the development and design of the Project and the Project Work.

“**Project Work**” means all administration, labor, equipment and materials whether on or off the real estate depicted on the Site Plan necessary to produce and fully effect the Completion of the Project.

“**Retail Space**” means not less than 20,000 square feet of retail space that is on the ground floor of the Mixed-Use building, located on the Developer Land.

“**Residential Space**” means the approximately 60 residential units that are part of the Mixed-Use Building, located above the Retail Space, which may be owner occupied or rental units.

“**Site Plan**” means the initial site plan attached hereto as Exhibit A respecting the City Land and the Developer Land, including the Project, as the same may be amended or modified from time to time pursuant to the terms of this Agreement.

“**SNDA**” means a subordination, non-disturbance and attornment agreement entered into by and among the City, the Construction Lender, the Developer and any other party that may be deemed necessary or convenient.

SECTION 1.2 Effect of Heading and Table of Contents.

The Article and Section headings herein and in the Table of Contents are for convenience of reference only and shall not affect the construction hereof.

SECTION 1.3 Severability Clause.

If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 1.4 Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of North Carolina. Each party hereto consents to and submits to in personam jurisdiction and venue in the Edgecombe County, North Carolina and in the federal district courts for the Eastern District of North Carolina.

SECTION 1.5 Counterparts.

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 1.6 Approval of the City or the Developer.

Whenever this Agreement indicates that a matter is subject to the City's or the Developer's approval or consent, and no standard is otherwise provided, then such approval or consent shall not be unreasonably withheld, conditioned, or delayed and, except as specifically provided herein, shall be deemed to be given if the City or the Developer, as applicable, has not responded to any written request for such approval or consent within sixty (60) days of the City's or the Developer's, as applicable, receipt thereof. The City or the Developer shall be entitled to such additional time for approvals or consent as is reasonable under the circumstances, not to exceed an additional forty-five (45) days.

ARTICLE 2

PURPOSE AND PLAN OF FINANCE

SECTION 2.1 Purpose.

The purpose of this Agreement is to evidence the agreement of the City and the Developer in connection with the planning, designing, and constructing of the Project on the City Land and the Developer Land, payment of the Project Costs and to address certain other matters of mutual concern to the parties hereto. This Agreement is intended to be a "development contract" for purposes of the PPP Act. The City and the Developer hereby desire to cooperate with one another in order to cause the timely and efficient completion of the Project and grant the Developer the exclusive right to develop a hotel on the City Land. This Agreement shall be interpreted in such a manner as may be most consistent with the foregoing purposes.

SECTION 2.2 Plan of Finance for the Project.

The parties hereto understand and agree that:

- (a) It is in the best interests of the parties hereto to provide for the planning, design, financing, construction, development and operation of the PPP Project and the Project;
- (b) The City Land will be owned by the City and will be leased to the Developer pursuant to the Ground Lease;
- (c) The Developer will be solely responsible for acquiring the Developer Land on which a portion of the Project will be located;
- (d) The Developer will have the exclusive right to develop a hotel on the City Land during the term of this Agreement and will design, develop and construct the Hotel on the City Land and adjacent Developer Land, and the Developer will own the Hotel;
- (e) The Developer will design, develop and construct the Parking Facility, which will be owned by the Developer and leased to the City pursuant to the Capital Lease; and
- (f) The Developer will design, develop and construct the Mixed-Use Building, which will be owned by the Developer and occupied by third party tenants or owners.

ARTICLE 3

CONSTRUCTION OF THE PROJECT

SECTION 3.1 Construction.

Subject to the terms of this Agreement, the Ground Lease and the Capital Lease, the Developer agrees to design, develop and construct the Hotel, the Parking Facility and the Mixed-Use Building on the real estate depicted on the Site Plan, including the City Land and the Developer Land, by constructing the Project substantially in accordance with the Project Construction Plans. The parties hereto expressly intend for the development of the PPP Project, including, but not limited to, the design, development and construction of the Parking Facility, to constitute a public-private partnership as contemplated under the PPP Act.

SECTION 3.2 Site Plans; Project Construction Plans.

(a) The City and the Developer recognize and agree that the Site Plan shows the general concept of the Project and that in the course of the development of the Project, numerous changes relating to the Project will have to be made in the process of developing the final Project Construction Plans. The City reserves the right to approve any change in the basic concept of the Project.

(b) The City and the Developer recognize and agree that the Project Construction Plans shall be approved by the City before the implementation thereof, and that the City has the right to approve any changes to the Site Plan. The City's approval shall not be unreasonably withheld, conditioned or delayed provided such plans and specifications are consistent with the Site Plan as originally presented to the City or as amended or modified with the City's consent; provided further that, the City shall have no obligation to consent to any Project Construction Plans relating to the Parking Facility or to any amendments or modifications to the Site Plan that decreases the number of parking spaces in the Parking Facility below 700, or increases the rental amount to be paid by the City under the Capital Lease.

(c) During the construction of the Project, the Developer may make changes to the Site Plan as it relates to the Project, the Project Construction Plans, or any aspect the foregoing, including, but not limited to the following:

(i) modifying the construction schedule, so long as the completion date for the Hotel is no later than [December 31, 2020], the completion date for the Parking Facility is not later than [December 31, 2020], and the completion date for the Mixed-Use Building is no later than [December 31, 2021];

(ii) modifying the areas in which the Improvements and the Mixed-Use Building are to be constructed;

(iii) expanding or deleting items, and making such other changes as site conditions or other issues of feasibility may dictate;

(iv) with respect to the Mixed-Use Building, make changes to meet the reasonable requests of prospective tenants or owners so long as the Mixed-Use Building continues to meet the minimum requirements set forth in Section 3.6;

(v) with respect to the Hotel, make changes to meet the requirements of a franchisor of any Approved Hotel Flag so long as the Hotel continues to meet the minimum requirements set forth in Section 3.6;

(vi) make other changes as may be necessary or desirable to enhance the economic viability of the Project in furtherance of the general objectives of the Project.

(d) Notwithstanding the foregoing, the following changes to the Site Plan and the Project Construction Plans shall require the prior written consent of the City:

(i) Any change in the location of the Mixed-Use Building from the Developer Land to the City Land (or any other land owned by the City);

(ii) Any material change in the location of the Hotel and the Parking Facility on the City Land;

(iii) Any change to the Project Construction Plans relating to the Parking Facility (the “Parking Facility Construction Plans”) that results in a material change in the design of the Parking Facility from that approved by the City, including but not limited to the number of floors, the overall design of the façade, or the number of spaces in the Parking Facility, or a change in the cost in excess of the maximum amount set forth in Section 3.6;

(iv) Any other change that results in a “material” change to the Project. For purposes of this subsection (iv), “material” shall mean any change that results in the Project no longer substantially conforming to the basic concepts of the Site Plan.

SECTION 3.3 Construction of the Project.

(a) The Developer agrees to commence construction of the Project, at the latest, within ninety (90) days after the Date of Delivery and to use its best efforts to effect Completion of the Hotel and the Parking Facility on or before [December 31, 2020], and the entire Project (including the Mixed-Use Building, Hotel and Parking Facility) on or before [December 31, 2021], subject to delays incident to strikes, riots, acts of God or the public enemy, adverse economic conditions and other causes beyond the reasonable control of the Developer. The obligations of the Developer set forth in the immediately preceding sentence are expressly contingent upon the City obtaining approval of the City Financing Documents (and the transactions contemplated therein) by the LGC no later than September 10, 2019. It is understood and acknowledged that although the City Land may include improvements other than the Project, the Developer’s construction obligations under this Agreement shall be satisfied with the Completion of the Project.

(b) The Developer shall not commence construction of the Hotel or the Parking Facility until it has provided written notice to the City that it has obtained all of the insurance required by the Ground Lease.

(c) Prior to commencing any construction activities related to the Parking Facility, the Developer shall obtain the prior written consent of the City to the Parking Facility Construction Plans. The Developer shall complete the Project in conformity with the Project Construction Plans.

(d) The Project shall be constructed in a good and workmanlike manner and in compliance with all applicable laws. The Developer shall complete the Project with reasonable diligence and shall, promptly after Completion of the Project, obtain all certificates, sign-offs, licenses, permits, and approvals

required by law to be obtained with respect to the Project and with respect to all equipment, machinery and fixtures installed in connection with the Project.

(e) The Developer shall put forth a good-faith effort, in compliance with the PPP Act, to recruit and select small business entities with respect to the development, design and construction of the Project and to comply with N.C.G.S. Sections 143-128.2 and 143-128.4 regarding participation by minority and historically underutilized businesses in developing and constructing the Project.

(f) For purposes of this Section, “commence construction” by a party shall be deemed to occur on the latter of (i) the date on which such party executes a contract with a licensed contractor to construct improvements on the real estate depicted on the Site Plan, or (ii) the date on which soil-disturbing activities begin on the real estate depicted on the Site Plan pursuant to one or more permits issued by the City.

(g) The Developer shall provide a performance and payment bond in the amount of 100% of the total anticipated amount of the construction contracts for the PPP Project as required by N.C.G.S. Section 143-128.1C(g). For the purposes of this section, the Developer certifies that \$41,160,000 is its good-faith projection of its total costs for designing, constructing and equipping the PPP Project as of the date of this Agreement.

SECTION 3.4 Completion of the Project.

(a) The Completion of the Project shall be deemed to have occurred when all of the following have been substantially completed: the construction of the Project and the substantial completion of all other Project Work in accordance with the Project Construction Plans, including but not limited to achievement of “substantial completion” as defined in the construction contracts relating to every aspect of the Project, including the issuance of a certificate of occupancy for all portions of the Project. To the extent the parties are determining completion of a portion of the Project, the elements of “Completion of the Project” described herein shall apply to that portion of the Project.

(b) Promptly after Completion of the Project (or portion thereof) as defined in Section 3.4(a), the Developer shall deliver to the City an architect’s certificate of substantial completion of the Project (or portion thereof, as applicable), certifying that the Project has been completed in accordance with this Agreement. Certification by such architect shall be a conclusive determination of the satisfaction of the Developer’s agreements and covenants to effect Completion of the Project (or portion thereof, as applicable).

(c) The Developer shall deliver to the City copies of the “as-built” plans for the Parking Facility and all material alterations (including replacements of or material alterations to building systems, structural alterations to the structural elements of the buildings, and additions to the buildings), including AutoCAD drawings within sixty (60) days of the final completion of the Parking Facility or any alterations.

(d) No later than forty-five (45) days after the Completion of the Project, with respect to each of the Hotel, the Mixed-Use Building and the Parking Facility, the Developer shall satisfactory evidence, in the reasonable determination of the City, that the Developer has arranged for permanent financing to take out the Construction Loan upon completion of each phase of the Project.

SECTION 3.5 Cooperation.

(a) The City agrees to cooperate with the Developer in the development of the Project.

(b) Subject to the provisions hereof, the Developer will enter into such other contracts, and do, or cause to be done, all other acts or things that may be necessary or proper to complete the construction of the Project in order to enable Developer and the City to perform fully their respective obligations under this Agreement.

(c) The Developer and the City each agree to comply with the requirements of the PPP Act in developing and constructing the Parking Facility and the Project.

(d) The Developer will be responsible for obtaining financing for the entire Project. The Developer shall provide evidence satisfactory to the City of the availability of such financing, and that such financing meets the requirements of N.C.G.S. Section 143-128.1C(a)(4).

SECTION 3.6 Description of the Hotel, Parking Facility, and Mixed-Use Building.

The Developer acknowledges its understanding and agreement that the construction of the Project in conformance with this Agreement and in particular this Section 3.6 constitutes an important, material, and substantial inducement to the City to enter into this Agreement. Consequently, all requirements of this Section 3.6 apply except to the extent specifically modified by the parties in writing.

- a) Hotel. The Hotel shall consist of not less than 100 rooms and not more than 130 rooms. The Hotel will be located on the City Land (although a portion of the Hotel may be on the Developer Land that is contiguous to the City Land). The Hotel shall be operated under an Approved Hotel Flag. The Developer estimates that the Project Costs relating to the Hotel will be not less than \$[14,755,000.00].
- b) Parking Facility. The Developer shall construct one (1) Parking Facility on the City Land in close proximity to the Hotel. The total number of parking spaces in the Parking Facility shall be 700 spaces unless a different number of spaces is approved in writing by the City. The total cost of the Parking Facility shall not exceed \$[17,750,000.00] unless such increased cost is expressly approved by the City in writing. The City shall have the right to approve the Parking Facility Construction Plans.
- c) Mixed-Use Building. The Mixed-Use Building should consist of the Retail Space consisting of not less than 20,000 square feet on the ground floor, and the Residential Space consisting of an estimated 60 units of residential condominiums or apartments in one or more stories above the ground floor. The Developer estimates that the Project Costs relating to the Mixed-Use Building will be not less than \$[16,825,000.00].

SECTION 3.7 Capital Lease.

The City and the Developer intend to enter into the Capital Lease pursuant to which the Developer will construct the Parking Facility and lease it to the City. The Capital Lease shall be in substantially the form attached hereto as Exhibit B and made a part hereof (or such other form as mutually agreed to between the parties hereto and approved by the LGC). The Project Costs related to the Parking Facility have been determined and verified to the Developer's and the City's satisfaction, and have been verified to be reasonable and fair by an independent third party. The parties shall execute the Capital Lease only after the Developer has entered into a guaranteed maximum price construction contract consistent with such determination and verification. The Capital Lease shall provide, among other terms and conditions, that (i) the amount of the lease payments due under the Capital Lease reflect the final costs of construction of the Parking Facility plus (A) up to \$600,000.00 for land acquisition (based on the actual cost thereof) and (B) up to \$400,000 for the cost of connecting utilities to the Site (based on the actual cost thereof) (collectively,

the “Final Parking Facility Costs”), and (ii) the [quarterly] lease payment due under the Capital Lease shall be equal to the Final Parking Facility Costs, amortized over twenty (20) years at an interest rate equal to the City’s Cost of Capital. In no event shall the Final Parking Facility Costs exceed \$[17,750,000.00]. Upon Completion of Construction of the Parking Facility, as described in Section 3.4, the Developer shall provide to the City a detailed breakdown of the actual cost of the Parking Facility (based on disbursement requests under the construction contract or other evidence satisfactory to the City of the actual cost of the Parking Facility) in order to determine the Final Parking Facility Costs.

SECTION 3.8 Grant of Exclusive Option to Ground Lease the City Land

The City hereby grants to the Developer an exclusive option to ground lease the City Land (the “Option”) pursuant to the terms and conditions set forth in the form of the Ground Lease attached hereto as Exhibit C. The Option shall be exercisable by the Developer, on the date of the Closing so long as the conditions set forth in Section 4.1 below have been satisfied (collectively, the “Closing Requirements”). The term of the Option shall begin on the Date of Delivery and shall terminate on the date that is one (1) year after the Date of Delivery (the “Option Term”) unless this Agreement is terminated by the Developer or the City pursuant to the terms hereof prior to the end of the Option Term. To exercise the Option, the Developer shall deliver to the offices of the City Manager written notice of its intent to exercise the Option (the “Notice to Exercise”) prior to the expiration of the Option Term, which notice shall demonstrate the satisfaction of the Closing Requirements. Simultaneously with the delivery of the Notice to Exercise, the Developer shall deliver to the offices of the City Manager an executed Ground Lease in the form attached hereto as Exhibit C, together with the other City Financing Documents required for the Closing. Upon the Developer’s effective exercise of the Option, the City Manager shall promptly cause the Ground Lease and the remaining City Financing Documents to be executed by the City and the Memorandum of Ground Lease to be recorded in the office of the Register of Deeds of Edgecombe County.

ARTICLE 4

CONDITIONS TO CLOSING; TERMINATION

SECTION 4.1 Conditions Precedent to the Closing.

Prior to or contemporaneously with the Closing, each of the following conditions shall have been fully satisfied:

- (a) the parties to the new markets tax credit transaction that financed the Rocky Mount Event Center shall have given consent to the release of the City Land through the execution, delivery and recordation of the Partial Lease Termination Agreement and the Partial Release of Leasehold Deed of Trust;
- (b) favorable opinion(s) of bond counsel to the City have been issued as to the impact of the transactions contemplated in this Agreement on the tax-exempt status of the City’s Special Obligation Bonds, Series 2016;
- (c) favorable opinion of new markets tax credit counsel has been issued as to the impact of the Partial Lease Termination Agreement, the Partial Release of Leasehold Deed of Trust and the release of the City Land from the new markets tax credit transaction that financed the Rocky Mount Event Center;

(d) the City has obtained all necessary consents, amendments, modifications and waivers from the appropriate third parties in order to consummate the Project and enter into the City Financing Documents, including in particular approval from the LGC of the Capital Lease;

(e) the Developer shall have provided a signed franchise agreement with a franchisor for an Approved Hotel Flag for the Hotel;

(f) the Developer shall have obtained commitments from any private lending sources (“Financing Commitments”) for the Construction Loan and delivered copies thereof to the City; and the Developer shall be in compliance with all of the materials terms and conditions of the Financing Commitments and no default exists thereunder;

(g) the exhibits to this Agreement shall be satisfactory in all respects to the City and the Developer and shall be affixed hereto and, as applicable, executed in counterpart originals; and

(h) the City and the Developer shall have received such other opinions of counsel as are customary for a transaction of this nature.

SECTION 4.2 Termination.

At any time prior to Closing, the Developer may, by giving written notice to the City, terminate this Agreement and the Developer’s obligations hereunder, if Developer, in its sole discretion, determines (i) that the Project is not economically feasible, or (ii) that any aspect of its due diligence investigations of the Project is unsatisfactory (such due diligence investigations will include, without limitation, title and encumbrance review and analysis, boundary line, easement and topographical surveys, soil sampling and boring tests, environmental and hazardous waste and substance investigations and such other engineering and mechanical analysis and investigations as the Developer may require). In the event of termination of this Agreement pursuant to the provisions of this paragraph, the City shall have no liability to the Developer under this Agreement or otherwise as a result of such termination.

In the event the City is unable to obtain the consent of the LGC to the Capital Lease on or prior to October 1, 2019 (or such later date as the parties may agree to), the Developer may terminate this Agreement by giving written notice to the City. Within thirty (30) days of notice of such termination, the City shall reimburse the Developer up to \$[●] for all of its costs and expenses actually incurred after the Date of Delivery of which the City had written notice, providing estimates of such costs and expenses (including any Project Costs and the reasonable fees of all attorneys and design professionals engaged by the Developer and any franchise fees paid to any Approved Hotel Flag franchisor) prior to the date of termination in furtherance of the performance of the Developer’s obligations under this Agreement. Upon such payment by the City to the Developer neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement.

In the event the Developer is unable to satisfy the conditions set forth in Section 4.1(e) or (f) on or prior to October 1, 2019 (or such later date as the parties may agree to), the City may terminate this Agreement by giving written notice to the other party. Within thirty (30) days of notice of such termination, the Developer shall reimburse the City up to \$[●] for all of its costs and expenses actually incurred after the Date of Delivery of which the Developer had written notice, estimating such costs and expenses (including, but not limited to, the reasonable fees of all attorneys, financial advisors and third party consultants engaged by the City) prior to the date of termination in furtherance of the performance of the City’s obligations under this Agreement. Upon such payment by the Developer to the City, neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

SECTION 5.1 Representations and Warranties of the City.

The City hereby represents and warrants to the Developer as of the Date of Delivery and as of Closing:

(a) All consents, approvals, authorizations and orders of governmental authorities (including, but not limited to, the LGC) which are required as a condition to the execution and delivery of this Agreement and each of the City Financing Documents and the consummation of the transactions contemplated by this Agreement and each of the City Financing Documents have been obtained by or on behalf of the City and are in full force and effect.

(b) The execution and delivery by the City of this Agreement and each of the City Financing Documents and the consummation of the transactions contemplated herein and therein do not conflict with, are not in violation of and do not constitute (upon notice or lapse of time, or both) a default under the City's charter, any indenture, mortgage, deed of trust or other contract, agreement or instrument to which the City is a party or is subject, or any resolution, order, rule, regulation, writ, injunction, decree or judgment of any governmental authority or court having jurisdiction over the City.

(c) There is no action, suit, proceeding, inquiry or investigation pending before any court or governmental authority, or, to the City's knowledge, threatened against or affecting the City or the properties of the City, which involves the consummation of the transactions contemplated by this Agreement or any of the City Financing Documents, the validity of such documents, the organization of the City, the election or qualification of its directors or officers, or the powers of the City.

(d) This Agreement and each of the City Financing Documents constitutes the legal, valid and binding obligations of the City and is enforceable against the City in accordance with its terms, except insofar as the enforceability thereof may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights and (ii) general principles equity, regardless of whether such enforceability is considered in a proceeding at equity or at law.

(e) The City has complied with the requirements of Section 143-128.1C of the North Carolina General Statutes in entering into this Agreement, and has followed the requirements of Section 160A-272 in entering into the Ground Lease.

SECTION 5.2 Representations and Warranties of the Developer.

The Developer hereby represents and warrants to the City as of the Date of Delivery and as of Closing:

(a) The Developer is duly organized and validly existing as a corporation under the laws of the State of Tennessee, is duly qualified to do business in North Carolina, and is in good standing under its organization documents and the laws of Tennessee and North Carolina.

(b) The Developer has the power to consummate the transactions contemplated by the Developer Documents.

SECTION 6.6 Benefit of Agreement.

Nothing in this Agreement, express or implied, is intended to give any person, other than the parties hereto and their respective successors and permitted assigns, any benefit or any legal or equitable right, remedy or claim under this Agreement.

SECTION 6.7 Further Assurances.

The City and the Developer will do, execute, acknowledge and deliver such further acts, instruments and assurances, and otherwise cooperate with one another as necessary or appropriate for accomplishing the purposes of this Agreement, including, but not limited to, executing any and all instruments or providing any and all documentation reasonably requested by any Construction Lender.

SECTION 6.8 Counterparts

This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement.

SECTION 6.9 Term.

The term of this Agreement shall commence on the Date of Delivery, and, unless earlier terminated, shall terminate at 5:00 p.m. local time in Rocky Mount, North Carolina upon the completion of the Project; provided, however that to the extent any obligations of either party have accrued as of the date of such termination but have not yet been performed, such obligations shall survive such termination.

SECTION 6.10 Prior Agreements.

This Agreement supersedes in its entirety any and all other agreements, verbal or written, concerning the payment the other subject matters dealt with herein. In furtherance (but not in limitation) of the foregoing, the parties hereto hereby acknowledge and agree that the terms and provisions of this Agreement shall govern and control with respect to the subject matter hereof.

SECTION 6.11 Project Delivery Method.

After due consideration, the City has determined that it is in the public interest to pursue the public private partnership reflected by this Agreement for the delivery of the Project rather than to pursue a design-build method of delivery for the Parking Facility. Accordingly, nothing within this Agreement should be construed as creating a design-build relationship between the Developer and the City.

SECTION 6.12 Compliance with Applicable Laws.

The Developer shall comply with all applicable laws and regulations in providing services under this Agreement. In particular, the Developer represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Agreement. The Developer shall also require that its contractor (and will require the contractor to require its subcontractors (of any tier)) remain in compliance with these laws at all times while providing contracted or subcontracted services in connection with this Agreement.

SECTION 6.13 Compliance with Iran Divestment Act of 2015.

The Developer certifies that as of the date of this Agreement, the Developer is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. Section 147-86.58. The Developer understands that it is not entitled to any payments whatsoever under this Agreement if this certification is false. The individual signing this Agreement certifies that he or she is authorized by the Developer to make the foregoing statement.

[remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties have executed this Project Development and Cooperation Agreement as of the date first set forth above.

CITY OF ROCKY MOUNT, NORTH CAROLINA

By: _____
Print Name: _____
Its: _____

HUNT SERVICES, INC.

By: _____
Print Name: _____
Its: _____

EXHIBIT A

Site Plan

[See attached.]

EXHIBIT A-1

City Land

BEING ALL of Tract 5 containing 2.45 acres, as shown on map or plat entitled “Recombination Survey for Downtown Community Facility Tract 5 Rocky Mount Township, Edgecombe County, North Carolina” dated April 28, 2017, by Mack Gay Associates, P.A., a copy of which is recorded in Plat Book 12, Page 88, Edgecombe County Registry.

EXHIBIT B
Form of Capital Lease

[See attached.]

EXHIBIT C
Form of Ground Lease

[See attached.]

CAPITAL LEASE AGREEMENT

Between

THE CITY OF ROCKY MOUNT, NORTH CAROLINA

and

HUNT SERVICES, INC.

TABLE OF CONTENTS

	Page
Parties.....	1
Recitals.....	1
ARTICLE 1 Definitions and Other Provisions of General Application	2
SECTION 1.1 Definitions	2
SECTION 1.2 General Rules of Construction.....	2
SECTION 1.3 Effect of Headings and Table of Contents.....	2
SECTION 1.4 Severability Clause	3
SECTION 1.5 Governing Law	3
SECTION 1.6 Counterparts.....	3
SECTION 1.7 Entire Agreement.....	3
ARTICLE 2 Demising Clause	3
ARTICLE 3 Ownership and Construction of the Parking Facility	4
ARTICLE 4 Lease Term and Lease Payments	4
SECTION 4.1 Lease Term	4
SECTION 4.2 Basic Lease Payments.....	4
SECTION 4.3 Overdue Payments	5
ARTICLE 5 The Parking Facility.....	5
SECTION 5.1 Possession and Use of Parking Facility	5
SECTION 5.2 Maintenance and Other Operating Expenses.....	6
SECTION 5.3 Taxes, Assessments, Etc.	6
SECTION 5.4 Improvements, Alterations, Etc.	6
SECTION 5.5 Leasehold Deed of Trust; Assignment by Developer	6
SECTION 5.6 The City’s Personal Property and Fixtures	7
SECTION 5.7 Insurance.....	7
SECTION 5.8 Damage and Destruction.....	7
SECTION 5.9 Condemnation.....	8
ARTICLE 6 Representations and Covenants.....	8
SECTION 6.1 General Representations	8
SECTION 6.2 Corporate Existence.....	8
SECTION 6.3 Inspection of Records	9
SECTION 6.4 Indemnities	9
ARTICLE 7 Lease Default; Remedies.....	10
SECTION 7.1 Events of Default	10
SECTION 7.2 Remedies on Default.....	10
SECTION 7.3 No Remedy Exclusive	11

SECTION 7.4	Agreement to Pay Attorneys' Fees and Expenses	11
SECTION 7.5	No Additional Waiver Implied by One Waiver	11
SECTION 7.6	Remedies Subject to Applicable Law	11
SECTION 7.7	The Developer's Default.....	11
ARTICLE 8 Options.....		12
SECTION 8.1	Option to Purchase Parking Facility	12
SECTION 8.2	Conveyances on Exercise of Option to Purchase	12
ARTICLE 9 Miscellaneous.....		12
SECTION 9.1	Developer's Liabilities Limited	12
SECTION 9.2	Notices	13
SECTION 9.3	Successors and Assigns	13
SECTION 9.4	Benefits of Capital Lease.....	13
SECTION 9.5	Estoppel Certificates.....	13
SECTION 9.6	Subordination, Non-disturbance and Attornment	14
Testimonium		22
Signatures.....		22
Acknowledgments.....		23
EXHIBIT A - Description of Parking Facility		
EXHIBIT B - Permitted Encumbrances		

CAPITAL LEASE AGREEMENT

THIS CAPITAL LEASE AGREEMENT (this “Capital Lease”) is made and entered as of [_____], 2019 by and between the **CITY OF ROCKY MOUNT, NORTH CAROLINA**, a municipal corporation duly created under the laws of the State of North Carolina (the “City”), and **HUNT SERVICES, INC.**, a Tennessee corporation authorized to do business in North Carolina (as more particularly described below, the “Developer”).

Recitals

WHEREAS, the City has determined that the development of a hotel, retail, residential and parking facilities in the area around the Rocky Mount Event Center is critical to the revitalization of downtown Rocky Mount, and has determined to develop a critically needed parking facility under the provisions of N.C.G.S. Section 143-128.1C that permit public-private partnerships to construct certain capital improvement projects (the “PPP Act”); and

WHEREAS, the Developer is experienced in the development of hotels, retail, residential and parking facilities in urban areas; and

WHEREAS, the City reviewed the qualifications of the Developer to serve as its development partner to develop a critically needed parking facility as part of a mixed-use project, commonly known as Event Center Village, consisting of a hotel, a mixed-use building and the Parking Facility (as defined below, and collectively hereinafter referred to as the “Project”) to be developed on certain real property located within the corporate limits of the City, including an approximately 2.45 acre parcel owned by the City, including review of the Developer’s: (i) financial stability, (ii) experience in constructing developments such as the Project, (iii) experience and that of its project team and its proposed method of design and construction of the Project, and (iv) proposed timeline for construction; and

WHEREAS, after conducting such review, the City and has determined to enter into that certain Project Development and Cooperation Agreement dated as of [_____], 2019 (the “Project Agreement”), the Ground Lease (as defined below) and this Capital Lease in order to accomplish the purposes set forth herein; and

WHEREAS, the City and the Developer have agreed to cooperate with each other in order to facilitate the planning, design, financing, construction, and operation of the Project; and

WHEREAS, as part of the Project, the Developer will construct a structured parking facility providing at least 700 spaces that meets the minimum requirements set forth in Section 3.6 of the Project Agreement (the “Parking Facility”), and will lease it to the City pursuant to the terms and conditions of this Capital Lease; and

WHEREAS, it is the intent of the City and the Developer that the development of the Project and the design, construction and leasing of the Parking Facility constitute a public-private project and that the Project Agreement be a “development contract” under the PPP Act; and

WHEREAS, the parties hereto have common and compelling interests in developing the Project, and the Parking Facility in particular, in order to foster the success of the Rocky Mount Event Center and the revitalization of downtown Rocky Mount.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows:

ARTICLE 1

Definitions and Other Provisions of General Application

SECTION 1.1 Definitions

For all purposes of this Capital Lease, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms not otherwise defined herein shall have the meaning assigned in the Project Agreement.

SECTION 1.2 General Rules of Construction

For all purposes of this Capital Lease, except as otherwise expressly provided or unless the context otherwise requires:

- (a) Defined terms in the singular shall include the plural as well as the singular, and vice versa.
- (b) The definitions in the recitals to this instrument are for convenience only and shall not affect the construction of this instrument.
- (c) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to “generally accepted accounting principles” refer to such principles as they exist at the date of application thereof.
- (d) All references in this instrument to designated “Articles”, “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.
- (e) The terms “herein”, “hereof” and “hereunder” and other words of similar import refer to this Capital Lease as a whole and not to any particular Article, Section or other subdivision.
- (f) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
- (g) The term “person” shall include any individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization and any government or any agency or political subdivision thereof.
- (h) The term “including” means “including without limitation” and “including, but not limited to”.

SECTION 1.3 Effect of Headings and Table of Contents

The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 1.4 Severability Clause

If any provision in this Capital Lease shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 1.5 Governing Law

This Capital Lease shall be construed in accordance with and governed by the laws of the State of North Carolina. Each party hereto consents to and submits to in personam jurisdiction and venue in the Edgecombe County, North Carolina and in the federal district courts for the Eastern District of North Carolina.

SECTION 1.6 Counterparts

This Capital Lease may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 1.7 Entire Agreement

This Capital Lease contains the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, including commitments or understandings with respect to such matters.

ARTICLE 2

Demising Clause

For and in consideration of the performance and observance by the City of the agreements and covenants of this Capital Lease to be performed and observed by the City, the Developer does hereby lease and demise to City, and City does hereby lease, take and hire from the Developer the following property constituting the Parking Facility LESS AND EXCEPT the Exclusive Spaces (as defined below), subject to this Capital Lease:

I.

Buildings and Structures

All buildings and structures now or hereafter located on the real property described in Exhibit A to this Capital Lease (the “Site”) consisting of the Parking Facility, including the buildings and structures to be constructed, altered or improved as part of the Parking Facility, and the Premises (as defined below). The Parking Facility and all appurtenances and easements benefitting, belonging or pertaining to the Parking Facility together with an easement over all of the pedestrian and vehicular ingress/egress areas located on, benefitting, or providing access to the Parking Facility are hereinafter collectively referred to as the “Premises”.

II.

Personal Property and Fixtures

The following personal property and fixtures: (i) all personal property and fixtures to be acquired and installed within the Parking Facility, including the personal property and fixtures described in Exhibit

A to this Capital Lease, (ii) all personal property and fixtures acquired by (or in the name of) the Developer and installed on such real property as a substitute or replacement for personal property or fixtures transferred or otherwise disposed of pursuant to the terms of this Capital Lease, and (iii) all personal property and fixtures acquired by (or in the name of) the Developer and installed on such real property with the proceeds of any insurance or condemnation award.

SUBJECT, HOWEVER, to the Permitted Encumbrances, which are described in Exhibit B to this Capital Lease.

ARTICLE 3

Ownership and Construction of the Parking Facility

The Site on which the Parking Facility is to be constructed is owned by the City and ground leased to the Developer pursuant to the terms of that certain Ground Lease dated of even date herewith (the “Ground Lease”) between the City and the Developer; however, to the maximum extent permitted under federal and state laws, the Developer shall be treated as the owner of the Parking Facility for the duration of the Lease Term (as defined below). For the avoidance of doubt, at all times during the Lease Term, the Parking Facility shall be the property of the Developer, but shall remain on the Site throughout such Lease Term. During the Lease Term, the Developer alone shall be entitled to all of the tax attributes of ownership of the Parking Facility and all personal property acquired (or leased) by the Developer, including, without limitation, the right to claim depreciation or cost recovery deductions or any federal or state tax credits. This Capital Lease shall not (i) impact in any way all the benefits and burdens of ownership of the Parking Facility by the Developer or (ii) cause the Developer to not be treated as the owner of the Parking Facility. The parties agree to treat this Capital Lease in a manner consistent with this intention, including, on the part of the Developer, filing all income tax returns and other reports consistent with such treatment. The City will not claim any tax credits, depreciation or any other federal or state income tax benefits with respect to the Parking Facility, or take any action which is inconsistent with this provision. The City shall have no liability for the tax treatment of the ownership of the Parking Facility by the Internal Revenue Service or the North Carolina Department of Revenue. The provisions of this paragraph shall not affect the treatment of the Parking Facility on the financial statements of the City.

The Developer shall construct the Parking Facility on the Site in accordance with the Project Agreement. The buildings and structures to be constructed as part of the Parking Facility are described or depicted in Exhibit A to this Capital Lease.

ARTICLE 4

Lease Term and Lease Payments

SECTION 4.1 Lease Term

The term of occupancy by the City under this Capital Lease (the “Lease Term”) shall begin on the date (the “Commencement Date”) of the completion of the Parking Facility, as evidenced the issuance of a certificate of occupancy, and shall continue for twenty (20) years thereafter.

SECTION 4.2 Basic Lease Payments

(a) The City shall make payments (“Basic Lease Payments”) to the Developer on a [quarterly] basis, beginning on the Commencement Date and on the first day of each calendar [quarter] thereafter in an amount equal to the Final Parking Facility Costs, amortized over twenty (20) years in equal [quarterly]

installments at an interest rate equal to the City's Cost of Capital; provided, however, that any Basic Lease Payment for any fractional [quarter] shall be prorated based on a [ninety (90) day quarter]). The Final Parking Facility Costs will be determined in accordance with the Project Agreement.

(b) In addition to the Basic Lease Payments, the City shall make payments to the Developer on or before January 15 of each Lease Year following the Commencement Date, in arrears, as follows: (i) as a management fee, an amount equal to three percent (3%) of the [total gross revenue generated from the operation of the Parking Facility] during the prior Lease Year (the "Management Fee") and (ii) in order to fund a renewal and replacement reserve, an amount equal to four percent (4%) of the [total gross revenue generated from the operation of the Parking Facility] during the prior Lease Year (the "Renewal and Replacement Reserve Fee", and together with the Management Fee, collectively, the "Additional Lease Payments"). The last of such Additional Lease Payments shall be due and payable not less than seven (7) days nor more than twenty-one (21) days after the expiration of the Lease Term. The term "Lease Year" shall mean each period of twelve (12) consecutive full calendar months following the Commencement Date.

(c) All payments by the City pursuant to this Section 4.2 shall be made in funds immediately available to the Developer by wire transfer on or before the due date of such Basic Lease Payments or Additional Lease Payments, as applicable.

SECTION 4.3 Overdue Payments

Any Basic Lease Payment or Additional Lease Payment that is not paid within ten (10) days of when due shall bear interest from its due date until paid at the lesser of eight percent (8%) per annum or the maximum lawful rate of interest permitted by applicable law.

ARTICLE 5

The Parking Facility

SECTION 5.1 Possession and Use of Parking Facility

(a) So long as no Lease Default (as defined in Section 7.1 below) exists, the City shall be permitted to possess, use, operate and enjoy the Parking Facility without hindrance on the part of the Developer, subject, however, to all the terms and conditions of this Capital Lease and the Developer's right to the exclusive use of 140 reserved parking spaces within the Parking Facility (collectively, the "Exclusive Spaces"). The Developer will designate the Exclusive Spaces, which will be used by the Developer for guests of the Hotel. Such spaces will be clearly marked and will not be available for use by the City for the general public. As more particularly described in Section 8.2 below, the Developer's right to use the Exclusive Spaces shall extend beyond the Lease Term and be conterminous with the expiration of the term of the Ground Lease (the "Ground Lease Term"). The City and the City's agents, employees, subtenants, assignees, licensees, contractors or invitees, including the general public, shall also have the right of access, ingress and egress over, under, through and upon the Premises in order to utilize the Premises for vehicular and pedestrian access to the Parking Facility.

(b) The Developer and its agents, employees, representatives, contractors, successors and assigns shall be permitted such possession of the Parking Facility as shall be necessary and convenient at any time throughout the Ground Lease Term to access the Exclusive Spaces.

SECTION 5.2 Maintenance and Other Operating Expenses

The Developer will, at its own expense, (a) maintain the Parking Facility in good condition, repair and working order, except for ordinary wear and tear; (b) care for and maintain the grounds around the Parking Facility, including the regular mowing of grass, care of shrubs and general landscaping; (c) maintain the whole of the Parking Facility in a clean condition; and (d) promptly make all structural and nonstructural, foreseen and unforeseen, ordinary and extraordinary changes, repairs and replacements of every kind which may be required to keep the Parking Facility in such good condition, repair and appearance. The Developer's obligation extends to both interior and exterior items and includes, without limitation, maintenance, repair, and replacement of the surfaces and walls of the Parking Facility, doors and passageways, equipment, fixtures, all pavement (asphalt, concrete, or other types which may be on the Parking Facility and including re-striping and repaving same and removing any ice, snow and rubbish thereon). The City and the Developer acknowledge that the Developer is collecting from the City the Renewal and Replacement Reserve Fee, and that such amounts will be available to and used by the Developer to perform the maintenance and repairs required by this Section; provided that, to the extent the amount of the Renewal and Replacement Reserve Fee is insufficient to cover such costs, the Developer shall nevertheless be responsible for the maintenance and repairs required by this Section.

Except in the event of an emergency in which no prior approval shall be required, with written approval from the City, which approval shall not be unreasonably withheld, conditioned or delayed, the Developer may at any time and from time to time close all or any portion of the Parking Facility to make repairs, improvements, alterations or changes.

The Developer shall also pay all gas, electric, water, sewer and other charges for the operation, use and upkeep of the Parking Facility.

SECTION 5.3 Taxes, Assessments, Etc.

The Developer will pay all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Parking Facility or any part thereof or upon any income therefrom; provided, however, that the Developer shall not be required to pay and discharge any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings.

SECTION 5.4 Improvements, Alterations, Etc.

The Developer may, at its own expense, make additions, improvements or alterations to the buildings and structures constituting a part of the Parking Facility so long as such additions, improvements or alterations do not interfere with the use by the City or the general public of the Parking Facility or change the number of parking spaces available to the City.

SECTION 5.5 Leasehold Deed of Trust; Assignment by Developer

The City agrees that the Developer may, without the prior written consent, authorization or other acknowledgment of the City, grant a leasehold mortgage, collateral assignment or assignment as security with respect to the rights, interests and estates of the Developer under this Capital Lease or its rights, interests and estates in the Parking Facility, and assign its rights under this Capital Lease to an Affiliate of the Developer or an Affiliate of Hunt Properties, an unincorporated Tennessee general partnership ("Hunt Properties") so long as Hunt Services, Inc. remains liable for the obligations of the Developer under this Capital Lease, either as co-Developer or as guarantor. In the event of an assignment to an Affiliate of the Developer or an Affiliate of Hunt Properties, the Developer shall notify the City in writing within fifteen

(15) days prior to the effective date of any such assignment together with evidence reasonably satisfactory to the City of Hunt Services, Inc.'s continued obligation with respect to this Capital Lease.

SECTION 5.6 The City's Personal Property and Fixtures

(a) The City may, at its own expense, install at the Parking Facility any personal property or fixtures which, in the City's judgment, are necessary or desirable for the conduct of the business carried on by the City at the Parking Facility. Any such personal property or fixtures which are installed at the City's expense and which do not constitute a part of the personal property and fixtures subject to this Capital Lease shall be and remain the property of the City and may be removed by the City at any time while no Lease Default exists; provided, that any damage to the Parking Facility occasioned by such removal shall be repaired by the City at its own expense.

(b) If any personal property or fixtures described in this Section are leased by the City or the City shall have granted a security interest in such property in connection with the acquisition thereof by the City, then the lessor of such property or the party holding a security interest therein, as the case may be, may remove such property from the Parking Facility even though a Lease Default shall then exist or this Capital Lease shall have been terminated following a Lease Default hereunder; provided, that the foregoing permission to remove shall be subject to the agreement by such lessor or secured party to repair at its own expense any damage to the Parking Facility occasioned by such removal.

SECTION 5.7 Insurance

(a) The Developer shall be required to maintain insurance with respect to damage or destruction of the Parking Facility in accordance with the terms of the Ground Lease, which insurance shall be in an amount at least equal to the replacement cost of the Parking Facility.

(b) The City will at all times maintain insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Parking Facility or in any way related to the condition or operation of the Parking Facility, in the minimum amounts of \$[●] for death of or bodily injury to any one person, \$[●] for all death and bodily injury claims resulting from any one accident, and \$[●] for property damage. Such insurance shall insure the Developer, as well as the City, against such liability.

(c) All insurance required by Section 5.7 shall be effected with responsible insurance carriers. All policies or other contracts evidencing such insurance or a certificate of the respective insurers attesting the fact that such insurance is in force and effect, shall be deposited with the Developer and the City. Prior to the expiration of such insurance, the City or the Developer, as applicable, shall furnish to the other evidence that such insurance has been renewed or replaced. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for the benefit of the Developer or the City, as applicable, for at least ten (10) days after written notice to the Developer or the City of cancellation.

SECTION 5.8 Damage and Destruction

If the Parking Facility is damaged or destroyed by fire or other casualty, the Developer shall use the proceeds of any insurance to repair or replace the Parking Facility damaged or destroyed. Any property acquired by the Developer in connection with such repair or replacement shall become a part of the Parking Facility subject to this Capital Lease.

SECTION 5.9 Condemnation

(a) If title to, or the use of, the Parking Facility or any part thereof shall be taken by the exercise of the power of eminent domain, the entire proceeds of any related award shall be paid to the Developer. The Developer shall not be required to replace the property so taken. Any property acquired by the Developer in connection with such replacement shall become a part of the Parking Facility subject to this Capital Lease. The Basic Lease Payments payable hereunder during the unexpired portion of the Lease Term shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority.

(b) The Developer shall cooperate in good faith with the City in the conduct of any condemnation proceeding with respect to the Parking Facility. The Developer will not settle, or consent to the settlement of, any condemnation proceeding without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 6

Representations and Covenants

SECTION 6.1 General Representations

The City makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) It is a municipal corporation duly created under the laws of the State of North Carolina and the City has duly authorized the execution and delivery of this Capital Lease and the consummation of the transactions contemplated hereby.

(b) The City has obtained all consents, approvals, authorizations and orders of governmental authorities that are required to be obtained by it as a condition to the execution and delivery of this Capital Lease.

(d) The execution and delivery by the City of this Capital Lease and the consummation by it of the transactions contemplated hereby will not (1) conflict with, be in violation of, or constitute (upon notice or lapse of time or both) a default under any agreement, instrument, order or judgment to which it is a party or is subject, or (2) result in or require the creation or imposition of any lien of any nature upon or with respect to the Parking Facility other than the encumbrance created by this Capital Lease.

SECTION 6.2 Corporate Existence

(a) The City will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises.

(b) The City may not consolidate with or merge into any other entity or transfer its property substantially as an entirety to any person unless:

(1) the entity into which the City is merged (the "Successor") shall execute and deliver to the Developer an instrument in form acceptable to the Developer containing an assumption by the Successor of the performance and observance of every covenant and condition of this Capital Lease to be performed or observed by the City;

(2) immediately after giving effect to such transaction, no Lease Default, or any event which upon notice or lapse of time or both would constitute such a Lease Default, shall have occurred and be continuing; and

(3) the City shall have delivered to the Developer a certificate executed by the City and an opinion from counsel acceptable to the Developer, each of which shall state that such consolidation, merger, conveyance or transfer complies with this Section and that all conditions precedent herein provided relating to such transactions shall have been complied with.

(c) Upon any consolidation or merger or any conveyance or transfer of the City's property substantially as an entirety in accordance with this Section, the Successor shall succeed to, and be substituted for, and may exercise every right and power of, the City under this Capital Lease with the same effect as if such Successor had been named as the City herein.

SECTION 6.3 Inspection of Records

The City will at any and all times, upon the written request of the Developer, permit the Developer by its representatives to inspect the Parking Facility. The Developer will, upon the written request of the City, permit the City to inspect its books, records, reports and other papers relating to the operation of the Parking Facility in connection with the determination of the amount of Additional Lease Payments due under Section 4.2(b) hereof.

SECTION 6.4 Indemnities

(a) To the extent permitted by law, the City shall indemnify and hold harmless the Developer from and against any and all claims arising from the City's use of the Premises, or from any activity, work or things done, permitted or suffered by the City in the Premises on or after the Commencement Date and shall further indemnify and hold harmless the Developer from and against any and all claims arising from any Lease Default (as defined in Section 7.1 below) or breach in the performance of any obligation on the City's part to be performed under the Lease Term, and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against the Developer by reason of any such claim, the City upon notice from the Developer shall defend the same at the City's expense by counsel reasonably satisfactory to the Developer.

(b) The Developer shall indemnify and hold harmless the City from and against any and all claims arising from the Developer's activity, work or things done, permitted or suffered in or about the Premises by the Developer prior to or after the Commencement Date and shall further indemnify and hold harmless the City from and against any and all claims arising from any breach or default in the performance of any obligation on the Developer's, or any of the Developer's agents, contractors or employees part to be performed under the terms of this Capital Lease, and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against the City by reason of any such claim, the Developer upon notice from the City shall defend the same at the Developer's expense by counsel reasonably satisfactory to the City.

(c) Notwithstanding (a) and (b) above, each of the City and the Developer releases the other, and its employees, agents, and representatives, from liability, and waives its entire right of recovery against the other for loss or damage occurring in or about the Premises to the extent such loss or damages is covered under fire, casualty and all risk insurance policies, including extended coverage endorsements, carried by the parties. Each party agrees that each such insurance policy obtained by it with respect to the Premises or

any personal property shall include a waiver by the insurer of its subrogation rights for such losses and damages. The foregoing mutual waivers shall be effective only so long as such waivers are available in the State of North Carolina and do not invalidate the insurance coverage.

ARTICLE 7

Lease Default; Remedies

SECTION 7.1 Events of Default of the City

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

- (a) default in the payment of any Basic Lease Payment when such Basic Lease Payment becomes due and payable; or
- (b) default in the payment of any Additional Lease Payment when such Additional Lease Payment becomes due and payable; or
- (c) an Act of Bankruptcy by the City; or
- (d) default in the performance, or breach, of any covenant or warranty of the City in this Capital Lease (other than a covenant or warranty, a default in the performance or breach of which is elsewhere in this Section specifically dealt with), and the continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “notice of default” hereunder.

For purposes of this Section, an “Act of Bankruptcy” shall mean the appointment of a receiver, liquidator or trustee of the designated entity or any of its properties or assets; or a general assignment by the designated entity for the benefit of the creditors thereof; or the commencement of proceedings by or against the designated entity under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, now or hereafter in effect.

SECTION 7.2 Remedies on Default

If a Lease Default occurs and is continuing, the Developer may exercise any of the following remedies:

- (a) declare all installments of Basic Lease Payments for the remainder of the term of this Capital Lease to be immediately due and payable;
- (b) reenter the Parking Facility, without terminating this Capital Lease, and, upon ten (10) days’ prior written notice to the City, relet the Parking Facility or any part thereof for the account of the City, for such term (including a term extending beyond the term of this Capital Lease) and at such rentals and upon such other terms and conditions, including the right to make alterations to the Parking Facility or any part thereof, as the Developer may deem advisable, and such reentry and reletting of the Parking Facility shall not be construed as an election to terminate this Capital Lease nor relieve the City of its obligations to make payments required by this Capital

Lease and to perform and observe any of its other agreements and covenants under this Capital Lease, all of which shall survive such reentry and reletting, and the City shall continue to make all payments required by this Capital Lease until the end of the term of this Capital Lease, less the net proceeds, if any, of any reletting of the Parking Facility after deducting all of the Developer's expenses in connection with such reletting, including all repossession costs, brokers' commissions, attorneys' fees, alteration costs and expenses of preparation for reletting;

(c) terminate this Capital Lease, exclude the City from possession of the Parking Facility and, if the Developer elects so to do, lease the same for the account of the Developer, holding the City liable for all payments due under this Capital Lease up to the date of such termination; and

(d) take whatever legal proceedings may appear necessary or desirable to collect the payments under this Capital Lease then due, whether by declaration or otherwise, or to enforce any obligation or covenant or agreement of the City under this Capital Lease or by law.

SECTION 7.3 No Remedy Exclusive

No remedy herein conferred upon or reserved to the Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Capital Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient.

SECTION 7.4 Agreement to Pay Attorneys' Fees and Expenses

If the City should default under any of the provisions of this Capital Lease and the Developer should employ attorneys or incur other expenses for the collection of payments due under this Capital Lease or the enforcement of performance or observance of any agreement or covenant on the part of the City herein contained, the City will on demand therefor pay to the Developer the reasonable fee of such attorneys and such other expenses so incurred.

SECTION 7.5 No Additional Waiver Implied by One Waiver

In the event any agreement contained in this Capital Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7.6 Remedies Subject to Applicable Law

All rights, remedies and powers provided by this Article may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Capital Lease invalid or unenforceable.

SECTION 7.7 Events of Default of the Developer.

The Developer's failure to perform or observe any of its obligations under this Capital Lease after a period of thirty (30) days after it receives written notice from the City setting forth in reasonable detail

the nature and extent of the failure and identifying the applicable Lease provision(s) shall constitute a Lease Default under this Capital Lease; provided, however, if such default cannot be cured within thirty (30) days, such cure period shall be extended for a reasonable period of time to allow a cure so long as the Developer has begun to cure within such thirty (30) days and diligently pursues a cure to completion. If the Developer commits a Lease Default, the City may pursue any remedies available to it under applicable law, except for suspending or discontinuing any Basic Lease Payment or Additional Lease Payments or terminating this Capital Lease.

ARTICLE 8

Options

SECTION 8.1 Option to Purchase Parking Facility

If no Lease Default exists, the City shall have the option to purchase the Parking Facility for a purchase price of \$[1.00] after the expiration of the Lease Term. Such option shall be deemed automatically exercised upon the expiration of the Lease Term unless the City notifies the Developer in writing prior to such expiration that it does not intend to exercise such option. The closing for such purchase shall take place on (a) a Business Day designated by the Developer that is not less than seven (7) days nor more than twenty-one (21) days after the expiration of the Lease Term, or (b) such other date as shall be mutually acceptable to the Developer and the City.

SECTION 8.2 Conveyances on Exercise of Option to Purchase

Upon the exercise of any option to purchase granted herein, the Developer will transfer the Parking Facility to the City, and the City will lease back the Exclusive Spaces to the Developer pursuant to a long-term, "triple net" lease in form and content acceptable to the parties, the term of which shall be at least co-terminus with the Ground Lease Term. The Developer will deliver to the City documents conveying to the City the Parking Facility, subject to the following: (a) all easements or other rights, if any, required to be reserved by the Developer under the terms and provisions of the option being exercised by the City; (b) those liens and encumbrances, if any, to which title to said property was subject when conveyed to the Developer; (c) those liens and encumbrances created by the City or to the creation of which the City consented; and (d) those liens and encumbrances resulting from the failure of the City to perform or observe any of the agreements or covenants on its part contained in this Capital Lease.

ARTICLE 9

Miscellaneous

SECTION 9.1 Developer's Liabilities Limited

Subject to the terms of this Capital Lease and the Project Agreement, no recourse under or upon any covenant or agreement of this Capital Lease or of any contract or other agreement entered into pursuant to this Capital Lease shall be had against any past, present or future incorporator, officer or member of the Developer, or of any successor entity, either directly or through the Developer, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Capital Lease is solely a corporate obligation of Hunt Services, Inc., and that no personal liability whatever shall attach to, or is or shall be incurred by, any incorporator, officer or member of the Developer or any successor corporation, or any of them, under or by reason of the covenants or agreements contained in this Capital Lease.

SECTION 9.2 Notices

All notices or other communications required to be given under this Capital Lease shall be given in writing and shall be deemed to have been duly given on the date delivered, if delivered personally; or the next Business Day, if delivered to a nationally recognized overnight courier service, addressed as follows:

If to the City:

City of Rocky Mount, North Carolina
P.O. Box 1180 _____
Rocky Mount, NC 27804 _____
Attention: City Manager _____

With copies to:

Jep Rose, City Attorney
Poyner & Spruill
130 S. Franklin St.
Rocky Mount, NC 27804

If to the Developer: Hunt Services, Inc.
1031 Greystone Square
Jackson, TN 38305
Attention: David B. Hunt, President

With a copy to:

C. Randall Minor, Esq.
Maynard Cooper & Gale, P.C.
1901 Sixth Avenue N. Suite 2400
Birmingham, AL 35203

The City and the Developer may specify a different address for the receipt of such documents by giving notice of the change in address to the other parties named in this Section.

SECTION 9.3 Successors and Assigns

All covenants and agreements in this Capital Lease by the Developer or the City shall bind their respective successors and assigns as permitted under the terms of this Capital Lease, whether so expressed or not.

SECTION 9.4 Benefits of Capital Lease

Nothing in this Capital Lease, express or implied, shall give to any person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Capital Lease.

SECTION 9.5 Estoppel Certificates

Within ten (10) days following written request by the Developer or the City, the other party shall execute, acknowledge and deliver to the requesting party a certificate indicating any or all of the following: (a) the date on which the term of this Capital Lease commenced and the date on which it is then scheduled to expire; (b) that this Capital Lease is unmodified and in full force and effect (or, if there have been modifications, that this Capital Lease is in full force and effect, as modified, and stating the date and nature of each modification); (c) the then current rent for the Parking Facility; (d) that no default exists that has

not been cured, except as to defaults stated in such certificate; (e) that the responding party has no existing defense or offset to enforcement of this Capital Lease, except as specifically stated in such certificate; and (f) such other matters as may be reasonably requested by the requesting party.

SECTION 9.6 Subordination, Non-disturbance and Attornment

This Capital Lease and all rights of the City hereunder are and shall be subject and subordinate to the lien of any mortgage, deed to secure debt, deed of trust, or other instrument in the nature thereof (a "Mortgage") which may now or hereafter affect the Developer's title to the Premises or the Developer's interest hereunder and to any modifications, renewals, consolidations, extensions, or replacements of any of the foregoing. As a condition precedent to City's obligations under this section, the Developer agrees to cause any lender to the Developer that requires a Mortgage with respect to the Premises to execute and deliver to the City a subordination, non-disturbance and attornment agreement ("SNDA") in a form mutually acceptable to the Developer's lender and the City, which SNDA shall give the City reasonable assurance that its leasehold rights under this Capital Lease shall not be interrupted or disturbed as a result of a foreclosure or deed in lieu of foreclosure with respect to the Mortgage held by the Developer's lender. In return, the City will attorn to and recognize such successor to the Developer resulting from such foreclosure or deed in lieu of foreclosure as the City's landlord under this Capital Lease. Upon such non-disturbance and attornment, this Capital Lease shall continue in full force and effect as a direct Lease between such successor landlord and the City, subject to all the terms, covenants, and conditions of this Capital Lease, and the successor landlord shall not disturb the City's right of possession of the Premises so long as no Lease Default exists under this Capital Lease.

[remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the City and the Developer have caused this Capital Lease Agreement to be duly executed as of the date first set forth above.

CITY OF ROCKY MOUNT, NORTH CAROLINA

By: _____
Print Name: _____
Its: _____

STATE OF NORTH CAROLINA

COUNTY OF EDGECOMBE

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing instrument: David W. Combs, as Mayor of the City of Rocky Mount, North Carolina.

Dated: September __, 2019

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

HUNT SERVICES, INC.

By: _____
Print Name: _____
Its: _____

STATE OF

COUNTY OF

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing instrument: David B. Hunt, as President of Hunt Services, Inc., a Tennessee corporation.

Dated: September __, 2019

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A

Description of Parking Facility

The Parking Facility subject to this Capital Lease include the following components:

1. **Real Property.** The following real property located in Edgecombe County, North Carolina:

[Insert property description.]

2. **Buildings and Structures.** The following buildings and structures to be constructed, altered or improved on the real property described above:

[Describe buildings and structures to be constructed, altered or improved on real property. The real property may have existing buildings located there when it was acquired. Those buildings probably will be altered or improved as part of this financing. If so, this description should make that point.]

3. **Personal Property and Fixtures.** The following personal property and fixtures to be acquired and installed on the real property described above:

[Describe personal property and fixtures to be acquired and installed.]

EXHIBIT B

Permitted Encumbrances

[To be added.]

**GROUND LEASE
EVENT CENTER VILLAGE**

between

HUNT SERVICES, INC.

and

THE CITY OF ROCKY MOUNT, NORTH CAROLINA

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I BASIC TERMS AND DEFINITIONS; RULES OF CONSTRUCTION.....	2
Section 1.1 Definitions	2
Section 1.2 Rules of Construction	5
ARTICLE II LEASE OF PROPERTY; AS IS CONDITION; AGREEMENT; TERM OF LEASE; PERMITTED USE; PROJECT AGREEMENT	5
Section 2.1 Term.....	5
Section 2.2 As-Is Condition.....	5
Section 2.3 Permitted Use.....	6
Section 2.4 Access to Premises.....	6
Section 2.5 Compliance with Project Agreement; Cooperation	6
ARTICLE III RENT	6
Section 3.1 Base Rent	6
Section 3.2 Percentage Rent	7
Section 3.3 Additional Rent.....	7
Section 3.4 Additional Rent Payment.....	7
Section 3.5 Non-Waiver	7
Section 3.6 Inability to Pay Rent	7
Section 3.7 Interest and Charges on Late Payments	7
ARTICLE IV PAYMENT OF IMPOSITIONS AND UTILITIES	8
Section 4.1 Impositions	8
Section 4.2 Payable When Due.....	8
Section 4.3 Reserved	8
Section 4.4 Refund of Impositions	8
ARTICLE V EFFECT OF GROUND LEASE ON OWNERSHIP OF PROPERTY; AND CERTAIN OTHER INCIDENTS OF GROUND LEASE.....	8
Section 5.1 Ownership of Property.....	8
Section 5.2 Replacement of Fixtures	9
Section 5.3 Lien-Free.....	9
Section 5.4 Certain Rights and Duties of Leasehold Deed of Trust Beneficiaries.....	9
ARTICLE VI COMPLIANCE WITH LAW; ENVIRONMENTAL LAWS; CONTEST	11
Section 6.1 Compliance With General Laws	11
Section 6.2 Compliance With Environmental Laws.....	11
Section 6.3 Developer’s Right to Contest Claimed Violations.....	13
Section 6.4 Environmental Matters	14
Section 6.5 Reservation of Rights.....	14
ARTICLE VII REPAIRS AND MAINTENANCE	14
Section 7.1 Standards.....	14
Section 7.2 No Waste or Nuisance	14
Section 7.3 No Accumulation.....	14
Section 7.4 City’s Obligation.....	14

ARTICLE VIII INSURANCE; COMPLIANCE WITH INSURANCE REQUIREMENTS 14

- Section 8.1 Insurance 14
- Section 8.2 Insurance Policies 14
- Section 8.3 Blanket Coverage 15
- Section 8.4 Named and Additional Insured 15
- Section 8.5 No Cancellation Without Notice to City 15
- Section 8.6 Certificate of Insurance 15
- Section 8.7 Failure to Maintain Insurance 15

ARTICLE IX INDEMNITY 15

- Section 9.1 Indemnity 15

ARTICLE X CASUALTY DAMAGE AND DESTRUCTION 16

- Section 10.1 Damage 16
- Section 10.2 Proceeds of Insurance 16
- Section 10.3 Termination Rights 16

ARTICLE XI CONDEMNATION 17

- Section 11.1 Definitions 17
- Section 11.2 Nature of Taking 17
- Section 11.3 Taking While Leasehold Deed of Trust in Effect 17
- Section 11.4 Taking After Discharge of Leasehold Deed of Trust 18
- Section 11.5 Reimbursement for Taxes 18
- Section 11.6 No Benefit to Condemning Party 19

ARTICLE XII ESTOPPEL CERTIFICATES 19

- Section 12.1 Estoppel Certificates 19

ARTICLE XIII ASSIGNMENT AND SUBLEASE 19

- Section 13.1 Prohibition of Assignment and Subleasing 19
- Section 13.2 Permitted Assignment and Subletting 19

ARTICLE XIV DEFAULT; INSOLVENCY EVENTS; AND CONDITIONS OF
LIMITATION 20

- Section 14.1 Events of Default 20
- Section 14.2 Insolvency Events 20
- Section 14.3 Material Default 21
- Section 14.4 City Default 21

ARTICLE XV REMEDIES 21

- Section 15.1 Rights of City 21
- Section 15.2 Right of Injunction 22
- Section 15.3 City May Cure Default 22
- Section 15.4 No Waiver by the City 23
- Section 15.5 Developer Waiver 23
- Section 15.6 Jurisdiction 23
- Section 15.7 Re-Enter 23

ARTICLE XVI BROKER 23

- Section 16.1 No Broker 23
- Section 16.2 No Broker's Lien 23

ARTICLE XVII NO IMPAIRMENT OF CITY’S TITLE 23
 Section 17.1 Rights Granted by City 23
 Section 17.2 No Impairment of City’s Title 24
 Section 17.3 Liens 24

ARTICLE XVIII QUIET ENJOYMENT 24
 Section 18.1 Quiet Enjoyment 24

ARTICLE XIX LIMITATION OF CITY LIABILITY 24
 Section 19.1 Transfer by City 24
 Section 19.2 No Personal Liability 24

ARTICLE XX END OF TERM..... 24
 Section 20.1 Surrender of Premises 24
 Section 20.2 Personal Property 25
 Section 20.3 Holdover 25
 Section 20.4 No Acceptance of Surrender 25

ARTICLE XXI MISCELLANEOUS 25
 Section 21.1 Modifications in Writing 25
 Section 21.2 No Waiver 26
 Section 21.3 Consent of City 26
 Section 21.4 No Partnership 26
 Section 21.5 Further Liability 26
 Section 21.6 Validity of Lease 26
 Section 21.7 No Merger 26
 Section 21.8 Memorandum of Ground Lease 27
 Section 21.9 Entire Agreement 27
 Section 21.10 Independent Covenants 27
 Section 21.11 Inclusion 27
 Section 21.12 Negotiations Have No Binding Effect 27
 Section 21.13 Notice 27
 Section 21.14 No Claims Against City 28

EXHIBIT A - LEGAL DESCRIPTION OF SITE
EXHIBIT B - PERMITTED ENCUMBRANCES
EXHIBIT C - INSURANCE REQUIREMENTS
EXHIBIT D - MEMORANDUM OF GROUND LEASE

Ground Lease (Event Center Village)

THIS GROUND LEASE (EVENT CENTER VILLAGE) (this “*Ground Lease*”) dated as of [_____], 2019, between the **CITY OF ROCKY MOUNT, NORTH CAROLINA**, a municipal corporation duly created under the laws of the State of North Carolina (the “*City*”), and **HUNT SERVICES, INC.**, a Tennessee corporation authorized to do business in North Carolina (as more particularly described below, the “*Developer*”).

RECITALS:

WHEREAS, the City has determined that the development of a hotel, retail, residential and parking facilities in the area around the Rocky Mount Event Center is critical to the revitalization of downtown Rocky Mount, and has determined to develop a critically needed parking facility under the provisions of N.C.G.S. Section 143-128.1C that permit public-private partnerships to construct certain capital improvement projects (the “*PPP Act*”); and

WHEREAS, the Developer is experienced in the development of hotels, retail, residential and parking facilities in urban areas; and

WHEREAS, the City reviewed the qualifications of the Developer to serve as its development partner to develop a critically needed parking facility as part of a mixed-use project, commonly known as Event Center Village, consisting of a hotel, a mixed-use building and the Parking Facility (as defined below, and collectively hereinafter referred to as the “*Project*”) to be developed on certain real property located within the corporate limits of the City, including an approximately 2.45 acre parcel owned by the City (as more particularly described on **Exhibit A** attached hereto, the “*City Land*”), including review of the Developer’s: (i) financial stability, (ii) experience in constructing developments such as the Project, (iii) experience and that of its project team and its proposed method of design and construction of the Project, and (iv) proposed timeline for construction; and

WHEREAS, after conducting such review, the City and has determined to enter into that certain Project Development and Cooperation Agreement dated as of [_____], 2019 (the “*Project Agreement*”), this Ground Lease and the Capital Lease (as defined in the Project Agreement) in order to accomplish the purposes set forth herein; and

WHEREAS, the City and the Developer have agreed to cooperate with each other in order to facilitate the planning, design, financing, construction, and operation of the Project; and

WHEREAS, as part of the Project, the Developer will construct a structured parking facility providing at least 700 spaces that meets the minimum requirements set forth in Section 3.6 of the Project Agreement (the “*Parking Facility*”), and will lease it to the City pursuant to the terms and conditions of the Capital Lease; and

WHEREAS, it is the intent of the City and the Developer that the development of the Project and the design, construction and leasing of the Parking Facility constitute a public-private project and that the Project Agreement be a “development contract” under the PPP Act; and

WHEREAS, the City has complied with the requirements of N.C.G.S. Sections 160A-272(b1) and 160A-269 prior to entering into this Ground Lease; and

WHEREAS, the parties hereto have common and compelling interests in developing the Project, and the Parking Facility in particular, in order to foster the success of the Rocky Mount Event Center and the revitalization of downtown Rocky Mount.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements and conditions as set forth herein, and desiring to provide for the terms and conditions in which the efforts of the parties will be conducted, the City and the Developer hereby covenant and agree as follows:

ARTICLE I
BASIC TERMS AND DEFINITIONS; RULES OF CONSTRUCTION

Section 1.1 Definitions. Unless otherwise set forth in this Ground Lease, all definitions set forth in the Project Agreement shall be applicable to this Ground Lease. The following definitions shall be applicable to this Ground Lease:

“*Additional Rent*” means all amounts payable by the Developer under this Ground Lease other than the Base Rent and whether or not designated as Additional Rent.

“*Applicable Laws*” means any present or future law (including Environmental Laws), statute, ordinance, regulation, code, judgment, injunction, arbitral award, order, rule, directive, proclamation, decree, common law or other requirement, ordinary or extraordinary, foreseen or unforeseen, of the United States, any state or local government, or any political subdivision thereof, arbitrator, department, commission, board, bureau, agency or instrumentality thereof, or of any court or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, or of any other public or quasi-public authority or group, having jurisdiction over the Premises; and any reciprocal easement, covenant, restriction, or other agreement, restriction or easement of record affecting the Premises as of the date of this Ground Lease or subsequent thereto.

“*Base Rent*” means the amount required to be paid under Section 3.1 hereof.

“*Closing Date*” means [_____], 2019.

“*City*” means the City of Rocky Mount, North Carolina, a municipal corporation duly created under the laws of the State of North Carolina.

“*Developer*” means Hunt Services, Inc., a Tennessee corporation and includes its successors and assigns permitted hereunder and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party, as permitted hereunder.

“*Environmental Laws*” means all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, resolutions, executive orders and decisions of Governmental Authorities relating to Hazardous Substances, natural resources, human health or the environment, including, without limitation, as amended from time to time, the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901, 6903 et seq.), Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601(14) et seq.), Federal Hazardous Materials Transportation Control Act (42 U.S.C. Section 1801 et seq.), Federal Clean Air Act (42 U.S.C. Section 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. Section 1317), Federal Water Act of 1977 (93 U.S.C. Section 1251 et seq.), Federal Insecticide, Fungicide and Rodenticide Act, Radioactive Waste Storage and Transportation Act of 1980, and Federal Clean Air Act (42 U.S.C. Section 7401, et seq.).

“GAAP” shall mean means those conventions, rules, procedures, and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States.

“Governmental Authority” means any governmental authority, agency, department, district, commission, board or instrumentality of the United States of America, the State, the City, North Carolina, and any other governmental authority having jurisdiction over the Premises.

“Gross Hotel Revenues” shall mean all revenue and income of any kind derived directly or indirectly from operations at the Hotel and properly attributable to the period under consideration (including rentals or other payments from licensees, lessees, or concessionaires of any retail space in the Hotel, but not gross receipts of such licensees, lessees, or concessionaires), determined in accordance with GAAP, except that the following shall not be included in determining Gross Hotel Revenues:

- A. government taxes, duties, levies and/or charges collected directly from patrons or guests, or as a part of the sales price of any goods or services sold at the Hotel;
- B. rebates, discounts, or credits of a similar nature (not including charge or credit card discounts, which shall not constitute a deduction from revenues in determining Gross Hotel Revenues, but shall constitute Operating Expenses);
- C. proceeds of any financing or refinancing of the Hotel;
- D. refunds to Hotel guests of any sums or credits to any Hotel customers for lost or damaged items; and
- E. refunds to parking customers of any sums or credits to any parking customers for lost or damaged items.

“Ground Lease” means this Ground Lease, by and between the City and the Developer.

“Hazardous Substances” means any material, waste, substance, industrial waste, toxic waste, chemical contaminant, petroleum, asbestos, polychlorinated biphenyls, radioactive materials or other substances regulated or classified by Environmental Laws as hazardous, toxic, dangerous or harmful to human health or property.

“Hotel” means an approximately 107 room, limited service hotel to be constructed on the City Land in the approximate location depicted on the Site Plan and to be operated under an Approved Hotel Flag. The Hotel shall meet the minimum requirements set forth in Section 3.6 of the Project Agreement.

“Impositions” has the meaning provided therefor in Section 4.1 hereof.

“Improvements” means the “Project”, as defined in the Recitals.

“Liabilities” means all losses, claims, suits, demands, costs, liabilities, and expenses, including reasonable attorneys’ fees, penalties, interest, fines, judgment amounts, fees, and damages, of whatever kind or nature.

“Market Value” means the most probable price which a property (whether fee estate, leasehold estate, the City Land or the Project, as the case may be) should bring in a competitive and open market under all conditions requisite for a fair sale, the buyer and seller (or assignee and assignor in the case of

the sale of a leasehold estate) each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus or distress, under the following conditions:

- (i) buyer and seller (or assignor and assignee, as the case may be) are typically motivated; and
- (ii) both parties are well informed or well advised, and acting in what they consider their best interests; and
- (iii) a reasonable time is allowed for exposure in the open market; and
- (iv) payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- (v) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

“*Net Hotel Revenues*” shall mean Gross Hotel Revenues less Operating Expenses.

“*Operating Expenses*” shall mean the following, but only as it relates to the Hotel: (i) the costs of operating and maintaining the Hotel (including, but not limited to, salaries and wages, employee benefits, laundry, cleaning, operating supplies and linens); (ii) debt service on any Construction Loan, permanent loan and/or subordinate mezzanine financing; (iii) general, administrative and marketing expenses (including, but not limited to, legal, accounting and audit fees for services directly related the Hotel, including bookkeeping, record keeping and audit of the Hotel in accordance with this Ground Lease); (iv) property maintenance, operation and repair expenses, (v) energy and other utility costs; (vi) Base Rent; (vii) Additional Rent and (ix) insurance premiums, all as determined in accordance with GAAP. Operating Expenses shall not include: (i) reserves for furniture, fixtures and equipment, (ii) any hotel management fee paid to the Developer, and (iii) with respect to expenses paid for goods and services provided by Affiliates, any amount paid in excess of market rates.

“*Percentage Rent*” means the amount required to be paid under Section 3.1 hereof.

“*Permitted Encumbrances*” means as of any particular time, (i) liens for ad valorem taxes, special assessments, and other charges not then delinquent or for taxes, assessments, and other charges being contested in accordance with the terms of this Ground Lease, (ii) the currently existing utility, access, and other easements and rights of way, restrictions, and exceptions set forth on **Exhibit B** attached hereto, (iii) mechanics’ and materialman’s liens that arise by operation of law but that have not been perfected by the required filing of record, for work done or materials delivered after the date hereof, and (iv) any additional exceptions or encumbrances created or consented to by both the City and the Developer.

“*Permitted Use*” means the Premises shall be used for hotel and parking uses and uses ancillary thereto in connection with the Project, and any other lawful use, including the use of the City Land by the Developer or its Affiliate (or an Affiliate of Hunt Properties).

“*Person*” means any individual, corporation, partnership, firm or other legal entity.

“*Personal Property*” means all furniture and other personal property owned or leased by the City or the Developer, located at the Premises and used in the operation of the Project, excluding trucks and cars.

“*Premises*” means the City Land and any improvements (or portions thereof) thereon, including the Hotel and the Parking Facility, together with any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto.

“*Rent*” means, collectively, Base Rent, Percentage Rent and Additional Rent.

“*State*” means the State of North Carolina.

“*Term*” means the period beginning on the date of execution and delivery hereof and ending on a date sixty-five (65) years after the Closing Date.

Section 1.2 Rules of Construction.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words used herein shall include the plural as well as the singular number.

(b) References herein to particular articles or sections are references to articles or sections of this Ground Lease unless some other reference is indicated.

(c) References herein to specific sections or chapters of the General Statutes of North Carolina or to specific legislative acts are intended to be references to these sections, chapters or acts as amended and as they may be amended from time to time by the General Assembly of North Carolina, or any successor statute.

**ARTICLE II
LEASE OF PROPERTY; AS IS CONDITION; AGREEMENT; TERM OF
LEASE; PERMITTED USE; PROJECT AGREEMENT**

Section 2.1 Term. Subject to the terms and conditions of this Ground Lease, the City leases to the Developer, and the Developer leases from the City, the Premises for the Term, subject to earlier termination pursuant to any of the terms, covenants, or conditions of this Ground Lease or pursuant to Applicable Laws.

Section 2.2 As-Is Condition. The Developer has examined the City Land and accepts possession of the City Land in its condition as is on the Closing Date, but free and clear of all liens and encumbrances other than the Permitted Encumbrances, provided however that the Developer shall not be deemed (i) to have assumed any Liabilities for environmental or other conditions that are in existence prior to the Closing Date and violate any Applicable Laws, whether or not discovered or discoverable (collectively, the “*Pre-Existing Conditions*”). Except as otherwise expressly provided in this Ground Lease or the Capital Lease and except for the Pre-Existing Conditions, the City has no obligation whatsoever to perform any work or make any repairs with respect to the Premises, to furnish any services with respect to the Premises, or to incur any expenses with respect to the Premises, and the City has no responsibility with respect to the condition of the Premises under this Ground Lease. The Developer expressly acknowledges and agrees that the City has not made and is not making, and the Developer, in executing and delivering this Ground Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Ground Lease. Notwithstanding the foregoing, during the Term, the City shall not encumber the Premises with any liens or encumbrances of any nature whatsoever except for the Permitted Encumbrances without the Developer’s prior written consent.

Section 2.3 Permitted Use. Subject to all of the other terms, covenants and conditions of this Ground Lease, the Developer shall use the City Land and the Project only for the Permitted Use and for the construction and operation of the Project. The City hereby acknowledges and agrees that the Developer shall lease the Parking Facility to the City pursuant to the Capital Lease. The Developer shall not at any time use or occupy the City Land or the Project, or consent to anyone else using or occupying the Premises: (a) in any manner that violates the provisions of this Ground Lease or the certificate(s) of occupancy for the Premises, once issued, or (b) so as to cause waste, or (c) so as to violate any insurance policy then issued in respect of the Premises, or (d) so as to create a nuisance. In the event of the exercise of remedies under the Leasehold Deed of Trust by the Construction Lender, the City understands that the term Permitted Use will include any lawful use.

Section 2.4 Access to Premises. The City, its authorized representatives, agents, employees, and attorneys may, but shall be under no duty to, enter the Premises at reasonable times and hours without any interference to the Developer to inspect the Premises in order to determine whether the Developer is complying with its obligations under this Ground Lease.

Section 2.5 Compliance with Project Agreement; Cooperation.

(a) The City and the Developer shall observe all requirements terms and conditions of the Project Agreement. To the extent reasonably necessary, and without violating Applicable Laws, the City shall cooperate with the Developer in the Developer's efforts to obtain the required permits, approvals, and authorizations for the construction of the Project and operation of the Premises in accordance with this Ground Lease, including by joining in applications for building permits, subdivision plat approvals, certificates of dedication, public works or other agreements, utility easements, permits for sewer, water and other utility services, and the dedication to the applicable governmental authorities of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are reasonably necessary or desirable.

(b) Subject to the terms and conditions hereof, the Developer shall have the right at any time throughout the Term, at its sole cost and expense, to subdivide the Premises into two (2) separate lots (each, a "Lot"), with the Hotel being located on one (1) such lot and the Parking Facility being located on the other, by the recordation of a subdivision plat (the "Plat"), so long as the subdivision and the Plat (i) do not materially change the size, location or dimensions of the Premises, (ii) do not impose additional use, access or development restrictions on the Premises that would prohibit or materially and adversely affect the Permitted Use of the Premises or direct access to a public street from the Premises, and (iii) provide insurable access to each such lot that is acceptable to the City. Such subdivision of the Premises into the Lots must be approved by the City in accordance with its subdivision ordinances, processes and procedures. Within five (5) business days after the recordation of the Plat (following approval thereof by all applicable governmental authorities), the parties agree that, to the extent the platted legal description differs from the legal description attached hereto as Exhibit A-1 or attached to any memorandum hereof, the parties will, at the City's or the Developer's election, enter into an amendment to this Ground Lease or any memorandum hereof for the purpose of revising the legal description to reflect the platted legal description.

**ARTICLE III
RENT**

Section 3.1 Base Rent. In consideration for the granting of this Ground Lease, the Developer shall pay to the City \$[1.00] per year (the "Base Rent") with the first payment due on the Closing Date and thereafter beginning on each anniversary of such date during the Term. None of the Base Rent is refundable in the event of an early termination hereof.

Section 3.2 Percentage Rent. Commencing on the first calendar day of the [quarter] following the date the Hotel is “substantially complete” as evidenced by the issuance of a certificate of occupancy, the Developer shall pay to the City, throughout the Term, rent in addition to the Base Rent and the Additional Rent in an amount equal to five percent [5]% of Net Hotel Revenues (the “*Percentage Rent*”). The Percentage Rent for each calendar quarter shall be due and payable [quarterly] on the [45th] day following the [last] calendar day of such calendar quarter; provided that, the amount due for the quarter ending December 31 of each year shall be payable within sixty (60) days after the last calendar day of such quarter based on the actual results of such quarter. The Developer will provide information to the City within forty-five (45) or sixty (60) days after the end of each quarter, as applicable, detailing the calculation of Net Hotel Revenues. The Percentage Rent shall be paid to the City at the place provided for in Section 23.13 hereof in lawful money of the United States of America by good check or, at the City’s request, by wire transfer.

Section 3.3 Additional Rent. The parties hereto understand and agree that this is a so-called “triple net” lease and that the Developer shall pay, or cause to be paid, any and all costs and expenses, and shall perform (or cause to be performed) all obligations, relating to the ownership, use, occupancy, operation, maintenance and repair of, and maintenance of insurance on, and payment of taxes or assessments of any sort with respect to, the Premises, and all such payments shall be deemed Additional Rent for purposes of this Ground Lease whether paid directly to the City or to others. Additional Rent paid directly to others shall be paid on or before the initial due date thereof. Additional Rent paid directly to the City for any period shall be paid within thirty (30) days after the City provides the Developer with a written statement of the estimated or actual additional rent due for such period; the City will provide the Developer with a final adjustment statement within ninety (90) days after the close of each calendar year. In addition, during the Term of this Ground Lease, the City shall have no monetary obligations with respect to the Premises, except as otherwise expressly provided in the Project Agreement or the Capital Lease.

Section 3.4 Additional Rent Payment. Additional Rent may be paid directly to the person to whom it is owed, with notice to the City or, if applicable, to the City at the place provided for in Section 23.13 hereof in lawful money of the United States of America by good check or, at the City’s request, by wire transfer. A bill for Additional Rent payable to the City sent by first class mail to the address to which Notices are to be given under this Ground Lease shall be deemed a proper demand for the payment of the amounts set forth therein.

Section 3.5 Non-Waiver. The City’s delay in rendering, or failure to render, any statement or bill for Additional Rent for any period shall not waive the City’s right to render a statement or collect such Additional Rent for that or any subsequent period. If the City delivers to the Developer an incorrect statement with respect to any Additional Rent, the City shall have the right to give the Developer a corrected statement for the period covered by the incorrect statement and to collect the correct amount of the Rent.

Section 3.6 Inability to Pay Rent. If at any time during the Term the Rent is not fully collectible by reason of any Applicable Laws, the Developer shall enter into such agreements and take such other action as the City reasonably requests to permit the City to collect the Rent.

Section 3.7 Interest and Charges on Late Payments. If any Base Rent or the Percentage Rent is not paid within ten (10) days of when due, the Developer shall pay interest on the amount not so paid from its due date until paid at the lesser of eight percent (8%) per annum or the maximum lawful rate of interest permitted by applicable law. If any Additional Rent payable directly to the City is not paid within fifteen days after the date any bill therefor is mailed to the Developer, the Developer shall pay the City, as Additional Rent, interest on the amount not so paid from its due date until paid at the lesser of

eight percent (8%) per annum or the maximum lawful rate of interest permitted by applicable law. Such additional payments shall be in addition to, and not in lieu of, any other remedy the City may have.

ARTICLE IV PAYMENT OF IMPOSITIONS AND UTILITIES

Section 4.1 Impositions. The term “*Impositions*” shall mean, collectively, (a) all real estate taxes, all special assessments and all other property assessments, including all assessments for public improvements or betterments, whether or not commenced or completed within the Term of this Ground Lease, (b) all ad valorem, sales and use taxes, (c) all rent taxes, occupancy taxes and all similar taxes, (d) all fines, fees, charges, penalties, and interest imposed by any Governmental Authority, including the City, and (e) all other governmental charges and taxes, in each case of any kind or nature whatsoever, general or special, foreseen or unforeseen, ordinary or extraordinary, which are at any time during or with respect to the Term assessed, levied, charged, confirmed or imposed with respect to the Premises or the use, leasing, ownership or operation thereof, or become payable out of or become a lien upon the Premises or the rents or income therefrom. If at any time during the Term the present method of real estate taxation or assessment is changed so that there is substituted for the type of Impositions presently being assessed or imposed on real estate, or in lieu of any increase in such Impositions, a tax, such substitute taxes shall be deemed to be included within the term “*Impositions*.”

Section 4.2 Payable When Due. The Developer will pay, or cause to be paid, all Impositions as and when the same shall become due and payable directly to the Governmental Authority charged with the collection thereof, provided that if any Imposition may by Applicable Laws be paid in installments, the Developer may pay such Imposition in installments as permitted by Applicable Laws.

Section 4.3 Reserved

Section 4.4 Refund of Impositions. If all or any part of an Imposition is refunded (whether through cash payment or credit against Impositions), the party who paid the Imposition to which the refund relates shall be entitled to such refund to the extent such refund relates to any Imposition paid by such party. If either party receives a refund (whether by cash payment or credit) to which the other party is entitled, the receiving party shall promptly pay the amount of such refund or credit to the entitled party, less the receiving party’s reasonable expenses, if any, in obtaining such refund or credit.

ARTICLE V EFFECT OF GROUND LEASE ON OWNERSHIP OF PROPERTY; AND CERTAIN OTHER INCIDENTS OF GROUND LEASE

Section 5.1 Ownership of Property. At all times during the Term, all Improvements and all Personal Property acquired (or leased) by the Developer shall be the property of the Developer, but shall remain on the Premises throughout such Term. During the Term, the Developer alone shall be entitled to all of the tax attributes of ownership of the Improvements and all Personal Property acquired (or leased) by the Developer, including, without limitation, the right to claim depreciation or cost recovery deductions. This Ground Lease is intended to convey to the Developer all the benefits and burdens of ownership and to cause the Developer to be treated as the owner of the Improvements for federal income tax purposes. The parties agree to treat this Ground Lease in a manner consistent with this intention, including filing all federal income tax returns and other reports consistent with such treatment. The City will not claim any tax credits, depreciation or any other federal or state income tax benefits with respect to the Improvements, or take any action which is inconsistent with this provision. Upon the expiration or sooner termination of the Term, the Improvements and all Personal Property shall become the sole property of the City at no cost to the City, except (i) that the Developer may remove from the Premises

upon any such termination any of the Personal Property that is moveable, but the Developer shall repair any damage caused by such removal and (ii) as otherwise expressly provided in the Project Agreement or the Capital Lease. The foregoing shall not apply to the Parking Facility.

Section 5.2 Replacement of Fixtures. Notwithstanding the foregoing, the Developer may replace and may permit any other tenant to replace any fixtures, machinery, equipment and Personal Property from time to time, provided such replacements are new and of quality and utility at least equal to the fixtures, machinery, equipment and Personal Property being replaced. Any such replacements shall remain on the Premises and become the property of the City at the expiration or sooner termination of this Ground Lease as provided above.

Section 5.3 Lien-Free. The Developer shall keep the Premises and this Ground Lease free from any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect or engineer and free from any similar lien or encumbrance with respect to work, material or services alleged to have been performed for the Developer. If any such lien or encumbrance is filed or recorded, the Developer shall discharge any such lien or encumbrance by bond or otherwise within thirty (30) days after the Developer receives notice of such lien or encumbrance. If the Developer fails to discharge such lien or encumbrance within such 30-day period, the City may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as the City deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by the Developer. The amount so paid and costs incurred by the City shall be deemed Additional Rent under this Ground Lease payable within thirty (30) days after the Developer is billed therefor. Nothing in this Ground Lease shall be deemed in any way to: (a) constitute the City's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair of the Premises; or (b) evidence the City's agreement to subject the Premises to any such lien.

Section 5.4 Certain Rights and Duties of Leasehold Deed of Trust Beneficiaries. The Developer shall have the right from time to time to apply for and obtain mortgage loan financing and to grant to the providers of such financing (collectively, the "Leasehold Deed of Trust Beneficiaries") leasehold deeds of trust, assignments of leases and rents and such other security instruments covering and affecting all or any portion of the Developer's interest in the Premises as the Developer may deem necessary or appropriate.

(a) **Mortgagee's Right to Take Possession.** Any of the Leasehold Deed of Trust Beneficiaries, during the term of their deed of trust and subject to clause (e) below, may, under the provisions of such deed of trust, have inter alia the right to enter upon and take possession of the Premises, for any default in or breach of the Developer's obligations to such Leasehold Deed of Trust Beneficiary. Notice thereof shall be sent to the City and to all Leasehold Deed of Trust Beneficiaries.

(b) **Right of Leasehold Deed of Trust Beneficiaries to Cure Defaults.** Each Leasehold Deed of Trust Beneficiary who gives written notice to the City shall have the benefit of the following provisions in addition to those elsewhere provided in this Ground Lease:

(i) all notices or copies of notices which are by the terms of this Ground Lease to be sent to such Leasehold Deed of Trust Beneficiaries shall be in writing and shall be sent to the address set forth in Section 23.13 hereof;

(ii) no notice of default given by the City to the Developer shall be effective unless it sets forth in sufficiently reasonable detail the nature of the Developer's uncured default and until a copy thereof shall also be sent to all Leasehold Deed of Trust Beneficiaries; and

(iii) after the occurrence of a default and receipt of the notice described in clause (ii) above, Leasehold Deed of Trust Beneficiaries shall have the same time period subsequent to the receipt of such notice to cure any default or cause the same to be cured as shall be permitted under this Ground Lease to the Developer, plus an additional 90 days, and the City shall not exercise any remedy provided for in Section XV hereof until such cure period has expired.

Nothing contained in this clause (b) shall require a Leasehold Deed of Trust Beneficiary to begin or continue such possession or foreclosure proceedings or to begin or continue to cure any default by the Developer.

(c) ***Attornment and Non-Termination of this Ground Lease.*** In the event any Leasehold Deed of Trust Beneficiary enters upon and takes possession of the Premises due to the default of the Developer under any loan documents executed for the benefit of Leasehold Deed of Trust Beneficiary, such Leasehold Deed of Trust Beneficiary or its nominee shall attorn to the City as landlord under this Ground Lease and the City shall accept and recognize such Leasehold Deed of Trust Beneficiary or its nominees as tenant for the remainder of the Term so that there shall be no lapse of this Ground Lease, at the rent and upon the covenants, agreements, terms, provisions and limitations herein contained. Any such Leasehold Deed of Trust Beneficiary, as tenant under this Ground Lease, shall have the same rights, title and interest in and to the buildings and improvements on the City Land as the Developer had under this Ground Lease.

(d) ***Protection of Interests of Leasehold Deed of Trust Beneficiary.*** If a Leasehold Deed of Trust Beneficiary, through its rights hereunder or through its leasehold deed of trust or operation of its loan documents, or by entry as a mortgagee in possession or by foreclosure, or by acceptance of an assignment in lieu of foreclosure, acquires the Developer's interest in the City Land (or any portion thereof), such Leasehold Deed of Trust Beneficiary shall have the right, at its option, to:

(i) operate the Premises itself and in all respects comply with the provisions of this Ground Lease from and after the date on which such Leasehold Deed of Trust Beneficiary acquired possession; or

(ii) assign or transfer the Developer's interest in the Premises, provided that the assignee or transferee shall expressly assume all of the covenants, agreements and obligations of the Developer under this Ground Lease arising from and after the date of such assignment or transfer by written instrument to be recorded in the appropriate real property records.

No such action by a Leasehold Deed of Trust Beneficiary shall relieve the Developer of any of its obligations hereunder.

(e) ***Obligations and Rights of a Leasehold Deed of Trust Beneficiary in Possession.*** If a Leasehold Deed of Trust Beneficiary shall enter upon and take possession of the Premises, but not otherwise, it shall be bound thereafter to keep and perform all duties and covenants and agreements of the Developer arising under this Ground Lease from and after the date on which such Leasehold Deed of Trust Beneficiary entered and took possession of the Premises and neither the Leasehold Deed of Trust Beneficiary, nor any of its successors, assigns or grantees, shall be liable for any duties, covenants, agreements or obligations of the Developer arising prior to the date on which such Leasehold Deed of Trust Beneficiary, or its successor, assign or grantee, enters and takes possession of the Premises. In

addition notwithstanding anything in the foregoing or any other provision hereof to the contrary, (i) if any default shall have been cured and the Developer shall resume possession, or (ii) if after such entry upon and taking possession of the Premises, the City and the Leasehold Deed of Trust Beneficiary shall accept, in writing, another tenant in place of the Developer or the Leasehold Deed of Trust Beneficiary shall have assigned or transferred the Developer's interest in the Premises pursuant to subsection (d)(ii) above, then the Leasehold Deed of Trust Beneficiary shall no longer be so bound.

(f) **No Modification or Termination by the Developer.** During the term of any leasehold deed of trust, this Ground Lease shall not be (i) amended or modified or (ii) terminated or canceled by the Developer hereunder, or by the giving of any notice by the Developer hereunder nor shall the City accept a surrender of the Developer's leasehold interest, unless such amendment, modification, termination, surrender or cancellation is assented to in writing in advance by all Leasehold Deed of Trust Beneficiaries. Any such attempted amendment or modification, termination, surrender or cancellation without such prior written assent shall be void.

(g) **Rights of Purchaser/Assignee.** The rights of Leasehold Deed of Trust Beneficiaries described in this Section 5.4 also shall inure to the benefit of any purchaser at a foreclosure sale or any purchaser or assignee of the Leasehold Deed of Trust Beneficiary's interest after the Leasehold Deed of Trust Beneficiary has acquired leasehold title by foreclosure or acceptance of a deed in lieu of foreclosure.

(h) **Additional Documentation.** The City will execute and deliver, within five days of the Developer's request therefor, estoppel certificates or such other similar certificates as may be reasonably requested from any Leasehold Deed of Trust Beneficiaries, affirming such facts with respect to this Ground Lease as may be required by parties to such financing and offering, among other matters, that this Ground Lease is in full force and effect. Furthermore, the City agrees, promptly after submission, to execute, acknowledge and deliver any normal and customary agreements modifying this Ground Lease reasonably requested by Leasehold Deed of Trust Beneficiary, provided that such modifications do not decrease the Developer's obligations pursuant to this Ground Lease.

ARTICLE VI COMPLIANCE WITH LAW; ENVIRONMENTAL LAWS; CONTEST

Section 6.1 Compliance With General Laws. The Developer, at no expense to the City, shall comply in all material respects at all times, with all Applicable Laws. Without limiting the foregoing, the Developer shall promptly cure, or cause the cure of, all violations of Applicable Laws caused by the Developer as to which a notice of violation has been issued or as to which a directive or order has been issued by any public officer or other person having authority; promptly discharge of record any such notice of violation by the Developer; promptly comply with any such order or directive; and pay all fines, penalties, interest, and other costs imposed by any Governmental Authority in connection with any violation or requirement of Applicable Laws by the Developer. Notwithstanding the foregoing, the Developer shall not have any responsibility or liability with respect to any Pre-Existing Conditions, which shall remain the responsibility of the City in accordance with Section 2.2 above.

Section 6.2 Compliance With Environmental Laws. Without limiting the foregoing:

(a) The following terms, as used in this Ground Lease and in all amendments hereto (unless otherwise specified or unless the context otherwise requires), shall have the meanings and/or be construed, as the case may be, as set forth below:

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

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

“*Material*”, as used to describe the Developer’s compliance obligations in this Article VI, shall mean that the failure to so comply may reasonably be expected to result in material risk of (1) physical injury or illness to any individual, (2) physical damage to the City Land or the Project, (3) criminal liability or (4) fines or Remedial Action.

(b) Subject to subparagraph (c) and to Section 6.4 below, the Developer, at no expense to the City, shall comply in all material respects at all times, with all Environmental Laws. Such compliance includes the Developer’s obligation, at no expense to the City, to take, or cause the taking of, Remedial Action when required by Applicable Laws (in accordance with Applicable Laws and this Ground Lease) and to pay, or cause the payment of, all fines, penalties, interest and other costs imposed by any Governmental Authority in connection with any violation or requirement of Applicable Laws by the Developer, including any additional fines or penalties levied in the matter resulting from the City’s failure to comply with any Environmental Laws in the past.

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

(d) If the Release of any Hazardous Substance onto the Premises or the Release of sediment was the result of action or negligent omission of the Developer, the Developer shall take and complete, or cause the taking and completion of, any Remedial Action with respect to the Premises in full compliance with all Laws and shall, when such Remedial Action is completed, submit to the City written confirmation from the applicable Governmental Authorities that no further Remedial Action is required to be taken (“*Final Governmental Approval*”). In connection with any Material Remedial Action, (i) the Developer shall promptly submit, or cause the submission, to the City the plan of Remedial Action and all material modifications thereof, (ii) the Developer shall use an environmental consultant reasonably acceptable to the City, and (iii) the Developer shall apprise the City, on a quarterly basis (or more frequently if reasonably requested by the City), of the status of such remediation plan and provide the City with copies of all correspondence, plans, proposals, contracts and other documents relating to such plan or proposed plan. If the Developer’s environmental consultant determines that there is not a

reasonable likelihood of obtaining Final Governmental Approval prior to the third anniversary of the date on which the remediation plan is first submitted to the City, a certificate to that effect shall be provided to the City by such environmental consultant on behalf of the Developer, which certificate shall also state, to the reasonable satisfaction of the City, the status of the Remedial Action and the schedule for completion of the Remedial Action, the reasons why such Final Governmental Approval is not likely to be obtained within such time period and that all Remedial Actions to date have been completed in accordance with all Environmental Laws.

Section 6.3 Developer's Right to Contest Claimed Violations. The Developer shall have the right to contest, at no cost to the City, by appropriate legal proceedings, the amount or validity of any fine, charge or penalty imposed in connection with an alleged violation of Applicable Laws the validity of any Applicable Laws to the Premises, the validity of any application of any Applicable Laws to the Premises, the existence of any violation of Applicable Laws, and/or the validity of any notice of violation of Applicable Laws issued to the Developer (the "*Contested Obligation*"). The Developer may defer payment and/or performance of the Contested Obligation to the extent that and so long as the Developer is diligently contesting, at no expense to the City, by appropriate legal proceedings the existence, amount or validity of the Contested Obligation, provided that all of the following conditions are met:

- (a) There is no outstanding Event of Default.
- (b) Such contest is made and prosecuted in good faith.
- (c) Such proceeding shall operate during the pendency thereof to prevent (i) the sale, forfeiture or loss of the City's fee estate in the City Land, (ii) the forfeiture or loss of the Base Rent or Additional Rent, (iii) any interference with the use or occupancy of the Premises, and (iv) the cancellation of any insurance policy required to be maintained by the Developer pursuant to Article VIII of this Ground Lease. In addition, such proceeding shall not create an imminent, material risk that any of the foregoing will occur.
- (d) The City is not exposed to any risk of criminal liability, penalty, or sanction.
- (e) The Developer reimburses the City, within ten days of being billed therefor, for all Liabilities incurred by the City in connection with such contest.
- (f) The Developer is not contesting a criminal liability, penalty, or sanction.
- (g) The Developer shall, promptly upon the City's request, apprise the City of the status of the contest and provide the City with copies of all documentation relating to such contest.
- (h) The Developer promptly and diligently prosecutes such contest to final conclusion by appropriate legal proceeding, but the Developer shall have the right to attempt to settle or compromise such contest, subject to receipt of the City's consent, which shall not be unreasonably withheld, unless the settlement or compromise will in the City's reasonable judgment have a material impact on the use and occupancy of the Premises.

The Developer shall indemnify and save the City harmless against any and all Liabilities incurred by the City in connection with any such contest or the Contested Obligation. The Developer shall, promptly after the final determination of such contest, comply with the requirements of such determination and pay all amounts levied, assessed, charged or imposed on the City, the Developer, the Premises or any part thereof, in connection therewith, together with all fines, penalties, interest, costs and Liabilities.

Section 6.4 Environmental Matters. To the best of the City's knowledge, without independent investigation, and except as expressly disclosed in writing by the City, the City represents that (a) the Premises, including, without limitation, soil and groundwater conditions, is not in violation of any Environmental Law, nor has the City received any written notice nor is the City otherwise aware of any such violation or alleged violation; (b) neither the City nor any third party has used, manufactured, stored or disposed of, on, under or about the Premises, or transported to or from the Premises, any Hazardous Substances; and (c) no underground storage tanks exist on or have been removed from the Premises, nor have the Premises ever been used as a dump or landfill site. The City acknowledges and agrees that it shall be solely responsible for any and all Liabilities associated with any Pre-Existing Conditions.

Section 6.5 Reservation of Rights. Nothing contained in this Ground Lease shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which either Developer and/or City may have against any third party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved

ARTICLE VII REPAIRS AND MAINTENANCE

Section 7.1 Standards. Subject to the terms of the Project Agreement and the Capital Lease, the Developer, at no expense to the City, shall at all times (a) maintain or cause to be maintained the Premises in an orderly and safe condition, in a good state of repair, and in a manner consistent with the standards of operation and maintenance of first class properties similar to the Premises, and (b) make or cause to be made such repairs, replacements and alterations to the Premises as are necessary to keep it in the condition required by the preceding clause (a) and to comply or require any tenant to comply with the requirements of Article V, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen.

Section 7.2 No Waste or Nuisance. The Developer shall not permit any waste of the Premises or permit any nuisance to exist on the Premises.

Section 7.3 No Accumulation. The Developer shall keep or cause to be kept the entire Premises, including adjoining sidewalks, substantially free of any accumulation of dirt, rubbish, snow and ice.

Section 7.4 City's Obligation. Unless otherwise expressly provided in this Ground Lease, the Project Agreement or the Capital Lease, the City is under no obligation to maintain, repair, clean, alter or improve the Premises or to provide any service to the Premises.

ARTICLE VIII INSURANCE; COMPLIANCE WITH INSURANCE REQUIREMENTS

Section 8.1 Insurance. During the Term, the Developer shall carry and maintain all insurance coverages as set forth in **Exhibit C** attached hereto and shall name the City and any Construction Lender as additional insureds under such coverage.

Section 8.2 Insurance Policies. All policies required by this Article shall be issued by insurance companies licensed to do business in the State of North Carolina and must be approved by the City. All such insurers shall have the rating of "A-V" or better corresponding to an adjusted policyholder

surplus of not less than \$500,000,000 by A.M. Best (or any successor rating agency or entity reasonably selected by the City if A.M. Best discontinues publishing ratings of insurance companies or if the rating system is changed). If it is commercially impracticable to obtain insurance from an insurer with the “A-V” rating because of changes in the insurance industry or conditions in the vicinity of the Premises, the Developer’s insurers shall have a policy holder’s rating that is at least equal to the customarily required rating.

Section 8.3 Blanket Coverage. Such policies may be carried under a blanket or umbrella policy covering the Premises and other locations of the Developer, if such blanket policy contains an endorsement that guarantees a minimum limit available for the Premises equal to the minimum limits required by this Article and that the minimum limits shall not be reduced for claims made with respect to other properties, and otherwise complies with this Article.

Section 8.4 Named and Additional Insured. The liability policy shall name the Developer as insured and shall include the City as additional insured. Notwithstanding the foregoing, to the extent this Section or any other Section of this Ground Lease requires the City to be (a) included as additional insured in any policy of insurance or (b) benefited by a waiver of subrogation endorsement, such requirement shall be triggered as to any lender or as to the City’s managing agent only when the City has advised the Developer of the names and addresses of such entities and requested such inclusion.

Section 8.5 No Cancellation Without Notice to City. All insurance policies required by this Article shall (i) contain endorsements that such insurance may not be canceled, except upon not less than thirty (30) days prior written notice to the City from said insurance carrier or the Developer, and (ii) be written as primary policies not contributing to or in excess of any policies carried by the City, and (iii) each contain a waiver of subrogation endorsement, in form and substance reasonably satisfactory to the City, in favor of the City.

Section 8.6 Certificate of Insurance. Concurrently with execution of this Ground Lease and thereafter at least fifteen (15) days prior to the expiration of any policy, the Developer shall deliver to the City certificates evidencing the insurance required by this Article in form and content reasonably satisfactory to the City, together with evidence of payment of the annual premium for each policy. The Developer shall at any time and from time to time during the Term, promptly upon the City’s request, furnish the City with a copy of the then current paid-up property damage policy, appropriately authenticated by the insurer or, at the City’s option, the declarations page of such policy evidencing the required insurance.

Section 8.7 Failure to Maintain Insurance. If the Developer fails to maintain the insurance required by the foregoing provisions of this Article or to timely furnish to the City the required evidence of such insurance and payment of the insurance premiums, the Developer shall be responsible for all Liabilities incurred by the City with respect to such default, including any Liabilities that would have been covered by the insurance the Developer is required to maintain. If the Developer fails to maintain any of the insurance required by this Article, the City may, at its option, in addition to exercising any other remedies available to it under this Ground Lease or at law, obtain the insurance described in this Article, in which event the Developer shall reimburse the City, as Additional Rent, within ten (10) days of being billed therefor, for the costs incurred by the City to obtain such insurance.

ARTICLE IX INDEMNITY

Section 9.1 Indemnity. Except (i) as otherwise provided in this Ground Lease or the Capital Lease, (ii) to the extent caused by the negligence or misconduct of the City or its offices, representatives,

agents, contractors, employees or invitees and (iii) with respect to any Pre-Existing Conditions, the Developer shall indemnify and hold harmless the City from and against any and all Liabilities arising from or in connection with all of the following: (a) any operations or activities by the Developer on the Premises during the Term and after the Term for so long as the Developer, or any person holding through or under the Developer, remains in possession of the Premises, except to the extent such Liabilities arise out of the City's possessory rights under the Capital Lease, the negligence or misconduct by the City or its officers, representatives, agents, contractors, employees or invitees; (b) any act, negligent omission, negligence, or misconduct of the Developer, or any person holding through or under the Developer and/or any of the Developer's officers, directors, employees, partners, members, agents, contractors, invitees; (c) any accident, injury or damage (including death) occurring in, at or about the Premises during the Term and after the Term for so long as the Developer, or any person holding through or under the Developer, remains in possession of the Premises, except to the extent such Liabilities arise out of the City's use or possessory rights under the Capital Lease, the negligence or misconduct by the City or its officers, representatives, agents, contractors, employees or invitees; (d) any breach or default by the Developer, or any person holding through or under the Developer under this Ground Lease; and (e) any holdover by the Developer, or by any person(s) holding through the Developer, after the Term. If any action or proceeding is brought against the City by reason of any such claim(s), the Developer, upon notice from the City, shall cooperate with the City to resist and defend such action or proceeding by counsel reasonably satisfactory to the City.

ARTICLE X CASUALTY DAMAGE AND DESTRUCTION

Section 10.1 Damage. If the Premises are damaged or destroyed by fire or other cause (ordinary or extraordinary), the Developer shall give the City prompt notice of such event and (i) so long as the Leasehold Deed of Trust is in effect, shall take such action as is required by the Leasehold Deed of Trust and (ii) so long as the Leasehold Deed of Trust is in effect and except as provided in Section 10.3 below, the terms and conditions of which are incorporated herein by this reference, the Developer shall repair such damage and restore the Premises to the condition existing prior to such damage or destruction and to a standard and quality no less than the construction of the original Improvements (the "Restoration"). Such repair and restoration shall be effected with reasonable diligence, subject to reasonable delays for adjustment of the insurance loss. Subject to Section 10.3, such obligation shall survive any termination of this Ground Lease. Except as provided in this Section 10.1 or Section 16.1, this Ground Lease shall not terminate solely by reason of such damage or destruction.

Section 10.2 Proceeds of Insurance. So long as the Leasehold Deed of Trust is in effect, the parties hereto acknowledge that the proceeds of any property damage policy shall be disbursed to the Leasehold Deed of Trust Beneficiaries to be applied as provided in the Leasehold Deed of Trust. In the event the Leasehold Deed of Trust is no longer in effect and unless the Developer is permitted to terminate this Ground Lease pursuant to Section 10.3, the proceeds of any property damage policy shall be disbursed to the Developer, to be used for the repair and restoration of the Premises as required by Section 10.1 hereof.

Section 10.3 Termination Rights. Subject to the foregoing:

- (a) If the Capital Lease is terminated as a result of such casualty, or the proceeds of any property damage policy are insufficient to pay for the cost of Restoration; or
- (b) If the Premises (or any discrete portion thereof) are damaged or destroyed by fire or other cause during the last five (5) years of the Term and the cost to restore the Premises (or

portion thereof), as reasonably estimated, would equal or exceed 25% of the full replacement cost of the Improvements;

then, the Developer may terminate this Ground Lease with respect to the Premises (or any discrete portion thereof) within ninety (90) days after such fire or casualty event, provided that the Developer must as a condition precedent to such termination pay to the City the proceeds of any property damage policy to the extent permitted by the Leasehold Deed of Trust. In such event, this Ground Lease shall cease and come to an end as of the later of the date forty-five (45) days after the date the City receives such notice and the parties shall accurately reconcile any previously deposited rates.

ARTICLE XI CONDEMNATION

Section 11.1 Definitions. The following basic terms, as used in this Ground Lease and in all amendments to this Ground Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

“*Taking*” shall mean a taking during the Term of all or any part of the Premises, or any interest therein or right accruing thereto including any right of access, by or on behalf of any Governmental Authority or by any entity granted the authority to take property through the exercise of a power of eminent domain granted by statute, any agreement that conveys to the condemning authority all or any part of the Premises as the result of, or in lieu of, or in anticipation of the exercise of a right of condemnation or eminent domain, or a change of grade affecting the Premises. The date of the Taking shall be deemed to be the date that title vests in the condemning authority or its designee.

“*Award*” shall mean the condemnation award and/or proceeds of the Taking, including any interest earned on the Award.

“*Partial Taking*” means any taking that is not a Substantial Taking or a Temporary Taking.

“*Substantial Taking*” means a taking that would render the Project unusable for the Permitted Use during the remainder of the Term.

“*Temporary Taking*” means a taking of the use of the Project that renders the Project unusable for the Permitted Use during the period of the Temporary Taking.

Section 11.2 Nature of Taking. The City and the Developer shall each notify the other if either becomes aware of a threatened or possible Taking (including any letter of interest from the condemning authority or its designee), or the commencement of any proceedings or negotiations which might result in a Taking. The City and the Developer shall have the right to appear in such proceedings, as their interests may appear, and be represented by their respective counsel.

Section 11.3 Taking While Leasehold Deed of Trust in Effect. If there is a Taking (whether a Substantial Taking, Partial Taking or Temporary Taking), the parties hereto acknowledge that so long as the Leasehold Deed of Trust is in effect the proceeds of any Award shall be disbursed to the Leasehold Deed of Trust Beneficiaries to be applied as provided in the Leasehold Deed of Trust and related Documents.

Section 11.4 Taking After Discharge of Leasehold Deed of Trust. If there is a taking after the discharge of the Leasehold Deed of Trust, then the following provisions shall apply.

(i) If such taking is a Substantial Taking, at the Developer's election, the Term of this Ground Lease shall cease and terminate on the date of the Taking as fully and completely as if such date were the originally stated expiration of the Term hereof and the parties shall accurately reconcile any previously deposited rent payments. The Award for a Substantial Taking shall be paid to the Developer..

(ii) If such taking is a Temporary Taking the Award shall be paid to the Developer.

(iii) If such taking is a Partial Taking, this Ground Lease shall remain in full force and effect; provided, however, that on the date of such Taking this Ground Lease shall terminate as to the portion of the Premises taken, which portion shall no longer be deemed part of the Premises. Thereafter, the Developer, to the extent of the Award made available to it, shall promptly restore, or cause the restoration of, the Premises, to the extent reasonably practicable given the nature and scope of the Taking and the requirements of Applicable Laws to their condition immediately prior to such Partial Taking in accordance with the provisions of this Ground Lease and to a standard and quality no less than the construction of the original Improvements (the "*Condemnation Restoration*"). The Award for the Partial Taking shall be allocated as follows:

If the Partial Taking includes any of the Project or the Improvements (including any parking area), the Award shall first be applied to effect the Condemnation Restoration. The balance of the Award (if any) shall be allocated as follows:

(A) the City shall be entitled to an amount equal to the diminution in the Market Value of its fee interest in the City Land; and

(B) the balance of the Award, if any, shall be paid to the Developer.

If the cost of the Condemnation Restoration, as reasonably estimated, is less than the portion of the Award needed to effect the Condemnation Restoration, the Award shall be paid to the Developer, who shall effect the Condemnation Restoration, and if the cost of effecting the Condemnation Restoration is equal to or greater than the portion of the Award needed for restoration of the Premises, the Award shall be paid to the City, who shall distribute such portion of the Award to the Developer as the Condemnation Restoration progresses in the same manner as provided in Section 10.2 with respect to insurance proceeds and subject to the same conditions; provided, however, that the Developers restoration obligations shall be limited to the Award.

If the Partial Taking does not include any portion of the Project, the entire Award shall be paid to the City.

Section 11.5 Reimbursement for Taxes. Notwithstanding anything in this Article XI to the contrary, to the extent any Award is allocated to reimbursement for real estate taxes and assessments that have been paid with respect to periods after the date title vests in the condemning authority or its designee, such portion shall be paid to the party who paid such taxes and assessments. To the extent any Award is allocated to reimbursement of prepayment penalties, such portion shall be paid to the party that paid the prepayment penalty.

Section 11.6 No Benefit to Condemning Party. Nothing in this Article is included for the benefit of the condemning authority, the intent being only to set out the rights of the parties vis-a-vis one another.

ARTICLE XII ESTOPPEL CERTIFICATES

Section 12.1 Estoppel Certificates. The City and the Developer shall, at any time and from time to time, within thirty (30) Business Days following receipt of written request from the other party, execute, acknowledge and deliver a written statement certifying to such parties as such requesting party may require, including lenders: that this Ground Lease is in full force and effect and unmodified (or, if modified, stating the nature and date of such modification); the Closing Date; the end of the Term; whether or not, to the best knowledge of the signer, the other party is in default in performance of any of its obligations under this Ground Lease including the payment of Additional Rent (and, if so, specifying each such default of which the signer shall have knowledge and the amount of any unpaid Additional Rent); if the signer is the Developer, that the Developer is not in default of any of its obligations under this Ground Lease; and as to such other matters regarding this Ground Lease as may reasonably be requested. Failure to deliver such statement within the 30-Business Days' period shall be conclusive as to the facts stated in the requested certification and binding upon the party who failed to deliver such certification as it relates to the entity seeking the certification. However, the failure to deliver said statement shall not be a waiver of any claim the City may otherwise have against the Developer to the extent the enforcement of the City's claim does not adversely impact the entity seeking the certification.

ARTICLE XIII ASSIGNMENT AND SUBLEASE

Section 13.1 Prohibition of Assignment and Subleasing. Except as permitted by this Article, or with the City's approval, the Developer may not assign this Ground Lease or sublease all or substantially all of the Premises in a single transaction or related transactions, or otherwise transfer (whether by operation of law or otherwise) all or substantially all of its interest in this Ground Lease or the Premises, excluding Affiliate transfers, transfers among members, and transfers for estate planning purposes. For purposes of this Article XIII, a transfer (whether by a single transfer or by a series of related or unrelated transfers) of 50% or more of the membership interests or other interests of the Developer, or of any Parent Entity (hereinafter defined), however accomplished and whether effected voluntarily or by operation of Applicable Laws shall be deemed an assignment of this Ground Lease, whether such transfer(s) shall involve a transfer or transfers of outstanding interests of the Developer and/or the issuance of interests in the Developer, unless the Developer or an Affiliate of the Developer is the manager or managing member immediately following any such transfer of 50% or more of the membership interests or other interests. A "Parent Entity" is any entity that owns 50% or more of the membership interests or other interests of the Developer.

Section 13.2 Permitted Assignment and Subletting. The City and the Developer agree that (i) the Capital Lease is permitted and (ii) any Leasehold Deed of Trust is permitted.

**ARTICLE XIV
DEFAULT; INSOLVENCY EVENTS; AND CONDITIONS OF
LIMITATION**

Section 14.1 Events of Default. This Ground Lease and the term and estate thereof are subject to the conditional limitation set forth below. If any of the following events occur and a court of competent jurisdiction renders a judgment in favor of the City (each, an “*Event of Default*”):

- (a) The Developer fails to pay Base Rent to the City when the same is due and payable under the terms of this Ground Lease, or
- (b) The Developer fails to pay to the City any Additional Rent when the same is due and payable under the terms of this Ground Lease and such failure continues for a period of thirty (30) days after written notice thereof is given to the Developer, or
- (c) The Developer, whether by action or inaction, fails to timely perform or observe any of the other terms, covenants or conditions of this Ground Lease and such default is not remedied within sixth (60) days after written notice thereof is given to the Developer, provided that if such default cannot, with reasonable diligence, be fully remedied within such 60-day period, the Developer shall have as long as is reasonably necessary to cure such default, provided the Developer commences compliance within such 60-day period (or as promptly as reasonably possible in an emergency) and thereafter pursues compliance to completion with reasonable diligence.

Then in any such case the City may, at any time during the continuance of such Event of Default after the applicable notice and cure periods have expired, give the Developer notice of termination of this Ground Lease and, upon the date five (5) days after service of such notice, this Ground Lease and the term and estate thereof shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Ground Lease, but the Developer shall remain liable for damages as provided in this Ground Lease and the City may resort to and enforce any of the remedies provided in Article XV below; provided, however, that the City acknowledges that any rights hereunder are subject to the rights of the Leasehold Deed of Trust Beneficiaries set forth in Section 5.4 above; and provided further that with respect to a default under clause (c) above, the City shall have, as its sole remedy for such default, the right to maintain an action in law or equity to require specific performance of the terms of this Ground Lease.

Section 14.2 Insolvency Events. Following the repayment in full or other discharge of the Construction Loans, this Ground Lease and the term and estate thereof is subject to the further conditional limitation that if any of the following events occur (“*Insolvency Events*”):

- (a) The Developer makes an assignment for the benefit of its creditors, or
- (b) If an involuntary petition is filed against the Developer under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import, and such petition is not dismissed within one hundred twenty (120) days after the date filed; or
- (c) The Developer shall file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by the Developer under the reorganization provisions of the United States Bankruptcy Act or under the provisions of any law of like import, or whenever a petition shall be filed by the Developer under

the arrangement provisions of the United States Bankruptcy Act or under the provisions of any law of like import.

Then in any such case the City may, at any time during the continuance of such Insolvency Event, after the applicable notice and cure period have expired, give the Developer notice of termination of this Ground Lease and, upon the date five days after service of such notice, this Ground Lease and the term and estate thereof shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Ground Lease, but the Developer shall remain liable for damages as provided in this Ground Lease and the City may resort to and enforce any of the remedies provided in Article XV below; provided, however, that the City acknowledges that any rights hereunder are subject to the rights of the Leasehold Deed of Trust Beneficiaries set forth in Section 5.4 above; and provided further that with respect to a default under clause (c), the City shall have, as its sole remedy for such default, the right to maintain an action in law or equity to require specific performance of the terms of this Ground Lease.

Section 14.3 Material Default. Notwithstanding any provision to the contrary herein, the City shall not have the right to terminate this Ground Lease unless the Developer's Event of Default materially impacts the City's long-term economic interest or is a default under Section 14.1 (a) or (b) (each a "*Material Default*"). In the event of a non-Material Default by the Developer, the City shall have the right to exercise such other, non-termination remedies as it may elect pursuant to Article XV below, except as otherwise expressly provided herein.

Section 14.4 City Default. It shall be a default under and breach of this Ground Lease by the City if it shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Ground Lease for a period of thirty (30) days after notice thereof from the Developer; provided, however, that if the term, condition, covenant or obligation to be performed by the City is of such nature that the same cannot reasonably be performed within such 30-day period, such default shall be deemed to have been cured if the City commences such performance within said 30-day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such the default by the City, the Developer may (a) cure such default by the City and offset Additional Rent against such amounts, or (b) sue for injunctive relief or to recover damages for any loss resulting from the breach or may pursue any other remedies available to it under Applicable Laws.

ARTICLE XV REMEDIES

Section 15.1 Rights of City. Subject to the rights of the Leasehold Deed of Trust Beneficiaries under this Ground Lease; and provided further that with respect to an Event of Default under Clause (c) of Section 14.1 above, the City shall have, as its sole remedy for such default, the right to maintain an action in law or equity to require specific performance of the terms of this Ground Lease, if (a) this Ground Lease is terminated pursuant to Article XIV, or (b) the City re-enters or obtains possession of the Premises by summary proceedings or any other action or proceeding, or (c) the City re-enters or obtains possession by any other legal act (which the City may do without further notice and without liability or obligation to the Developer or any occupant of the Premises if this Ground Lease is terminated pursuant to Article XVI), all of the provisions of this Section shall apply (in addition to any other applicable provisions of this Ground Lease):

(a) The Developer shall immediately vacate the Premises and surrender the Premises to the City in good order, condition and repair, excepting reasonable wear and tear and damage that is not the Developer's obligation to repair; and, if the Developer fails to surrender the

Premises in such condition, the Developer shall reimburse the City for all costs incurred by the City to restore the Premises to such condition.

(b) The City, at the City's option, may (i) relet the Premises, or any portion of the Premises, from time to time, in the name of the City, the Developer or otherwise, as determined by the City, to any person and on any terms, but the City shall have no obligation to relet the Premises, or any portion of the Premises, or to collect any rent (and the failure to relet the Premises, or any portion of the Premises, or to collect any rent shall not impose any liability or obligation on the City or relieve the Developer of any obligation or liability under this Ground Lease), and (ii) make any changes to the Premises as the City, in the City's judgment, considers advisable or necessary in connection with a reletting, without imposing any liability or obligation on the City or relieving the Developer of any obligation or liability under this Ground Lease.

(c) The Developer shall pay the City the following amounts:

(i) All Rent payable to the date on which this Ground Lease is terminated or the City reenters or obtains possession of the Premises;

(ii) Any deficiency between (i) the aggregate Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the 12 month period immediately preceding the termination, re-entry or obtaining of possession); and (ii) the rents, if any, applicable to that period collected under any reletting of any portion of the Premises; and the Developer shall pay any such deficiency in installments on the dates specified in this Ground Lease for payment of installments of the Base Rent, and the City shall be entitled to recover from the Developer each deficiency as the same arises. No suit to collect the deficiency for any month shall prejudice the City's right to collect the deficiency for any subsequent month. The Developer shall not be entitled to any rents payable (whether or not collected) under any reletting, whether or not those rents exceed the Rent; and

(iii) Any costs and expenses incurred by the City in connection with the termination, re-entry or obtaining of possession, and the reletting of the Premises, including all repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements, alteration costs and other expenses of preparing the Premises for reletting.

Nothing contained in this Ground Lease shall be considered to limit or preclude the recovery by the City from the Developer of the maximum amount allowed to be obtained as damages or otherwise by any Applicable Laws.

Section 15.2 Right of Injunction. Either party may seek to enjoin any breach or threatened breach of any provision of this Ground Lease. The right of any party to exercise any particular remedy available under this Ground Lease, at law or in equity, shall not preclude such party from exercising any other remedy it might have pursuant to this Ground Lease, in law or in equity. Each right and remedy specified in this Ground Lease and each other right or remedy that may exist at law, in equity or otherwise upon breach of any provision in this Ground Lease, shall be deemed distinct, separate and cumulative; and no right or remedy, whether exercised or not, shall be deemed to be in exclusion of any other unless otherwise expressly provided in this Ground Lease.

Section 15.3 City May Cure Default. If (a) there is then an Event of Default, or (b) if the Developer fails to comply with any obligation under this Ground Lease which in the City's reasonable

opinion creates an emergency, the City may, but is not obligated to, cure the default. The Developer shall reimburse the City, as Additional Rent, for all Liabilities incurred by the City in connection therewith, within ten days after the Developer is billed for such Liabilities.

Section 15.4 No Waiver by the City. No payment by the Developer or receipt by the City of a lesser amount than the Rent shall be considered other than on account of the Rent. No endorsement or statement on any check or letter accompanying any check or payment shall prevent the City from cashing the check or otherwise accepting the payment, without prejudice to the City's right to recover the balance of the Rent or pursue any other remedy.

Section 15.5 Developer Waiver. The Developer waives the Developer's right, if any, to designate the items against which any Rent payments made by the Developer pursuant to this Ground Lease are to be credited and the Developer agrees that the City may apply any payments made by the Developer to any Rent items the City sees fit irrespective of and notwithstanding any designation or request by the Developer as to the items against which any such payments shall be credited.

Section 15.6 Jurisdiction. All legal actions relating to this Ground Lease shall be adjudicated in any North Carolina state court or in any federal court having jurisdiction in the City. The Developer irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action relating to this Ground Lease and waives any claim that any legal action relating to this Ground Lease brought in any such court has been brought in an inconvenient forum. This consent to jurisdiction is self-operative and no further instrument or legal action, other than service of process in any manner permitted by Applicable Laws or this Section, is necessary in order to confer jurisdiction upon the person of the Developer and the subject matter in question in any such court.

Section 15.7 Re-Enter. The words "re-enter," "re-entry" and "re-entered" as used in this Ground Lease shall not be considered to be restricted to their technical legal meanings.

ARTICLE XVI BROKER

Section 16.1 No Broker. Each of the City and the Developer represents and warrants that it has not dealt with any broker in connection with this Ground Lease, and each party shall be responsible for any broker's fee or commission for any broker claiming through such party. The Developer shall indemnify and hold the City harmless from and against any and all claims for any brokerage fee or commission with respect to this Ground Lease transaction by any broker with whom the Developer has dealt or is alleged to have dealt. The provisions of this Section shall survive any termination of this Ground Lease.

Section 16.2 No Broker's Lien. The Developer shall keep the Premises and this Ground Lease free from any broker's lien, other than the lien of any broker that the City is obligated to pay pursuant to this Ground Lease.

ARTICLE XVII NO IMPAIRMENT OF CITY'S TITLE

Section 17.1 Rights Granted by City. Nothing contained in this Ground Lease or any action or inaction by the City, shall be deemed or construed to mean that the City has granted to the Developer any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance upon the estate of the City in the Premises.

Section 17.2 No Impairment of City's Title. In amplification and not in limitation of the foregoing, the Developer shall not permit the Premises to be used by any person or persons or by the public, as such, at any time or times during the term of this Ground Lease, in such manner as might reasonably tend to impair the City's title to or interest in the Premises or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises.

Section 17.3 Liens. The Developer shall not cause the City's fee estate in the Premises to be encumbered by any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect, or engineer with respect to the work, materials or services alleged to have been performed at or with respect to the Premises. If any such lien or encumbrance is filed or recorded, the Developer shall discharge any such lien or encumbrance by bond or otherwise within thirty (30) days after the Developer receives notice of such lien or encumbrance. If the Developer fails to discharge such lien or encumbrance within such 30-day period, the City may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as the City deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by the Developer. The amount so paid and costs incurred by the City shall be deemed Additional Rent under this Ground Lease payable within thirty (30) days after the Developer is billed therefor.

ARTICLE XVIII QUIET ENJOYMENT

Section 18.1 Quiet Enjoyment. The City covenants that if and so long as the Developer observes and performs each and every covenant, agreement, term, provision and condition of this Ground Lease on the part of the Developer to be observed and performed, the Developer shall quietly enjoy the Premises without hindrance or molestation of the City or any other person or entity acting through or on behalf of the City, subject to the covenants, agreements, terms, provisions and conditions of this Ground Lease. The City represents and warrants that there is no lien encumbering the City's fee interest in the City Land or any improvements located thereon.

ARTICLE XIX LIMITATION OF CITY LIABILITY

Section 19.1 Transfer by City. If the City sells, assigns, or otherwise transfers (whether by operation of law or otherwise) all or part of its interest in the Premises or this Ground Lease, the assignment agreement must fully obligate the assignee to assume all of the City's obligations and responsibilities pursuant to this Ground Lease. The City shall be relieved of all of its obligations and liabilities under this Ground Lease accruing after the effective date of the transfer, and the transferee shall be deemed to have assumed all of the City's obligations and liabilities under this Ground Lease effective from and after the effective date of the transfer.

Section 19.2 No Personal Liability. The officers, directors, employees, agents and attorneys of the City, disclosed and undisclosed, shall have no personal liability under or in connection with this Ground Lease.

ARTICLE XX END OF TERM

Section 20.1 Surrender of Premises. At the end of the Term whether by the running of the Term or on such earlier date that this Ground Lease terminates or expires, the Developer shall peaceably

and quietly surrender the Premises to the City, broom clean, in good order, condition and repair excepting reasonable wear and tear and damage that is not the Developer's obligation to repair, free and clear of all subleases, liens, and other encumbrances (except for the Capital Lease and any other liens and encumbrances either existing as of the date hereof caused or expressly consented to by the City), and with all Personal Property acquired (or leased) by the Developer removed. The Developer shall deliver to the City, on or before the end of the Term or such earlier date that this Ground Lease terminates or expires, upon the City's request, all licenses, permits, warranties, and guaranties then in effect for the Premises (and shall assign same to the City upon the City's request) and all books and records reasonably requested by the City. The Developer shall cooperate with the City to achieve an orderly transition of the Premises to the City's control. The City and the Developer shall, prior to the expiration of the Term, (a) adjust for Impositions and all other appropriate expenses and income of the Premises, and (b) if a memorandum of lease has been recorded, execute a document in recordable form evidencing the termination of this Ground Lease and all amendments thereto.

Section 20.2 Personal Property. Any Personal Property which shall remain on the Premises after the expiration of the Term or such earlier date that this Ground Lease terminates or expires, may, at the option of the City, be deemed to have been abandoned and either may be retained by the City as its property or be disposed of, without accountability, in such manner as the City may see fit, except that the property of any tenant then in possession shall be retained by such tenant. The Developer shall reimburse the City, as Additional Rent, for all costs and expenses incurred by the City in connection with disposing of such property.

Section 20.3 Holdover. If the Premises are not vacated and surrendered in accordance with this Ground Lease at the conclusion of the Term or sooner termination of this Ground Lease, the Developer shall be liable to the City for (a) all Liabilities incurred by the City in connection with such holdover, including Liabilities incurred in connection with any summary proceedings, action or proceeding to recover possession of the Premises from the Developer, and (b) per diem use and occupancy in respect of the Premises equal to the fair rental value of the Premises, and (c) all damages incurred by the City in connection with such holdover, including any lost opportunity damages incurred by the City. If only a portion of the Premises is timely vacated and surrendered, the Developer shall nevertheless remain liable for per diem use and occupancy with respect to the entire Premises, but any reletting proceeds received by the City during the period of the Developer's holdover shall be credited against the Developer's liability for use and occupancy for the entire Premises. In no event shall this Section be construed as permitting the Developer (or other occupants) to remain in possession of the Premises after the Term or sooner termination of this Ground Lease. The Developer shall indemnify, defend and hold harmless the City against all claims made by any succeeding tenants to the extent such claims arise by reason of the failure of the Developer (and all other occupants) timely to vacate and surrender the Premises (or any portion thereof) in accordance with this Ground Lease. The City may recover amounts due it under this Section in any summary proceeding and/or any separate action or proceeding.

Section 20.4 No Acceptance of Surrender. No act or thing done by the City or the City's agents (including receipt of keys) during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by the City.

ARTICLE XXI MISCELLANEOUS

Section 21.1 Modifications in Writing. This Ground Lease may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

Section 21.2 No Waiver. Receipt or acceptance of Rent by the City and payment of any Rent by the Developer shall not be deemed to be a waiver of any default under the covenants, agreements, terms, provisions and conditions of this Ground Lease, or of any right which the City or the Developer, as the case may be, may be entitled to exercise under this Ground Lease. Failure to insist upon the strict performance of any of the provisions of this Ground Lease or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such provision, right, remedy or election, but the same shall continue and remain in full force and effect. The waiver by either party of any breach of this Ground Lease shall not be deemed a waiver of any future breach.

Section 21.3 Consent of City. Consent of the City to any act or matter must be in writing and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve the Developer from the obligation wherever required under this Ground Lease to obtain the consent of the City to any other act or matter. If the Developer requests the City's consent or approval and the City fails or refuses to give such consent or approval, the Developer shall not be entitled to any damages for any withholding by the City of its consent or approval, it being intended that the Developer's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases where the City has expressly agreed in writing not to unreasonably withhold or delay its consent or where as a matter of law the City may not unreasonably withhold its consent.

Section 21.4 No Partnership. The City and the Developer acknowledge that they are not partners or joint venturers and that, except with respect to casualty insurance proceeds and condemnation awards, they do not stand in a fiduciary relationship to one another.

Section 21.5 Further Liability. Upon the expiration of the Term of this Ground Lease, neither party shall have any further obligation or liability to the other except as otherwise provided in this Ground Lease and except for (a) such obligations as by their nature or under the circumstances can only be, or by the provisions of this Ground Lease may be, performed after such expiration, and (b) any liability for Rent, and (c) any liability for acts or negligent omissions occurring during the Term, and (d) any obligation or liability under Articles IX, all of which shall survive such expiration.

Section 21.6 Validity of Lease. Each party represents and warrants (a) that this Ground Lease has been duly authorized, executed and delivered by such party and constitutes the legal, valid and binding obligation of such party, (b) that there are no actions, suits or proceedings pending or, to the knowledge of such party, threatened against or affecting such party, at law or in equity or before any Governmental Authority which would impair such party's ability to perform its obligations under this Ground Lease, and (c) that the consummation of the transactions hereby contemplated and the performance of this Ground Lease will not result in any breach or violation of, or constitute a default under any lease, bank loan or credit agreement. The Developer shall provide to the City, upon the City's request, evidence that the execution and delivery of this Ground Lease have been duly authorized by the Developer and that the person or persons executing and delivering this Ground Lease on behalf of the Developer have been duly authorized to do so, together with a certified copy of the Developer's articles of incorporation, partnership agreement or operating agreement, as applicable, and all amendments thereto.

Section 21.7 No Merger. There shall be no merger of this Ground Lease or the leasehold estate created by this Ground Lease with a fee interest in the Premises by reason of the fact that the same person may acquire, own or hold, directly or indirectly, this Ground Lease or the leasehold estate created by this Ground Lease and the fee estate in the Premises, unless and until such person shall join in a written instrument expressly providing for such merger and such instrument is recorded.

Section 21.8 Memorandum of Ground Lease. The parties shall execute and acknowledge, in a manner suitable for recording, a Memorandum of Ground Lease in the form attached hereto as **Exhibit D**, which Memorandum of Ground Lease may be recorded by either of the parties.

Section 21.9 Entire Agreement. This Ground Lease represents the entire agreement of the parties with respect to the Premises, and, accordingly, all prior understandings and agreements between the parties with respect to the Premises are merged into this Ground Lease, which alone fully and completely expresses the agreement of the parties.

Section 21.10 Independent Covenants. Each covenant, agreement, obligation or other provision of this Ground Lease on the Developer's part to be performed, shall be deemed and construed as a separate and independent covenant of the Developer, not dependent on any other provision of this Ground Lease.

Section 21.11 Inclusion. All terms and words used in this Ground Lease shall be deemed to include any other number and any other gender as the context may require.

Section 21.12 Negotiations Have No Binding Effect. The submission of drafts of and comments to this Ground Lease, the negotiation of this Ground Lease, and the exchange of correspondence concerning the negotiation and execution of this Ground Lease shall have no binding force or effect and shall confer no rights nor impose any obligations, including brokerage obligations, on either party. This Ground Lease shall become a binding agreement only after both the City and the Developer have executed this Ground Lease and duplicate originals thereof (including any counterparts) shall have been delivered to the respective parties.

Section 21.13 Notice. All notices or other communications required to be given under this Ground Lease shall be given in writing and shall be deemed to have been duly given on the date delivered, if delivered personally; or the next Business Day, if delivered to a nationally recognized overnight courier service, addressed as follows:

Notice to the City:

City of Rocky Mount, North Carolina
P.O. Box 1180 _____
Rocky Mount, NC 27804 _____
Attention: City Manager _____

With copies to:

Jep Rose, City Attorney
Poyner & Spruill
130 S. Franklin St.
Rocky Mount, NC 27804

Notice to the Developer:

Hunt Services, Inc.
1031 Greystone Square
Jackson, TN 38305
Attention: David B. Hunt

With a copy to:

C. Randall Minor, Esq.
Maynard Cooper & Gale, P.C.
1901 Sixth Avenue N. Suite 2400
Birmingham, AL 35203

Notice to the initial Leasehold Deed of Trust Beneficiaries:

Attention: _____

Each party hereto may, by notice given to each of the other parties, designate any additional or different addresses to which subsequent notices, certificates, demands, requests, or other communications shall be sent. Notwithstanding anything contained herein to the contrary, any notice required to be given by the City or the Developer hereunder shall be deemed to have been given and shall be effective as of the date such notice is received or refused reflected on said notice. All notices, certificates, demands, requests, or other communications made by either party to the other which are required or permitted by the provisions of this Ground Lease shall be in writing.

Section 21.14 No Claims Against City. Except to the extent expressly provided in this Ground Lease, nothing contained in this Ground Lease shall be deemed to authorize the Developer to enter into any contract or agreement on behalf of the City or to subject the City's interest in the Premises or in this Ground Lease to any lien or encumbrance, including without limiting the generality of the foregoing, any liens for the construction, repair, renovation or addition of any improvements so as to permit the making of any claim against the City or the City's interest in the City Land, the Improvements or the Personal Property, or shall be deemed a waiver by the City of any right, remedy, or interest granted to the City under this Ground Lease. The Developer is hereby prohibited from taking any such action. Any persons rendering any labor or service or furnishing materials to the Developer or to the Premises, or otherwise contracting with the Developer, shall look solely to the Developer for payment therefor.

HUNT SERVICES, INC., a Tennessee corporation

By: _____
Print Name: _____
Its: _____

STATE OF

COUNTY OF

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing instrument: David B. Hunt, as President of Hunt Services, Inc., a Tennessee corporation.

Dated: September __, 2019

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF CITY LAND

BEING ALL of Tract 5 containing 2.45 acres, as shown on map or plat entitled "Recombination Survey for Downtown Community Facility Tract 5 Rocky Mount Township, Edgecombe County, North Carolina" dated April 28, 2017, by Mack Gay Associates, P.A., a copy of which is recorded in Plat Book 12, Page 88, Edgecombe County Registry.

EXHIBIT B

PERMITTED ENCUMBRANCES

[All of the exceptions from coverage included on Schedule B to Developer's Leasehold Policy of Title Insurance issued by First American Title Insurance Company on the Closing Date.]

EXHIBIT C

INSURANCE REQUIREMENTS

[immediately follows]

EXHIBIT D

MEMORANDUM OF GROUND LEASE

Prepared by and Return to:

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "*Memorandum*") is made and entered into as of the [] day of [], 2019, by and between the City of Rocky Mount, North Carolina, a municipal corporation duly created under the laws of the State of North Carolina (the "*City*"), and Hunt Services, Inc., a Tennessee corporation, authorized to do business in North Carolina (the "*Developer*").

WITNESSETH:

WHEREAS, the City and the Developer entered into a certain Ground Lease dated as of [August 7], 2019 (the "*Ground Lease*"); and

WHEREAS, the City and the Developer desire to have a memorandum of the Ground Lease recorded in the Office of the Register of Deeds for Rocky Mount, North Carolina.

NOW, THEREFORE, the City and the Developer hereby state the following for recording:

1. The address for the City and the Developer as set forth in the Ground Lease are as follows:

For the City:

City of Rocky Mount, North Carolina
P.O. Box 1180 _____
Rocky Mount, NC 27804 _____
Attention: City Manager _____

For the Developer:

Hunt Services, Inc.
1031 Greystone Square
Jackson, TN 38305
Attention: David B. Hunt

2. Pursuant to the terms of the Ground Lease, the City leases to the Developer all that certain tract or parcel of land described in **Exhibit A** attached to this Memorandum hereto and made a part hereof by this reference.

3. The term of the Ground Lease shall commence on the date of execution and delivery thereof and shall terminate on _____, 20__.

4. In the event of termination of the Ground Lease for any reason contained therein, or upon the expiration of the term of the Ground Lease, if applicable, this Memorandum shall be deemed terminated, null and void, of no further force and effect and removed of record.

5. This Memorandum has been executed for recording purposes only, and shall not be deemed to amend or supplement the Ground Lease. In the event of any conflicts between the provisions of this Memorandum and the provisions of the Ground Lease, the provisions of the Ground Lease shall prevail.

[Remainder of Page Left Blank]

HUNT SERVICES, INC., a Tennessee corporation

By: _____
Print Name: _____
Its: _____

STATE OF

COUNTY OF

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing instrument: David B. Hunt, as President of Hunt Services, Inc., a Tennessee corporation.

Dated: September __, 2019

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A TO MEMORANDUM OF GROUND LEASE

LEGAL DESCRIPTION

BEING ALL of Tract 5 containing 2.45 acres, as shown on map or plat entitled "Recombination Survey for Downtown Community Facility Tract 5 Rocky Mount Township, Edgecombe County, North Carolina" dated April 28, 2017, by Mack Gay Associates, P.A., a copy of which is recorded in Plat Book 12, Page 88, Edgecombe County Registry.