

**DEVELOPMENT AGREEMENT**

**dated as of [\_\_\_\_\_], 2024**

**between**

**DOWNTOWN DEVELOPMENT AUTHORITY OF LAWRENCEVILLE, GEORGIA,**  
a public body corporate and politic created and existing under the laws of the State of Georgia

**AS OWNER**

**AND**

**NORTHPOINTE HOSPITALITY MANAGEMENT & DEVELOPMENT, LLC,**  
a Georgia limited liability company,

**AS DEVELOPER**

TABLE OF CONTENTS

INDEX OF DEFINED TERMS

Exhibit A

ARTICLE I  
APPOINTMENT AND ACCEPTANCE; MANAGER'S AUTHORITY

Section 1.01	Incorporation of Recitals
Section 1.02	Appointment of Developer
Section 1.03	Developer's Authority
Section 1.04	Compliance with Developer Standard.
Section 1.05	Developer's Right to Access and Use the Property and the Improvements
Section 1.06	Franchise Agreement

ARTICLE II  
TERM

ARTICLE III  
DEVELOPER'S DUTIES AND RESPONSIBILITIES

Section 3.01	Managing Development and Construction of the Project.
Section 3.02	Applications for Payment
Section 3.03	Permits
Section 3.04	Independent Contractor Status
Section 3.05	Employees
Section 3.06	The Indenture and Disbursement Agreement
Section 3.07	[Intentionally Omitted]
Section 3.08	Contracts and Subcontracts; Required Terms
Section 3.09	Liens
Section 3.10	Access to Project
Section 3.11	Litigation
Section 3.12	Maintenance of Property and Improvements

ARTICLE IV  
DEVELOPER'S COMPENSATION AND CERTAIN OBLIGATIONS TO OR FOR THE  
BENEFIT OF DEVELOPER

Section 4.01	Developer's Compensation.
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ARTICLE V  
INSURANCE AND INDEMNIFICATION

Section 5.01	DDA's Insurance
Section 5.02	Insurance Maintained by Developer
Section 5.03	Event of Loss or Event of Total Loss
Section 5.04	Indemnification.

ARTICLE VI  
LIMITATION OF LIABILITY

Section 6.01	Limited Obligations of the DDA
Section 6.02	Other Limitations.

ARTICLE VII  
TERMINATION; sUSPENSION

Section 7.01	Termination for Cause.
Section 7.02	Termination for Convenience
Section 7.03	Developer's Duties on Termination
Section 7.04	Termination on Destruction
Section 7.05	Payments Upon Termination.
Section 7.06	Possession of the Project
Section 7.07	Suspension by DDA.

ARTICLE VIII  
REPRESENTATIONS, WARRANTIES, AND COVENANTS

Section 8.01	Developer's Representations and Warranties.
Section 8.02	DDA's Representations

ARTICLE IX  
CONFIDENTIALITY

Section 9.01	Confidential Information
--------------	--------------------------

ARTICLE X  
RESTRICTIVE COVENANTS; EXCLUSIVE DEALINGS.

Section 10.01	Engaging in Competitive Business
Section 10.02	Further Agreements and Acknowledgements

ARTICLE XI  
MISCELLANEOUS

Section 11.01	Notices
Section 11.02	Consents and Approvals
Section 11.03	Cooperation
Section 11.04	Assignment.
Section 11.05	Interpretation
Section 11.06	Amendments
Section 11.07	Complete Agreement
Section 11.08	Governing Law
Section 11.09	Dispute Resolution
Section 11.10	Severability
Section 11.11	Captions and Headings
Section 11.12	Change of Control
Section 11.13	Assignment to the Trustee under the Assignment of Contracts; Exercise of Remedies by Trustee.
Section 11.14	No Construction Against Preparer
Section 11.15	Time is of the Essence
Section 11.16	Police/Regulatory Powers
Section 11.17	Further Assurances
Section 11.18	Counterparts

SCHEDULE 3.08(b)                      Contract addendum to be attached to all Specified Contracts  
SCHEDULE 5.01(a)                      Developer's Compensation

EXHIBIT A                                Index of Defined Terms

EXHIBIT B                                Legal Description of the Property

EXHIBIT C                                Franchise Agreement

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (“**Development Agreement**” or this “**Agreement**”), dated [\_\_\_\_], 2024 (“**Effective Date**”), is entered into by and between the **DOWNTOWN DEVELOPMENT AUTHORITY OF LAWRENCEVILLE, GEORGIA**, a public body corporate and politic created and existing under the laws of the State of Georgia, including its successors and assigns (the “**DDA**” or “**Owner**”), and **NORTHPOINTE HOSPITALITY MANAGEMENT & DEVELOPMENT, LLC**, a Georgia limited liability company (“**Developer**”). The DDA and Developer are referred to herein collectively as the “**Parties**” and individually as a “**Party**.” Capitalized terms used but not defined in the body of this Development Agreement have the meanings ascribed to them in the Index of Defined Terms, attached hereto as Exhibit A.

### **RECITALS:**

A. The DDA is a public body corporate and politic duly created and validly existing under and pursuant to the Downtown Development Authorities Law of the State of Georgia, O.C.G.A. § 36-42-1, *et seq.*, as amended.

B. The governing body of the City of Lawrenceville, Georgia (the “**City**”), has, by proper resolution, declared that there is a need for the DDA to function in the City, as required by the terms of the Act, and the DDA has been duly created and activated pursuant to the terms of the Act, and the DDA’s directors have been elected as provided therein and are currently acting in that capacity.

C. The DDA is the owner of that certain real property lying and situated in the City described on Exhibit B, consisting of approximately 1.94 acres of real property, together with all rights and appurtenances pertaining to thereto, including, without limitation, all right, title and interest of the DDA in and to adjacent streets, alleys, and rights-of-way (collectively, “**Property**”).

D. In connection with the Existing Development Deal (defined hereinafter), the DDA determined that the development of a mixed-use development on the Property with hotel, meeting space, structured public parking and street level retail components (i) will develop and promote for the public good and general welfare trade, commerce, industry, and employment opportunities in the City, (ii) will promote the general welfare of the State of Georgia by creating a climate favorable to the location of new industry, trade, and commerce and the development of existing industry, trade, and commerce within the City, and (iii) will help revitalize and redevelop the central business district of the City, and the DDA, in effectuating the mixed-use development, will be acting in furtherance of the public purposes for which the DDA was created.

E. The DDA further determined that the most favorable method for effectuating the mixed-use development was to lease the Property to a third-party developer to construct and operate the mixed-use development, and in furtherance thereof, the DDA and an affiliate of Developer, RIO Lawrenceville, LLC, a Georgia limited liability company (“**Initial Developer**”), entered into numerous agreements (the “**Existing Development Deal**”) whereby Initial Developer leased the Property from the DDA and planned to develop, construct and operate on

the Property a 120+ room hotel with 5,000 square feet of meeting space (the “**Hotel**”), retail space (the “**Retail**”), and a three-tiered parking garage to serve the Hotel and Retail and the downtown business district of the City (the “**Parking Deck**”; and together with the Hotel and Retail, collectively, the “**Project**”).

F. Initial Developer completed construction of the Parking Deck and transferred ownership to the DDA per the terms of the Existing Development Deal, but Initial Developer was unable to complete the remaining portions of the Project, and as a result, the Initial Developer, the DDA and Developer entered into that certain Omnibus Unwind and Termination Agreement, dated March 20, 2024 (the “**Unwind Agreement**”), pursuant to which the parties terminated and unwound the outstanding portions of the Existing Development Deal and cancel and terminate that certain Note, Loan, and Security Agreement, executed by Initial Developer and agreed, instead, that the DDA would (i) assume all of Initial Developer’s rights in the Project, (ii) hire an affiliate of Developer to manage the Hotel pursuant to a hotel management agreement that satisfies the requirements of Revenue Procedure 2017-13 (“**QMA**”) and provide pre-opening and technical services pursuant to a Pre-Opening and Technical Services Agreement (“**PTSA**”), and (iii) retain Developer to oversee, manage and coordinate the Project Development Work pursuant to the terms of this Agreement.

G. The DDA has determined that the most feasible method of financing the Project is for the DDA to issue its revenue bonds in the aggregate principal amount of [\$\_\_\_\_\_] (the “**Bonds**”).

H. The Parties desire to enter into this Agreement to set forth the terms and conditions under which Developer will oversee, manage and coordinate the Project Development Work on behalf of the DDA.

**NOW, THEREFORE**, for and in consideration of the Ten Dollars (\$10.00) in hand paid by the Parties, one to the other, the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the DDA and Developer hereby agree as follows:

## **Article I**

### **APPOINTMENT AND ACCEPTANCE; MANAGER'S AUTHORITY**

**Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as an integral part of this Agreement.

**Appointment of Developer.** The DDA hereby appoints Developer, and Developer accepts appointment, as the exclusive independent contractor to perform the Development Services upon and subject to the terms and conditions set forth in this Agreement. Developer shall perform the Development Services for the exclusive benefit of the DDA, in an expeditious and economical manner, using Developer’s commercially reasonable efforts, skill, judgment, and abilities, and in accordance with the Developer Standard. Developer accepts the fiduciary relationship of trust and confidence established by this Agreement between Developer and the DDA, and covenants that it shall not incur debts or other liabilities on behalf of DDA unless the

same are approved by the DDA, which approval will be deemed given if the liability is a Project cost contained in the Project Budget approved by the DDA.

**Developer's Authority.** Except as otherwise expressly provided in this Development Agreement, during the Term, Developer is not, and shall not be, authorized by the provisions hereof or otherwise, to: (a) enter into any Project Documents or other agreements that are or purport to be in the DDA's name, or amend or modify any such agreement, or grant any waiver or forbearance thereunder, except as contemplated and in full compliance with the requirements of Section 3.07; (b) commence, institute, defend, litigate, or settle any legal proceeding to which the DDA is a party (except with respect to Developer's own interests therein, if any); (c) take any other action that is inconsistent with the scope of its duties and obligations hereunder; or (d) represent or hold itself out as having the DDA to do any of the foregoing. If, for any reason whatsoever, Developer is unable to determine whether or not it is authorized to take (or refrain from taking) any action for and on behalf of the DDA as contemplated hereby, Developer must notify the DDA and request that the DDA provide clarification to Developer, in writing, as to the authority of Developer hereunder to take (or refrain from taking) any action for and on behalf of the DDA. Upon any such request from Developer, the DDA shall promptly provide such clarification to Developer. DDA and Developer hereby acknowledge that (i) Developer will assist DDA in identifying the counterparties to, and negotiation of, the Project Documents, and (ii) DDA will be required to execute all Project Documents on its own behalf (unless otherwise specifically addressed by Section 3.08). Notwithstanding that Developer will not be a party to the Indenture or Project Documents, Developer shall act on behalf of the DDA to enforce performance of the counterparty to each Project Document, and shall otherwise comply with the obligations of Developer with respect to the Project Documents set forth in this Agreement, including, without limitation, those set forth in Section 3.01(b) hereof.

#### **Section I.04 Compliance with Developer Standard.**

(a) In Developer's performance of its obligations under this Agreement, and under any other contract entered into with respect to the Project Development Work, Developer shall, and shall cause its employees, agents and contractors to, comply in all material respects with: (i) Applicable Law; (ii) Permits; (iii) the Franchise Agreement; (iv) Industry Practices; (v) the requirements and standards set forth in the Project Documents; and (vi) the terms and provisions of this Development Agreement (collectively, the "**Developer Standard**"). It is Developer's responsibility to ensure that the Project Development Work complies with the Developer Standard, provided that provision for payment of the cost of such compliance has been made (except insofar as this Development Agreement provides that the cost of such compliance shall be borne by Developer). Notwithstanding any other provision in this Agreement to the contrary, Developer will not be in breach of this Agreement or the Project Management Standard to the extent that (i) the Developer has not been given executed copies of all Permits, the Indenture, the Disbursement Agreement, and Project Documents, or (ii) the DDA fails to perform its obligations under this Agreement, or (iii) the DDA fails to take any commercially reasonable action pursuant to a Project Document recommended by the Developer.

(b) In Developer's performance of its obligations under this Agreement, Developer shall use commercially reasonable efforts to comply with such practices, methods,

and actions which are consistent with the highest industry standards and in the same manner as is customary and usual in oversight, management and coordination of the design, development, construction and furnishing of comparable mixed-used developments with comparable financial resources and budgetary parameters and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of any enterprise of like character and with like aims (“**Industry Practices**”).

**Developer's Right to Access and Use the Property and the Improvements.** Except as otherwise expressly provided herein, in its role as Developer hereunder, Developer shall have the right and authority during the Term to access and use the Property and Improvements for the purposes of fulfilling its obligations under this Development Agreement.

**Franchise Agreement.** Developer acknowledges that the DDA and Hilton Franchise Holding LLC, a Delaware limited liability company (“**Franchisor**”), are parties to that certain Franchise Agreement, dated [\_\_\_\_\_], 2024, a copy of which is attached hereto as **Exhibit C** (as amended from time to time, the “**Franchise Agreement**”), pursuant to which the Hotel will be operated as a Hilton Tapestry Collection franchise. With respect to the Franchise Agreement:

(a) Developer shall (i) advise the DDA as to whether the Project Development Work is being conducted in accordance with the terms and conditions of the Franchise Agreement, and (ii) use commercially reasonable efforts to ensure that the Project Work is being conducted in accordance with the Franchise Agreement, unless replaced by a franchise agreement provided by the DDA. Without the prior written consent of both the DDA and any lender, each acting in its individual discretion, Developer shall not, for any reason:

(1) cause, consent to, or permit any termination of the Franchise Agreement (in whole or in part) or cause, consent to, or permit any suspension of performance of services thereunder, unless replaced by a franchise agreement provided by the DDA;

(2) cause, consent to, or permit any amendment or modification, or any variance, impairment, replacement, or waiver of timely compliance with respect to any material terms or conditions of the Franchise Agreement; or

(3) permit to be done any act under the Franchise Agreement, or omit or refrain from any act under the Franchise Agreement, where such act done or permitted to be done, or such omission of or refraining from action, that could be reasonably expected to be done, or such omission of or refraining from action, that could be reasonably expected to have a Material Adverse Effect on the Hotel or the Project or cause a breach or default of the Franchise Agreement.

(b) As the franchisee under the Franchise Agreement, the DDA acknowledges that it will receive all official communication from the Franchisor; provided, however, that Developer acknowledges and agrees that the DDA will request that Franchisor include Developer as a copy party on any notices sent to the DDA under the Franchise Agreement. If



the Developer receives any communications from Franchisor that states or asserts that the DDA, the Hotel, the Hotel Manager, and/or Developer is in breach or violation of the terms of the Franchise Agreement, then Developer shall provide the DDA, promptly upon its receipt thereof, a copy of such communication from the Franchisor, and any subsequent communications between the Developer and the Franchisor.

(c) Developer shall provide the DDA with a copy of any report, analysis, summary or other information provided to Franchisor by Developer pursuant to the Franchise Agreement, promptly after providing same to the Franchisor.

## **Article II** **TERM**

The term of this Development Agreement shall commence on the Effective Date and terminate on the date that is thirty (30) days after Final Completion of the Work (the “**Term**”); provided, however, that either Party may terminate this Development Agreement in accordance with Article VII. Following expiration or earlier termination of this Development Agreement, as applicable, Developer shall have a continuing obligation to comply with any provision of this Development Agreement intended for the DDA’s protection or benefit, or that expressly survives completion of the Projection Development Work or the expiration or termination of this Agreement, for the survival period expressly set forth herein, and if none, then for one year following Final Completion of the Work.

## **Article III** **DEVELOPER’S DUTIES AND RESPONSIBILITIES**

### **Section III.06 Managing Development and Construction of the Project.**

(a) Development Services. Subject to this Agreement, Developer has the sole responsibility to manage, direct, supervise, coordinate and control the Project Development Work (collectively, the “**Development Services**”). The Development Services include, without limitation:

(1) Assisting the DDA with and leading (subject to the DDA’s input and final approval) the process of identifying, soliciting proposals from, selecting, and negotiating contracts with the Project Team for the completion of the Project Development Work, and advising the DDA and making recommendations concerning (i) scope of services to be provided by the Project Team, (ii) fees, and (ii) administration, management and oversight of contracts with the Project Team at the DDA’s direction;

(2) assisting the DDA in establishing a Project Budget in accordance with Section 3.01(e), and preparing (and updating, as necessary) a preliminary construction schedule in conjunction with the Construction Contractor, in critical path form, for the design, construction and installation of the Project in accordance with the Design Documents (“**Construction Schedule**”), in each instance for the DDA’s approval;

(3) after the DDA awards the Construction Contract and before the Construction Contractor or any subcontractor commences work on the site, assisting the

DDA in the preparation of all necessary site logistics plans, traffic flow diagrams and plans for the performance of the applicable work, showing the use of designated roadways or street lights, the closing of any roadways, streets and/or sidewalks, and the re-routing of any traffic, and assisting in obtaining necessary government approvals required to implement such traffic plans;

(4) ensuring that the Project Development Work is completed in accordance with the Developer Standard, the Project Budget and the Construction Schedule;

(5) assisting the DDA with and reviewing the processing of change orders, advising the DDA concerning the necessity for, scope of and recommended cost of change orders, and negotiating on the DDA's behalf (but with the DDA's input and approval) all change orders with the Construction Contractor, and advising the DDA on whether, and ensuring that, the final Project Budget and/or Construction Schedule, as applicable, is/are accurately revised to reflect approved change orders;

(6) reviewing and approving all Construction Contract invoices from the Construction Contractor, for subsequent approval and payment by the DDA;

(7) coordinating the arrangement and maintenance of insurance during the development and construction of the Project, as required under Article V;

(8) assisting the DDA to purchase, equip and furnish the Project with furnishings, fixtures and equipment approved by the DDA in preparation for opening, and managing and coordinating moving into the Project;

(9) as requested by the DDA, assisting the DDA in complying with its contracting protocols and procurement policies;

(10) supervising, coordinating and monitoring the submission of applications for obtaining all required Permits, and ensuring the procurement of such Permits by the appropriate party;

(11) use commercially reasonable efforts to cause the Construction Contractor to provide an update to the DDA each month, commencing sixty (60) days after a notice to proceed is issued to the Construction Contractor, stating (i) whether or not the construction and expected completion are on schedule, and if not, in what respects the Work is behind schedule, and (ii) whether any defaults or events that with notice, passage of time or both would constitute a default exist under the Construction Contract or related agreements, certificates, Permits or other documents, including, without limitation, any default of payment obligations to Construction Contractor or any subcontractors (reports shall include, without limitation, Construction Schedule progress, payment status, construction document status, request for information (RFI) log, submittal log, and owner and contractor meeting minutes);

(12) at the completion of construction of the Project, coordinate the obtaining of the applicable certificate(s) of occupancy; and

(13) manage the development of a punch list and the inspection and completion of the items thereon for Final Completion.

(b) Prosecution of the Project Development Work. Except as otherwise provided in this Agreement, Developer shall at all times use commercially reasonable efforts to promptly and faithfully advise the DDA and enforce the rights of the DDA to cause the Project Development Work to be performed under the Project Documents by each Person thereto to be performed in accordance with the terms and provisions thereof, and shall assist the DDA as required to keep and perform all of the covenants and conditions contained in the Project Documents to be kept and performed by the DDA; provided, however, that except as otherwise provided in this Agreement, Developer shall not be in breach of its obligations under this section to the extent that its failure to so perform is caused by (x) the negligence of willful misconduct of the DDA or any of its employees or agents, or (y) the failure of the DDA, its employees or agents, to follow the commercially reasonable advice or recommendations of the Developer, or (z) the failure of the DDA to perform its obligations under this Agreement or the applicable Project Document, so long as such failure is not caused by Developer's failure to perform its obligations under this Agreement. Developer will enforce, in accordance with the Developer Standard and for the benefit of the DDA, the obligations of all Persons under the Project Documents, and will promptly, after Developer learns of the same, notify the DDA of any material default by any Person under any of the Project Documents, and of the remedy or course of action sought by Developer in response to such default. Acting in accordance with the Developer Standard to achieve Substantial Completion will include good faith, diligent, commercially reasonable efforts to advise the DDA and cause the Work to meet the milestones set forth in the Construction Schedule necessary to achieve Substantial Completion by the Substantial Completion Date in accordance with the Construction Contract. In connection therewith, to the extent any such milestones are not met due to Developer's failure to act in accordance with the Developer Standard, Developer shall promptly develop and present to the DDA a plan for expediting the Work to cause future milestones to again be met to the extent necessary to achieve Substantial Completion by the Substantial Completion Date; provided, however, that nothing herein shall be construed as limited the DDA's right to declare default, as provided in this Development Agreement.

(c) DDA Design Approval Rights; Architect and Architectural Services Agreement. Developer will oversee, and cause to be created, the Design Documents, and the DDA will have final approval rights over the Design Documents; provided, however, neither the Developer's oversight of, nor the DDA's approval of, the Design Documents shall be construed as representing or implying that the Design Documents will, if followed, result in properly designed Improvements, and shall not be considered or construed as having made any express or implied warranty whatsoever as to the adequacy, quality, fitness or purpose of any physical conditions, materials, workmanship, plans, specifications, drawings or other requirements pertaining to the construction of the work contemplated therein, and the DDA expressly disclaims any and all such warranties. Such approval shall in no event be construed as representing or guaranteeing that any improvement built in accordance with the applicable plans and specifications will be built in a good or workmanlike manner. Neither Developer nor the DDA shall be responsible or liable for any defects in the approved Design Documents or any other plans or specifications submitted, revised, or approved, any loss or damage

arising from the noncompliance of the approved Design Documents or such other plans and specifications, nor any defects in construction undertaken pursuant to the approved Design Documents or such other plans and specifications.

(d) Geotechnical and Soils Testing. Without limitation of any other provision in this Agreement, Developer shall cause the appropriate engineers and/or geotechnical experts of the architectural and engineering design team engaged by the Architect in connection with architectural or engineering services for the Project (the “**A/E Team**”), or under contract to the Developer or the DDA, to conduct all appropriate soils and materials testing using certified independent laboratories and to furnish to the DDA copies of reports of such testing otherwise prepared by or for such engineers. All such reports may be relied upon by the DDA and any other Person involved with or providing financing of the Project and Developer shall cause the appropriate engineers and/or geotechnical experts of the A/E Team or under contract to Developer or the DDA to deliver appropriate reliance letters.

(e) Project Budget and Plans and Specifications. Developer will assist the DDA in preparing a final budget of all Project costs (the “**Project Budget**”) based on the Design Documents and Construction Documents that the DDA has previously prepared and approved (collectively, the “**Plans and Specifications**”). Developer shall use commercially reasonable efforts to ensure that the Project Budget is developed using sound architectural and construction principles and include analysis of the Project site conditions (including, without limitation, surface/subsurface conditions, pedestrian/vehicular access to the Project site during and after construction), and such other features and measures that are customarily and reasonably a part of mixed-use commercial developments and supporting infrastructure similar to the Project.

(f) Change Orders. The DDA shall have sole authority to execute any Change Order increasing the [Guaranteed Maximum Price] set forth in the Construction Contract, or altering the Project Schedule.

(g) Amendments to Contracts. The DDA shall have sole authority to execute any amendment of a material nature to a contract appertaining the performance of services on the Project or provision of materials to the Project.

Applications for Payment. Developer shall review applications for payment by the Construction Contractor, review and certify certificates for payment issued by Architect and make written recommendations to the DDA concerning payment. Developer’s certification for payment shall constitute a representation to the DDA that, to the best of the Developer’s knowledge, information, and belief, the Project Development Work has progressed to the point indicated and the quality of the work is in accordance with the Construction Documents. The issuance of a certificate for payment shall further constitute a representation from the Developer that the Construction Contractor is entitled to payment in the amount certified. In addition, Developer and the DDA shall cooperate with one another to develop an orderly procedure for review and payment of Project costs and expenses, including fees for the Architect and other consultants. All disbursements will be made pursuant to the Disbursement Agreement.

**Permits.** Developer shall obtain, or cause to be obtained, all Permits, licenses and easements required for the construction of the Project in accordance with the Plans and Specifications, including any and all utility, parking, access (including curb-cuts and highway access), construction, recreational, building, tap-on permits issued by the appropriate Governmental Authority, and the final building permit, which must be obtained in a timely manner in order for the Project to be complete in accordance with the Construction Schedule. Developer shall (i) maintain or cause to be maintained in full force and effect all Permits now held or hereafter acquired with respect to the Project, and (ii) perform, observe, fulfill and comply in all material respects with (or cause the performance, observance, fulfillment and compliance in all material respects of and with) all of the obligations, covenants and conditions contained in such Permits. Developer, upon written request therefor from the DDA, shall provide the DDA with copies of all Permits, including, without limitation, any occupancy permit, county fire marshal approval and other required Permits pertaining to the occupancy of the Project following the completion of construction before full or partial occupancy may occur.

**Independent Contractor Status.** Developer is serving as the Developer for the design, development and construction of the Project. The Parties intend for Developer to function as an independent contractor of the DDA. This Development Agreement shall therefore not be deemed to create an employer/employee, partnership, joint venture, principal-agent or other relationship between Developer and the DDA. Developer is neither an owner of the Project nor a lessee of the Project or any portion thereof for federal income tax purposes, and therefore Developer will not be entitled to, and will not take, any federal income tax depreciation or amortization deductions, any investment tax credit or any deductions with respect to the Project or any portion thereof.

**Employees.** Subject in every case to this Development Agreement, the Franchise Agreement, the Project Budget, the Project Documents, and compliance with all Applicable Laws that affect employers generally (including, without limitation, those concerning workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions and like subjects), Developer shall have the following rights and obligations, directly and through its position as the manager of Project Development Work:

(a) sole and exclusive discretion with respect to the number, qualifications and duties of the personnel to be employed by Developer to perform the Development Services;

(b) the sole and exclusive right and responsibility to screen, test, investigate, interview, hire, train, supervise, discharge, and pay all personnel necessary to conduct the Development Services; and

(c) sole and exclusive discretion with respect to compensation and benefits of its employees.

In the event such services are contracted or subcontracted pursuant to Section 3.07, the foregoing rights and responsibilities shall devolve upon and belong to the applicable contractor or subcontractor. SUCH PERSONNEL SHALL IN EVERY INSTANCE BE EMPLOYEES OF DEVELOPER, OR IF CONTRACTED OR SUBCONTRACTED, OF THE APPLICABLE CONTRACTOR OR SUBCONTRACTOR, AND UNDER NO CIRCUMSTANCES SHALL

ANY INDIVIDUAL EMPLOYED AT ANY TIME OR IN ANY CAPACITY IN RESPECT OF THE DEVELOPMENT SERVICES BE CONSIDERED EMPLOYEES OF THE DDA OR THE TRUSTEE, FOR ANY PURPOSE WHATSOEVER.

**The Indenture and Disbursement Agreement.** Developer represents and warrants and covenants that it: (i) has reviewed the Disbursement Agreement and the Indenture provisions described in clause (ii) below; and (ii) agrees to take commercially reasonable measure to ensure that the DDA complies with those provisions, requirements and limitations of Sections 413 and 805 of the Indenture and the provisions, requirements and limitations of the Disbursement Agreement.

**[Intentionally Omitted].**

**Contracts and Subcontracts; Required Terms.**

(a) **Form of Contracts; Compliance.** For all Non-Material Contracts and Specified Contracts (as those terms are defined below), Developer shall use the DDA's standard procurement forms, or such other forms as the DDA shall require, and manage the award of contracts in accordance with the below requirements.

(b) **Non-Material Contracts and Specified Contracts and Required Terms.** Notwithstanding any conflicting provision of the Agreement to the contrary, Developer shall be authorized to execute agreements on behalf of the DDA, without the DDA's approval if such agreements meet the following conditions (each a "**Non-Material Contract**"): (i) the agreement require total annual payments of less than fifty thousand dollars (\$50,000); and (ii) the agreement has a term of less than one (1) year (unless such agreement is terminable by Developer (on behalf of the DDA) upon not more than thirty (30) days' notice without fee or penalty). Any contract to which the DDA is a party, or that identifies the DDA as a responsible party or otherwise references the DDA, or has an expected spend of more than Fifty Thousand Dollars (\$50,000.00) per Fiscal Year (each a "**Specified Contract**"), must incorporate the contract addendum attached hereto as Schedule 3.08(b). The DDA shall be responsible for the direct payment of all costs, fees and expenses due to a counterparty pursuant to a Non-Material Contract, a Specified Contract or any contract with a Project Team member as required pursuant to the terms of such agreements. Developer shall use commercially reasonable efforts to advise the DDA on its payment obligations pursuant to such agreements.

**Liens.** To the extent the DDA has paid all amounts properly due and owing under the Project Documents, Developer shall not create or permit to exist a lien in respect of the Project without the prior written consent of the DDA and the Trustee, other than those created by the Indenture and the Security Deed (as defined in the Indenture) or in existence as of the Effective Date. In no event may Developer take any action that would cause or permit any mortgage, lien, pledge, charge, lease, easement, servitude, right of others, security interest or encumbrance of any kind in respect of the Project to exist, other than those created by the Indenture and the Security Deed or in existence as of the Effective Date.

**Access to Project.** The DDA, the Trustee, and their respective agents, attorneys, accountants, employees, invitees, or licensees shall have at all times during the Term: (i) full and complete access to the Project, subject to reasonable limitations as to the number of persons that may be permitted to be given access and the timing of such access (including requiring at least 24 hours prior written notice); (ii) the right to tour any portion of the Project to observe and to permit others to observe the Development Services performed by Developer or contractor, provided only that such tours shall be conducted in compliance with Developer's safety standards and Applicable Laws and shall not unreasonably interfere with the construction of the Project or Developer's ability to perform its obligations hereunder; (iii) the right to conduct inspections of all or part of the Project at reasonable intervals for the purposes of verifying compliance with the terms of this Development Agreement; and (iv) the right to inspect and copy any and all books and records of Developer pertaining to the Development Services and the Project Development Work (including, without limitation, all Permits, all contracts, insurance records under Article V, and Project financial records) and to discuss the Project Development Work with appropriate representatives of Developer or any contractor. Developer shall cooperate with the DDA, the Trustee, and their respective agents, attorneys, accountants, employees, invitees, or licensees in such inspections, and the DDA, the Trustee, and their respective agents, attorneys, accountants, employees, invitees, or licensees shall conduct such inspections or cause such inspections to be conducted so as not to unreasonably interfere with Developer's performance of its obligations hereunder. Developer shall, and shall cause each subcontractor to, provide any of the DDA or the Trustee at any time upon reasonable request with any Project related Information so requested.

**Litigation.** Developer and the DDA will notify each other in writing, within five (5) Business Days of receiving notice thereof, of any actual, pending or threatened claim, demand, mechanic's lien, litigation or adversarial proceeding that could reasonably be expected to materially and adversely affect the Project or such party. Each party will notify the other in writing and within five (5) Business Days of any matter that a party reasonably believes could result or does result in a material adverse change in the financial condition or operation of each party or the Project.

**Maintenance of Property and Improvements.** Developer agrees that it will, on behalf of the DDA, use commercially reasonable efforts to keep the Property and Improvements, or cause the Property and Improvements to be kept, in as reasonably a safe condition as its activities thereon or the Project Development Work shall permit, and maintain the Property and Improvements, or cause the Property and Improvements to be maintained, in a neat and clean condition, including daily removal of trash and debris at the Property.

#### **Article IV**

### **DEVELOPER'S COMPENSATION AND CERTAIN OBLIGATIONS TO OR FOR THE BENEFIT OF DEVELOPER**

#### **Section IV.01 Developer's Compensation.**

(a) In consideration for Developer's performance of the Development Services in accordance with and subject to the terms of this Development Agreement, Developer shall be paid the fees at the intervals set forth on Schedule 5.01(a) attached hereto ("**Developer Fees**"). If the DDA shall fail to pay the Developer Fees on time as set forth on

Schedule 5.01(a), such amount shall thereafter accrue interest at one and [one-half percent (1.5%)] per month from until paid.

(b) It is expressly understood and agreed that Developer Fees shall be the exclusive basis of payment to Developer for Development Services. Developer shall not be entitled to any additional or further payments for the services to be rendered by Developer pursuant hereto or to the reimbursement of any costs incurred by Developer in performing any of its obligations hereunder except as expressly provided herein.

(c) Affiliates of Developer may be compensated for services included in the Project Budget, provided that the services provided by any affiliate must be pursuant to a contract that meets the requirements of a Specified Contract (without regard to the annual amounts payable thereunder) that has been approved in writing by the DDA after specific disclosure that such Specified Contract is with an affiliate of Developer, and amounts paid or payable thereunder shall not exceed amounts that would be charged by an unrelated third party for similar services.

## **Article V** **INSURANCE AND INDEMNIFICATION**

### **DDA's Insurance.**

Developer shall advise the DDA as to (a) the insurance coverages and amounts that are customarily carried, and (b) such risks as are customarily insured against by others, in connection with the development and construction of facilities of similar character and size to the Project (including, without limitation, builder's risk, casualty and liability policies) (collectively, the "**DDA's Insurance**"). Subject in all cases to the requirements of the Indenture, DDA shall obtain the DDA's Insurance at its sole cost and expense. Developer and the Trustee shall be named as additional insureds on the DDA's liability insurance policies that are a part of the DDA's Insurance to the extent applicable. The DDA shall provide evidence of the coverage afforded under the DDA's Insurance policies to the Developer. Any builder's risk insurance carried by DDA hereunder shall be primary as to any insurance obtained pursuant to Section 5.02.

### **Insurance Maintained by Developer.**

(a) **General Requirements.** All insurance policies and renewals thereof that are required to be carried by the DDA, Developer or a Project Team member hereunder shall:

- (1) be issued by insurance carriers authorized to conduct business in the State of Georgia having an A.M. Best guide rating no less than A- VIII and an S&P rating of no less than A;
- (2) be written on an occurrence (and not "claims made") basis;
- (3) contain a provision whereby the insurer agrees to give to the DDA and the Trustee at least thirty (30) days' prior written notice of any cancellation or material modification;



(4) include insurer's waiver of subrogation as against the DDA;

(5) with respect to insurance policies and renewals thereof that are required to be carried by Developer or Project Team member hereunder, be primary and without right of contribution of any other insurance carried by or on behalf of the DDA (except for builder's risk insurance carried by DDA, which shall be primary to any insurance carried by Developer);

(6) list the DDA, the Trustee and the Developer as an additional named insured, except professional liability and worker's compensation insurance), be payable to the Trustee as a mortgagee and not as a coinsured, and, in the case of all policies of insurance carried by any lessee for the benefit of DDA, all such policies shall be payable to Trustee as loss payee;

(7) provide for a term of not less than one (1) year;

(8) include a standard mortgagee endorsement clause in favor of the Trustee;

(9) for all commercial general liability policies, include by endorsement as named insured to the policy: each DDA Indemnified Person, each Trustee Indemnified Person, the parent companies, subsidiaries, affiliate companies and partnerships and all of their directors, officers, agents, representatives and employees of the DDA and the Trustee; and

(10) comply with any other insurance requirements provided in this Development Agreement.

(b) Developer and all Project Team members performing Work at the Project, at their sole cost and expense, shall maintain insurance coverage in the types and amounts listed below at all times during which they are performing Work at the Project, and Developer shall ensure that all Project Team members comply with such requirements on behalf of the DDA (provided, however, that the Umbrella Liability limits set forth in subsection (5) below shall only apply to the Developer and Construction Contractor, and all other Project Team members shall only be required to carry \$5,000,000 of Umbrella Liability coverage):

(1) General Liability (including contractual liability)

\$2,000,000 General Aggregate (per project)

\$1,000,000 Products/Completed Operations

\$1,000,000 Each Occurrence

\$1,000,000 Personal/Advertising Injury (any one person or organization)

\$ 50,000 Fire Damage (any one fire)

\$ 5,000 Medical payments (any one person or occurrence)

(2) Automobile Liability

\$2,000,000 Bodily Injury/Property Damage combined single limit  
Statutory Personal Injury Protection per occurrence. Coverage  
should also include owned, hired, non-owned and leased  
automobiles, garage-keepers liability, statutory uninsured and  
underinsured motorist's liability

(3) Workers' Compensation

In amounts required by Applicable Law

(4) Employer's Liability

\$100,000 Each Accident

\$500,000 Disease – Policy limit

\$100,000 Disease – Each Employee

(5) Umbrella Liability

Umbrella Liability insurance in an amount  
not less than \$15,000,000 each occurrence and \$15,000,000  
aggregate coverage, and listing the DDA as additional named  
insured. The policy must include, at a minimum, coverage for  
bodily injury, property damage and advertising/personal injury  
arising from premises, operations, independent contractors,  
products completed operations, and liability assumed under an  
insured contract both oral and written. This coverage may provide  
for a deductible not to exceed \$25,000 per incident.

(c) Developer shall deliver, and shall cause each Project Team member to deliver, to the DDA and the Developer (as applicable) certificates, or at the request of the DDA, certified copies, of the policies evidencing the insurance required above, which must be before the commencement of the Development Services and from time to time at the request of the DDA for so long as the Developer or Project Team member (as applicable) is required to maintain such insurance. Each policy shall (1) require the insurer to notify the DDA and the Developer (as applicable) at least 30 days before any cancellation, nonrenewal or material modification of the policy, and (2) waive all rights of subrogation against the DDA. Upon the Developer receipt of any notice of cancellation, nonrenewal or material modification of a policy, the Developer shall, and shall cause each applicable Project Team member to, within ten (10) days thereafter, procure other policies of insurance that are acceptable to the DDA and similar in all respects to the policy or policies about to be canceled or altered.

**Event of Loss or Event of Total Loss.**

(a) Developer shall provide the DDA with prompt written notice of any actual or threatened Event of Loss or Event of Total Loss. “**Event of Loss**” means any loss of, destruction or damage to, or Taking of any part of the Project. “**Event of Total Loss**” means (i) all or substantially all of the Project is damaged to the extent of being completely or

substantially completely destroyed such that operations must be permanently discontinued; (ii) any damage to the Project that results in an insurance settlement with respect thereto on the basis of the Project being completely or substantially completely destroyed; or (iii) any Taking. “**Taking**” means all or substantially all of or a material portion of the Project is taken by exercise of eminent domain or a similar right or power by a Governmental Authority or a Governmental Authority shall order the Project to cease to construction and/or operations permanently, or sale or transfer in lieu of a condemnation or taking of the Project or any part thereof.

(b) If an Event of Loss or an Event of Total Loss occurs, Developer shall prepare or cause to be prepared and promptly deliver to the DDA an estimate of the total costs and schedule to repair or reconstruct the Project, as applicable. Subject in any event to the requirements of the Indenture, if the DDA is permitted to elect, and does so elect, in its sole reasonable discretion and after consultation with Developer, to repair or reconstruct the Project, Developer shall be responsible for the oversight and management of the repair or reconstruction. All reasonable costs and expenses incurred by or on behalf of Developer and pre-approved by the DDA pursuant to this Section shall be incorporated by Developer into the Project Budget. In the event the DDA elects, in its sole discretion, not to repair or reconstruct the Project, the loss proceeds will be applied in accordance with the terms of the Indenture.

#### **Section V.04 Indemnification.**

(a) Developer Indemnity. Developer shall indemnify, defend and hold each DDA Indemnified Person, and each Trustee Indemnified Person, and, together with the DDA Indemnified Persons, each an “**Indemnified Person**”) harmless from and against all Developer-Indemnified Liabilities. Notwithstanding the foregoing sentence, such indemnity shall not be available to the extent that the Developer-Indemnified Liability is determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the negligence, willful misconduct or fraud of the Indemnified Person seeking indemnification.

#### (b) Procedure for Indemnification.

(1) DDA Indemnified Persons. In the event that any action or proceeding is brought against any DDA Indemnified Person with respect to which indemnity may be sought hereunder, Developer, upon written notice from such DDA Indemnified Person shall assume the investigation and defense thereof, including the employment of counsel selected by such DDA Indemnified Person, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such DDA Indemnified Person shall have the right to review and approve or disapprove any such compromise or settlement in its reasonable discretion. Each DDA Indemnified Person shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof. Developer shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such DDA Indemnified Person may only employ separate counsel at the expense of Developer if, in the reasonable judgment of such DDA

Indemnified Person, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(2) Trustee Indemnified Persons. In the event that any action or proceeding is brought against any Trustee Indemnified Person with respect to which indemnity may be sought hereunder, Developer, upon written notice from such Indemnified Person, shall assume the payment of all expenses related thereto, and such Indemnified Person shall retain the full power to litigate, compromise or settle the same in its sole discretion.

(c) Use and Benefit of Funds held under the Indenture. Except as may be derived from insurance proceeds as set forth in Subsection (d), below, Developer acknowledges and agrees that its obligation to defend, indemnify and hold the Indemnified Persons harmless from and against Developer-Indemnified Liabilities shall not be funded from amounts or Funds held under the Indenture or diminished in any respect by the availability of such Funds or the use or application by the DDA of such Funds to satisfy any Liabilities (including Developer-Indemnified Liabilities) hereunder and that such use or application by the DDA or the Trustee of Funds under the Indenture for such purpose in accordance with the provisions of the Indenture shall not affect in any manner Developer's obligation to pay or reimburse the DDA therefor.

(d) Sources of Funds; Waiver of Subrogation. It is the DDA's and Developer's intent to look first to the insurance coverage required pursuant hereto for both legal defense and payment of any Liabilities, subject to the provisions of this Section. Notwithstanding any indemnity language to the contrary, in the event that Liability arises which is covered by the insurance required pursuant to the Indenture or this Development Agreement, Developer shall cause such insurance to be paid in accordance with such policies, and to the extent of such payment, the procedures related to indemnity below shall not apply; provided, that the foregoing shall not have any effect whatsoever on an Indemnified Person's underlying right to indemnity. As to any Liabilities paid by insurance, the Parties agree to waive all rights of subrogation, regardless of whether the negligence or fault of the other party or other party's agents, officers, or employees causes or is alleged to have caused such claim, liability, loss or damage.

(e) Survival. The rights of any Indemnified Person to indemnity hereunder shall automatically expire twenty (24) months after the expiration or termination of this Development Agreement, regardless of cause.

(f) Third-Party Beneficiaries. The Trustee, and to the extent of their rights hereunder to indemnification and exculpation from pecuniary liability, each Indemnified Person (other than a Party), is a third-party beneficiary of this Development Agreement, entitled to enforce its rights hereunder in his, her, its or their own name.

**Article VI**  
**LIMITATION OF LIABILITY**

**Limited Obligations of the DDA.** Notwithstanding anything to the contrary in this Agreement or in any other document or instrument to which the DDA is a party, whether express or by implication or construction or interpretation or otherwise), it is understood and agreed that in the performance of the DDA's obligations under this Agreement, including, without limitation, the obligations contained in the agreements contemplated by this Agreement, any obligation the DDA may thereby incur for the payment of money (including, without limitation, payment of the Management Fee and payment of amounts arising out of liability (directly or indirectly) for any claims, proceedings, costs or expenses of any kind in connection with this Agreement or any other document or instrument to which the DDA is a party related to the Project, its financing, development, construction or otherwise), shall not constitute a general obligation of the DDA, but instead shall constitute a limited obligation of the DDA payable solely out of the proceeds of the Bonds, and no recourse shall be had or claim shall be made against any other assets, properties, or revenues of the DDA to satisfy any obligations of the DDA under this Agreement or any of the agreements contemplated herein.

**Section VI.02 Other Limitations.**

(a) Neither Party shall be liable hereunder for incidental, special, punitive or consequential damages (including, lost revenues or lost profits) arising out of or in connection with this Development Agreement or any Development Services provided by Developer, even if such Party has previously been advised of the possibility of such damages; provided, that the foregoing limitation shall not apply to the extent that such incidental, special, punitive or consequential damages: (i) are the direct result of Developer's gross negligence, willful misconduct, fraud, malice and/or criminal activity; or (ii) are third-party damages for which an Indemnified Person is held or alleged to be liable and for which Developer is responsible under Developer's indemnification obligations to such Indemnified Person or Persons hereunder.

(b) NEITHER (A) THE DDA NOR ANY JOINT VENTURES (IF ANY), MEMBERS, OFFICERS, DIRECTORS OR EMPLOYEES OF THE DDA, NOR (B) THE DEVELOPER NOR ITS MEMBERS, OFFICERS, DIRECTORS OR EMPLOYEES, SHALL HAVE ANY PERSONAL LIABILITY WHATSOEVER WITH RESPECT TO THIS AGREEMENT. DEVELOPER AGREES THAT IT SHALL LOOK SOLELY TO THE DDA'S INTEREST IN THE PROCEEDS OF THE BONDS FOR THE SATISFACTION OF ANY CLAIM, JUDGMENT OR DECREE REQUIRING THE PAYMENT OF MONEY BY THE DDA BASED ON ANY DEFAULT HEREUNDER, AND NO OTHER PROPERTY OR ASSETS OF THE DDA, ITS AFFILIATES, SUCCESSORS, MEMBERS OR ASSIGNS, SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER ENFORCEMENT PROCEDURES FOR THE SATISFACTION OF ANY SUCH CLAIM, JUDGMENT, INJUNCTION OR DECREE.

**Article VII**  
**TERMINATION; sUSPENSION**

**Section VII.02      Termination for Cause.**

(a) By DDA. This Development Agreement may be terminated upon the occurrence of an Developer Termination Default under this Section at any time during the Term by the DDA by delivery of a written termination notice to Developer (an “**DDA Termination Notice**”). The DDA Termination Notice shall: (i) state that Developer's termination is being initiated pursuant to this Section; (ii) include a reasonable description of the grounds for such termination and the alleged conduct or event constituting the Developer Termination Default; and (iii) be effective on the third (3rd) Business Day following delivery of the DDA Termination Notice to Developer (such effective date, or any other effective date of termination of this Development Agreement, being referred to herein as the “**Termination Date**”). Developer shall notify the DDA and the Trustee promptly in writing upon the occurrence of any Developer Termination Default.

(b) “**Developer Termination Default**” means the occurrence of any of the following:

(1) The willful misconduct, malice, fraud and/or criminal activity of Developer or any of its key employees, its members, officers, agents or representatives, or any act materially outside the scope of Developer's authority hereunder to the extent such acts have a Material Adverse Effect on the DDA or the Project;

(2) [Intentionally Omitted]

(3) Developer's violation of any material Applicable Law in connection with the performance of its obligations hereunder, and failure to cure any such violation within 45 days thereafter, unless, in the reasonable judgment of the DDA, the violation, regardless of such cure, has a Material Adverse Effect on the DDA and/or the Project;

(4) Developer's failure to cure, at Developer's sole expense, any default by Developer (other than a default under Subparagraphs (1), (4), (5), (6), (7), (10) or (11) of this Subsection (b)) of any of its material obligations hereunder within the cure period specified herein, and if none specified, forty-five (45) days after written notice of such default has been given by the DDA or the Trustee and received by Developer (with receipt determined in accordance with Section 11.01), and such notice of default must reasonably specify the alleged breach; provided, however, that except with respect to a default under Subparagraph (8) of this Subsection (b), if a particular default cannot reasonably be cured within a forty-five day (45) day cure period, Developer shall have an additional thirty (30) days to cure any such default so long as Developer begins to cure promptly after receiving notice of the default from the DDA;

(5) Developer makes a general assignment for the benefit of creditors or third parties;

(6) Developer files in any court a petition in bankruptcy, or insolvency, or for a reorganization, or for the appointment of a receiver or trustee of all or a substantial part of its property;

(7) Developer commences or consents to any case, proceeding, or other action (A) seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of Developer or Developer's debts under any Applicable Law relating to bankruptcy, insolvency, reorganization, or relief of debts, or (B) seeking appointment of a receiver, trustee, or similar official for Developer or for all or any part of Developer's property;

(8) any case, proceeding, or other action against Developer is commenced (A) seeking to have an order for relief entered against Developer as debtor, (B) seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of Developer or Developer's debts under any Applicable Law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or (C) seeking appointment of a receiver, trustee, or similar official for Developer or for all or any part of Developer's property;

(9) [Intentionally Omitted];

(10) any breach of or material inaccuracy in any of the representations or warranties made by Developer in Section 8.01(a) – (c) hereof (collectively, the “**Fundamental Reps and Warranties**”);

(11) any breach of or material inaccuracy in any of the representations or warranties made by Developer (other than the Fundamental Reps and Warranties) that has a Material Adverse Effect on the construction and completion of the Project and/or the DDA;

(12) Developer abandons the Project;

(13) an event of default shall have occurred and be continuing under the Indenture (after the expiration of any applicable cure or grace period) as a result of Developer’s breach in its obligations under this Agreement, and such default has a Material Adverse Effect on the construction and completion of the Project as a Hilton Tapestry Collection franchise; or

(14) an event of default shall occurred and be continuing under the Franchise Agreement (after the expiration of any applicable cure or grace period) as a result of Developer’s breach in its obligations under this Agreement, and (i) Developer has failed to cause such default to be cured within the cure period set forth in the Franchise Agreement after being notified of the default by the DDA or Franchisor, or (ii) such default has a Material Adverse Effect on the construction and completion of the Project as a Hilton Tapestry Collection Franchise.

(c) By Developer. This Development Agreement may be terminated by Developer during the Term if a DDA Default has occurred and has not been cured within the time periods specified in the definition of “DDA Default”.

**Termination for Convenience.** DDA may terminate this Agreement for convenience in whole or in part upon written notice to Developer in the event that the DDA determines, in its reasonable discretion, that (a) economic conditions in the downtown Lawrenceville hotel submarket are no longer projected to be viable to support profitable operation of the Project, (b) the Project has lost the political support of the applicable governmental officials, agencies, bodies and/or instrumentalities necessary to effectuate development and operation of the Project, and/or (c) it is in the best interests of the City to terminate and no longer pursue development of the Hotel portion of the Project. In the event DDA terminates this Agreement for convenience, Developer shall be entitled to (i) payment for services satisfactorily performed prior to termination, calculated on a pro rata or other equitable basis determined by the DDA in its sole discretion (“**Earned Fees**”), and (ii) a lump sum termination fee in the amount of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) (“**Termination Fee**”). In no event shall Developer be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which could have been avoided. The Earned Fees and Termination Fee shall be the sole and exclusive remedy of Developer for DDA’s termination for convenience. DDA will not pay the Developer any loss of anticipated fees, profits or revenue or other economic loss arising out of or resulting from such termination. Upon receipt of notice of termination, unless the notice directs otherwise, the Developer shall do the following: discontinue all Development Services, entering into contracts for services, supplies, assistance, facilities, and materials used in connection with performing the Development Services, cause subcontractors to cease their Development Services, and shall promptly cancel all existing orders and contracts that are chargeable to this Agreement; and furnish the DDA with copies of all materials related to the Project within Developer’s possession or control within seven (7) days of receiving the DDA’s notice of termination.

**Developer’s Duties on Termination.** Prior to any termination or expiration of this Development Agreement, Developer shall, without additional reimbursement or payment, other than payment of Developer Fees otherwise due hereunder:

(a) Complete Development Services. Provide Development Services through such date reasonably requested by the DDA to allow the DDA to identify, engage, and transition the Development Services to a successor development and construction manager;

(b) Disclose Specified Contract Defaults. Disclose to the DDA in writing any breach or default by a counterparty to any Specified Contract of which Developer has actual knowledge (such disclosure to contain a description of such failure to comply and what steps, if any, have been taken to remedy same);

(c) Assign Warranties. If applicable and if requested by the DDA, assign to the DDA, to a successor Developer, or to a Person or entity designated by the DDA, all contracts with vendors, contractors, subcontractors, or others relating to the Development Services, or the development and construction of the Project, and any warranties of such



vendors, contractors, subcontractors, and others, to the extent that such contracts and warranties are assignable and all requisite consents have been obtained;

(d) Deliver Books and Records. If applicable, deliver to another Person designated by the DDA (or relinquish Developer's control over) (i) all information, including books and records in Developer's possession, relating to the Project, (ii) all financial records and all other records created or maintained by Developer, and in the DDA's discretion, required for the DDA or a successor Developer to take over the Development Services; and (iii) all Project materials, supplies, contracts, original documents and other items of personal property owned by the DDA and in Developer's possession or control; and

(e) Other Action. Reasonably cooperate with the DDA and take any and all such further reasonable action as may be requested by the DDA to ensure transfer of the Development Services to any successor Developer or any Person designated by the DDA. For the avoidance of doubt, reasonable action shall include, without limitation, the transfer of all Permits (if applicable) that may be transferred, or the provision of information necessary for the successor Developer or Person designated by the DDA to obtain all Permits necessary for the Project Development Work.

**Termination on Destruction**. Subject to the terms and conditions set forth in Section 5.03, the DDA [or Trustee] may terminate this Development Agreement, upon thirty (30) days' prior written notice to Developer, upon the Event of Total Loss of the Project and the determination by the DDA not to repair or reconstruct the Project pursuant to the terms of the Indenture.

#### **Section VII.05            Payments Upon Termination.**

(a) The DDA will be responsible for the direct handling and payment of invoices received under any Project Document after notice of any termination hereunder. Upon notice of termination by any Party for any reason, Developer will submit to the DDA an estimate of the additional liabilities and obligations incurred by the Project through the Termination Date, and all other obligations of the DDA hereunder (including without limitation all Unpaid Developer Fees).

(b) In connection with a termination under Section 7.01(a), the DDA Termination Notice shall be accompanied by payment (but nevertheless subject to the DDA's limitation on liability under Section 6.01) to Developer or an invoice, as applicable, of all Unpaid Developer Fees through the Termination Date, less any cost or expense for remedying the Developer Termination Default, including the cost of replacing Developer with another Developer, and any collections costs and reasonable attorneys' fees. If an amount is owing to the DDA pursuant to any Termination under Section 7.01(a), Developer shall pay such amount within five (5) Business Days of receiving an invoice for the same.

(c) Subject to the DDA's limitation on liability under Section 6.01, in connection with any termination hereunder (except any termination under Section 7.01(a) or a termination at the direction of the Trustee), the DDA shall pay to Developer all Unpaid Developer Fees through the Termination Date on or before the Termination Date, unless such

failure is due to insufficient funds available therefor under and in accordance with the Indenture, in which case the DDA will not be required to make any payment until sufficient funds become available for such purposes as provided in the Indenture.

**Possession of the Project.** Concurrently with the date of the termination of this Development Agreement, and following the payment of all Developer Fees and expenses due and owing to Developer under the terms of this Development Agreement, Developer shall deliver to or at the direction of the DDA, (i) all keys and other items providing for access to the Project, and (ii) possession of the Project, including vacation of any space in the Project occupied by Developer or its agents.

**Suspension by DDA.** DDA may, without cause, order the Developer in writing to suspend the Development Services, and cause a suspension of the Project Development Work, in whole or in part for such period of time as the DDA may determine. If the DDA suspends the Development Services and/or orders the Developer to cause a suspension of the Project Development Work, without cause, for more than thirty (30) consecutive days, the Developer shall be compensated for services performed prior to notice of such suspension. When the Development Services and the Project Development Work, as applicable, are resumed, the Developer shall be compensated for reasonable expenses incurred as a direct result of the interruption and resumption of the Development Services and/or the Project Development Work. If appropriate, the Developer's fees for the remaining services and the time schedules shall be equitably adjusted. If the DDA suspends the Development Services and/or the Project Development Work for more than ninety (90) consecutive days for reasons other than the fault of the Developer, the Developer may terminate this Agreement by providing the DDA not less than thirty (30) days' written notice, and payment of the Termination Fee.

## **Article VIII** **REPRESENTATIONS, WARRANTIES, AND COVENANTS**

### **Section VIII.01      Developer's Representations and Warranties.**

Developer represents and warrants to the DDA and the Trustee as of the Effective Date (and any additional date specified below) as follows:

(a) it is duly organized, validly existing and in good standing as a limited liability company under the laws of the State of Georgia and is qualified to conduct its business in the State of Georgia; further, it has the requisite authority and power to execute and deliver this Development Agreement and to perform its obligations hereunder; and it has taken all necessary action to authorize such execution, delivery and performance;

(b) the execution, delivery and performance of this Development Agreement does not conflict with or violate any Applicable Law, any provision of Developer's constituent documents, any order or judgment of any court or governmental agency applicable to it or any of its assets or any contractual restriction binding on it or its assets;

(c) this Development Agreement constitutes the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, subject to

applicable bankruptcy, insolvency, reorganization, moratorium and similar laws relating to the enforcement of creditors' rights generally and subject to principles of equity;

(d) Developer possesses the requisite skills, qualifications, experience and personnel to perform the Development Services and its covenants and obligations hereunder; and

(e) all representations made by Developer in connection with its application for any Permit that Developer filed with respect to the Project are true and correct as of the date hereof (including, if amended, as so amended), and Developer has provided such additional or updated information to the issuer of any such Permit as required to comply in all material respects with the requirements therefor.

### **DDA's Representations.**

The DDA represents and warrants to the Developer as of the Effective Date (and any additional date specified below) as follows:

(a) The DDA is a public body corporate and politic created and existing under the laws of the State of Georgia; further, it has the requisite authority and power to execute and deliver this Development Agreement and to perform its obligations hereunder; and it has taken all necessary action to authorize such execution, delivery and performance;

(b) the execution, delivery and performance of this Development Agreement does not conflict with or violate any Applicable Law, any provision of the DDA's constituent documents, any order or judgment of any court or governmental agency applicable to it or any of its assets or any contractual restriction binding on it or its assets; and

(c) this Development Agreement constitutes the legal, valid and binding obligation of the DDA, enforceable against the DDA in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws relating to the enforcement of creditors' rights generally, to principles of equity, to the exercise of judicial discretion in appropriate cases, to the limitations on legal remedies against Georgia governmental entities such as the DDA, and to limitations on the DDA's liability hereunder.

## **Article IX** **CONFIDENTIALITY**

**Confidential Information.** Developer agrees not to directly or indirectly use or disclose any confidential, proprietary business, or trade secret information of the DDA or the Project (collectively, "**Confidential Information**"), to any third party, except as the DDA may explicitly authorize in writing. The obligations of nondisclosure of the Confidential Information under this Section shall not apply to any part of the Confidential Information that (a) was already known to Developer before receiving such information from the DDA, (b) is or becomes known to the public or generally available to the public through no fault of Developer, (c) is rightfully furnished to Developer from a third party who has not received such Confidential Information, directly or indirectly, from the DDA under an obligation of nondisclosure or nonuse, (d) is independently developed by or for Developer without use of Confidential Information received from the DDA, (e) is required to be disclosed under any continuing disclosure agreement entered

into with respect to the Bonds, or (f) is contained in any reports given to the DDA that become subject to the Georgia Open Records Act (“**GORA**”). The obligation of nondisclosure of the Confidential Information herein shall not be breached by disclosure required in a judicial proceeding or governmental investigation; provided, that Developer gives the DDA prior notice of such requirement and affords the DDA an opportunity to oppose such disclosure or seek a protective order or other appropriate remedy. Notwithstanding the foregoing or anything herein to the contrary, Developer acknowledges that the DDA is an “authority” for purposes of GORA and that this Development Agreement and confidential information received from Developer that is covered hereby, including, but not limited to, any proprietary materials, will be considered public records and will be subject to disclosure under GORA, except for information falling within one of the exemptions therefrom. The DDA is required to and shall comply with all Applicable Laws, including GORA, in relation to any records, documents and information related to the DDA's dealings and relationship with Developer. Nothing herein shall be deemed or construed as a limitation on the DDA's discretion relating to compliance with the GORA or other Applicable Law. Nevertheless, the DDA will use reasonable efforts to provide notice to Developer of any request under GORA but shall have no liability arising out of its failure to do so in a timely manner or at all. The provisions of this Section shall survive the consummation of the transactions contemplated by this Agreement, and any expiration or earlier termination of this Agreement.

**Article X**  
**RESTRICTIVE COVENANTS; EXCLUSIVE DEALINGS.**

**Engaging in Competitive Business.** During the Restricted Period, neither Developer, nor any Person controlling, controlled by or under common control with Developer, shall directly or indirectly through an affiliate or otherwise, as sole proprietor, corporation, partner, member, employee, shareholder, principal, agent, consultant, manager, advisor, director, officer, control person, operator, or in any other capacity or manner whatsoever without the DDA’s prior written consent in its sole discretion:

(a) engage in the business of constructing or developing (or assisting another Person in the construction or development of) a Hotel Facility, in whole or in part, in the Restricted Territory; or own (beneficially or of record), Control or have any interest whatsoever (including as an equity holder, lender or otherwise) in any enterprise that shall engage in the activities set forth in this Subsection (a); or

(b) own, manage, lease, operate, Control or participate in any manner in the ownership, management, leasing, operation or control of, or have any financial interest in, or aid or assist anyone else in the conduct of (including through the provision of consulting services to) an operating Hotel Facility in the Restricted Territory; or own (beneficially or of record), control or have any interest whatsoever (including as an equity holder, lender or otherwise) in any enterprise that shall engage in the activities set forth in this Subsection (b).

**Further Agreements and Acknowledgements.**

(a) Developer expressly agrees that the DDA has a legitimate and protectable business interest justifying the existence of the restrictions contained in Section 10.01 (collectively, the “**Restrictive Covenants**”).

(b) The DDA and Developer have carefully considered the nature and extent of the Restrictive Covenants and the rights and remedies conferred upon the DDA under the Restrictive Covenants and hereby expressly acknowledged and agreed that: (i) the Restricted Period and the Restricted Territory and all other restrictions contained in the Restrictive Covenants are designed to protect the legitimate and protectable business interests of the DDA; (ii) the Restrictive Covenants are reasonable and necessary and fully required to protect the legitimate and protectable business interests of the DDA; (iii) the Restrictive Covenants impose a reasonable restraint upon Developer; (iv) any violation of the terms of any of the Restrictive Covenants could have a substantial detrimental effect on the DDA's business and the Project; (v) the Restrictive Covenants do not stifle Developer's inherent skill and experience; (vi) the Restrictive Covenants would not operate as a bar to Developer's means of support; and (vii) Developer expressly acknowledges that Developer shall have the ability to practice Developer's business outside of the Restricted Territory and that the Restrictive Covenants shall not inhibit Developer's ability to practice Developer's business or profession.

(c) Developer agrees and acknowledges that any damages resulting from any violation of the Restrictive Covenants would be difficult to ascertain and, for that reason, Developer expressly agrees that, in the event of any violation any of the Restrictive Covenants, the DDA shall be entitled to preliminary and permanent injunctive relief restraining any such violation of any or all of the Restrictive Covenants either directly or indirectly, from any court of competent jurisdiction, without proof of actual damages, and without the need to post any bond, and such right of the DDA shall be cumulative and in addition to any other remedy which the DDA may desire or seek. Developer expressly waives the defense in an action in equity that the DDA's legal remedy is adequate and hereby agrees that the DDA would suffer irreparable harm if Developer violates the Restrictive Covenants. Developer acknowledges that the Restrictive Covenants have been called to the attention of Developer and Developer understands that the Restrictive Covenants are a material covenant of this Development Agreement and that the DDA would not have entered into this Development Agreement without the existence of the Restrictive Covenants.

(d) If a court having jurisdiction over this Development Agreement shall determine that the Restricted Period or the Restricted Territory or any other restriction contained in any of the Restrictive Covenants is overbroad or is unenforceable for any reason whatsoever, it is the intention of the DDA and Developer that the Restrictive Covenants shall not thereby be terminated or void, but shall be deemed amended to the extent required by such court to render them valid and enforceable to the greatest extent permissible by such court and the applicable law and public policy.

(e) If Developer violates any Restrictive Covenant, and the DDA or any of the DDA's successors and assigns (including the Trustee) brings legal action for injunctive or other relief, such party bringing the action shall not, as a result of the time involved in obtaining the relief, be deprived of the benefit of the full period of such Restrictive Covenant, unless a court of competent jurisdiction holds that such Restrictive Covenant is not

enforceable in whole or in part. Accordingly, for any time period that Developer is in violation of any Restrictive Covenant, such time period shall not be included in calculating the Restricted Period.

(f) The DDA and all successors and assigns of the DDA, including the Trustee and the Beneficial Owners of the Bonds and all successors and assigns of the Trustee, are third-party beneficiaries of the Restrictive Covenants. The Restrictive Covenants are intended for the benefit of, and may be enforced by the DDA, the DDA's successors and assigns and the Trustee and its further assigns.

(g) The existence of any claim or cause of action by Developer against the DDA, whether predicated upon this Development Agreement or otherwise, shall not constitute a defense to the enforcement of the Restrictive Covenants by the DDA, the DDA's successors and assigns and the Trustee and its further assigns, but shall be litigated separately.

## **Article XI** **MISCELLANEOUS**

**Notices.** All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service, or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below, or by email as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice; each notice given by email shall be deemed given as of the date of the email transmission, provided a hardcopy of the emailed notice is given the following business day by one of the other means of delivery permitted in this Section. Upon a desired change of address by any party, such party shall give written notice of such change to the other parties in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

If to the DDA:

Downtown Development Authority of Lawrenceville,  
Georgia  
70 S. Clayton Street  
P.O. Box 2200  
Lawrenceville, GA 30046  
Attention: Lee Merritt, Chairman  
Tel: (770) 617-0295  
Email: [LMerritt@OfficeWarehouse.com](mailto:LMerritt@OfficeWarehouse.com)

And to:

Downtown Development Authority of Lawrenceville,  
Georgia  
70 S. Clayton Street  
P.O. Box 2200  
Lawrenceville GA 30046

Attention: Barry Mock, Executive Director  
Tel: (678) 407-6392  
Email: [barry.mock@lawrencevillega.org](mailto:barry.mock@lawrencevillega.org)

With a copy to (which shall not constitute notice):

Mahaffey Pickens Tucker, LLP  
1550 North Brown Road, Suite 125  
Lawrenceville, GA 30043  
Attention: Christopher D. Holbrook  
Tel: (770) 232-0000  
Email: [cholbrook@mptlawfirm.com](mailto:cholbrook@mptlawfirm.com)

If to Developer:

Northpointe Hospitality Management & Development, LLC  
c/o Northpointe Hospitality Management  
5019 West Broad Street, Suite M239  
Sugar Hill, GA 30518  
Attention: Greg Winey  
Email: [Gwiney@northph.com](mailto:Gwiney@northph.com)

With a copy to (which shall not constitute notice):

Morris, Manning & Martin LLP  
1600 Atlanta Financial Center  
3343 Peachtree Road NE  
Atlanta, GA 30326  
Attention: Daniel R. Weede, Esq.  
Tel: (404) 495-3680  
Email: [dweede@mmmlaw.com](mailto:dweede@mmmlaw.com)

and

HSR Development Services

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Attention: Harvey Rudy  
Tel: (404) 725-5356  
Email: [harvey@hsrds.com](mailto:harvey@hsrds.com)

If to the Trustee:

U.S. Bank Trust Company, National Association  
2 Concourse Parkway, Suite 800  
Atlanta, GA 30328-5588  
Attention: Corporate Trust Department  
Tel: (404) 898-8831  
Email: [zacchaeus.buckner@usbank.com](mailto:zacchaeus.buckner@usbank.com)

**Consents and Approvals.** All consents and approvals and waivers required or asserted hereunder shall be in writing, signed by the party from whom such consent, approval, waiver or notice is requested. Nothing herein shall affect the requirement for any consent or approval required under the Indenture.

**Cooperation.** Developer shall cooperate with the DDA promptly, as and when reasonably requested by the DDA, in order to assist the DDA and the Trustee in the performance of their respective duties, responsibilities and obligations hereunder, including executing and delivering documents, certificates or instruments reasonably necessary for the DDA or the Trustee to perform their respective duties, responsibilities and obligations hereunder.

#### **Section XI.04 Assignment.**

(a) **DDA Assignment.** The DDA shall have the right to convey, transfer or assign this Agreement or its rights, duties or obligations hereunder, in whole or in part, as expressly contemplated in the Assignment of Contracts (as defined in the Indenture), and to the City or any other tax-exempt entity without the consent of Developer so long as such transferee expressly assumes this Agreement in writing and a copy of the same is provided to Developer. Upon such conveyance, transfer or assignment, the DDA shall be released of all further obligations as to this Agreement or the rights, duties or obligations so conveyed, transferred or assigned as long as such assignee assumes all of the DDA's obligations under this Agreement as a condition to the conveyance, transfer or assignment. Promptly upon any assignment by the DDA, the DDA shall give notice thereof to Developer and each lender together with an address for notices of such assignee.

(b) **Developer Assignment.** This Agreement shall not be assignable by Developer, either directly or indirectly, without the prior written consent of the DDA, which consent shall not be unreasonably withheld.

**Interpretation.** Where appropriate to the context, words of one gender include all genders, and the singular includes the plural and vice versa. References to this Development Agreement shall include a reference to all Recitals, Schedules and Exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time. References to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time. References to Applicable Law shall mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time, including rules and regulations promulgated thereunder. The words "include" or "including" mean "including, without limitation," or "including, but not limited to," whether or not they are followed by such phrases or words of like import. Whenever in this Development Agreement the



DDA covenants to “cause” any Person to take any action, it is expressly understood and agreed that the DDA shall not be required to take any affirmative action and the DDA's obligation to so “cause” shall be fully satisfied solely by (i) including reasonable and appropriate provisions in the Indenture or other agreement providing for the obligation of such Person to take such action, and (ii) not knowingly and actively preventing such action from being taken.

**Amendments.** This Development Agreement may not be amended or modified except in a written instrument signed by Developer and the DDA; provided that if any such modification would adversely affect the interests of the Trustee or the Beneficial Owners of the Bonds, no such modification shall be effective without the prior written consent of the Trustee (who may rely upon the direction of the Beneficial Owners of the Bonds in providing any such consent). Developer shall make the representation and warranties set forth in Section 8.01 in connection with any such amendment or modification.

**Complete Agreement.** This Development Agreement, together with all schedules and exhibits attached hereto and made part thereof, supersedes all previous agreements, understandings and representations made by or between the Parties; provided that in the event of any conflict between the provisions hereof and the provisions of the Indenture, the Indenture shall control.

**Governing Law.** This Development Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to conflicts of law principles. All claims of whatever character arising out of this Development Agreement, or under any statute or common law relating in any way, directly or indirectly, to the subject matter hereof or to the dealings between the DDA and any other Party hereto shall be brought in any state or federal court of competent jurisdiction located in Gwinnett County, Georgia. By executing and delivering this Development Agreement, each Party irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (ii) waives any defense of forum non conveniens; (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by the DDA of any prior notice or procedural requirements applicable to actions or claims against or involving governmental units and/or political subdivisions of the State of Georgia that may exist at the time of and in connection with such matter.

**Dispute Resolution.**

(a) **Mediation.** Any controversy, dispute or claim arising out of or relating to this Agreement or the performance, enforcement, breach, termination or validity of this Agreement, shall first be submitted to nonbinding mediation and subsequently shall be determined by litigation. The venue for mediation shall be in Gwinnett County, Georgia. The mediation process shall be administered by a mutually acceptable mediator selected in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (the “AAA”) or the guidelines of the State of Georgia Alternative Dispute Resolution. The cost of the mediator will be split equally between the parties unless they agree otherwise in writing.

(b) Attorneys' Fees. Should either Party employ an attorney to enforce any of the provisions hereof, or to protect its interest in any matter arising under this Agreement, or to specifically enforce this Agreement, the party that prevails shall be entitled to recover from the other party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended in connection therewith. In case litigation is instituted arising directly or indirectly out of this Agreement, the losing party shall pay to the prevailing party its reasonable attorney's fees, together with all expenses, which may reasonably incur in taking such action, including, without limitation, expert witness fees. If an appeal is taken from any judgment or decree of the trial court, the losing party shall pay the prevailing party in the appeal its reasonable attorney's fees in such appeal. Such sums shall be in addition to all other sums provided by law.

(c) Continued Performance; Withholding of Payment. So long as the DDA shall continue to make payments for undisputed amounts due under this Agreement, neither the occurrence of an event nor the pendency of a claim shall constitute grounds for the suspension of performance by the Developer of its obligations under this Agreement, in whole or in part; provided, however, that: (i) the DDA shall be entitled to withhold payment of disputed amounts due under this Agreement (and Developer shall continue performing its obligations under this Agreement unabated despite such payments being withheld) during the occurrence of any Developer-Indemnified Liabilities or violation of any material Applicable Law in connection with the performance of Developer's obligations under this Agreement (as determined by the DDA in its commercially reasonable judgement); and (ii) the DDA shall be entitled to withhold payment of disputed amounts due under this Agreement (and Developer shall continue performing its obligations under this Agreement unabated despite such payments being withheld) for any cause other than those set forth in clause (i) above for up to 60 days while the Parties attempt to resolve the payment of disputed amounts through mediation in accordance with Section 11.09(a), and if the parties are unable to resolve the dispute through mediation, Developer shall be entitled to suspend performance under this Agreement if the DDA has not made payment of such disputed amounts, provided that such 60-day deadline for mediating the payment dispute shall be tolled day-for-day for any delay that the mediator determines in its reasonable discretion is attributable to Developer's failure to negotiate any such dispute diligently and in good faith.

Severability. In case any one or more of the provisions contained herein shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid provision shall be deemed severable, and shall not affect the validity or enforceability of any other provisions of this Development Agreement, all of which shall remain fully enforceable.

Captions and Headings. The captions and headings used herein are solely for convenience, and shall not be deemed to constitute a part of the substance of the Agreement for purpose of its construction.

Change of Control.

(a) During the Term of this Development Agreement, Developer will not permit or consent to a Change in Control of Developer without the consent of the DDA, which consent shall not be unreasonably withheld.

(b) A Change of Control prior to Final Completion of the Project will be an event of default under the Development Agreement unless the DDA consents to the Change of Control prior to the Change of Control taking place.

(c) “**Change of Control**” means that:

(1) [[\_\_\_\_\_] [and [\_\_\_\_\_]]] ([each, a] “**Northpointe Owner**”) and any other Northpointe Owner approved pursuant to Subsection (d) below, except as a result of the death, disability or retirement of any one or more of them, but subject to compliance with Subsection (d), below, [collectively] cease to own a majority of the ownership interests in and control the decision making of (i) \_\_\_\_\_, a \_\_\_\_\_ [limited liability company], the sole member of Developer (“**Developer Sole Member**”); or

(2) Developer Sole Member ceases to directly or indirectly own a majority of the ownership interests in and Control Developer.

(d) If one or more Northpointe Owners who are natural persons die, become disabled, or retire and, but for compliance with this Subsection (d) such death, disability, or retirement would constitute a Change of Control under subsection (c)(1) above, Developer must notify Trustee in writing within ninety (90) days of such occurrence. Unless waived in writing by Trustee, the deceased or retired Northpointe Owner shall be replaced by an individual or entity approved by the Trustee within one hundred eighty (180) days.

**Section XI.13 Assignment to the Trustee under the Assignment of Contracts; Exercise of Remedies by Trustee.**

(a) Developer acknowledges (i) that the DDA, pursuant to the Assignment of Contracts, shall assign to the Trustee, for the benefit of the Beneficial Owners of the Bonds, its rights, remedies, powers and privileges hereunder and (ii) that the Trustee may further assign such rights, remedies, powers and privileges to the extent contemplated by the Indenture. Developer agrees that the Trustee, as the assignee of the DDA, shall, subject to the terms of the Indenture, have the right to enforce the indemnification provisions hereof that expressly reference the Trustee, and Developer agrees to cooperate fully with the Trustee in the exercise of such rights and remedies. Developer further agrees to give the Trustee copies of all notices it is required to give to the DDA hereunder.

(b) Developer further acknowledges that if the Trustee exercises its remedies under the Assignment of Contracts, the Trustee may assume and become a party to this Development Agreement in its sole discretion.

**No Construction Against Preparer.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or

judicial authority by reason of such Party's having or being deemed to have prepared or imposed such provision.

**Time is of the Essence.** The Parties agree that this Agreement was entered into with the understanding that time is of the essence. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled Business Day.

**Police/Regulatory Powers.** DDA cannot, and hereby specifically does not, waive or relinquish any of the City's regulatory approval or enforcement rights as they may relate to regulations of general applicability which may govern the subject matter of this Agreement. Nothing in this Agreement shall create or be deemed to create an affirmative duty of the DDA to abrogate the City's sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, and state laws and regulations. In addition, nothing herein shall be considered the approval or issuance of a development order or zoning by agreement, or both.

**Further Assurances.** The Parties shall perform such other acts, and shall execute, acknowledge and deliver such other instruments, documents and other materials as the other Party may reasonably request in order to effectuate the transactions contemplated by this Agreement. All of the documents executed by the Parties shall be duly authorized, legal, valid and binding obligations of the Party executing same. The Parties shall cooperate, including without limitation, executing any other documents, following the Effective Date, as reasonably necessary to effectuate the intent of all terms and conditions set forth in this Agreement. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

**Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which, together, shall constitute one and the same instrument. Facsimile or .pdf electronic copies of this Agreement signed by a Party shall be binding and enforceable as if the same were an executed original.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Development Agreement as of the Effective Date.

**DOWNTOWN DEVELOPMENT AUTHORITY  
OF LAWRENCEVILLE, GEORGIA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NORTHPOINTE HOSPITALITY  
MANAGEMENT & DEVELOPMENT, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Schedule 3.08(b)**

**Contract addendum to be attached to (and incorporated in) all Specified Contracts**

**CONTRACT ADDENDUM**

1. This contract addendum (this “**Addendum**”) shall become a part of the \_\_\_\_\_ Agreement (the “**Agreement**”) by and between \_\_\_\_\_ (“**Contractor**”) and NORTHPOINTE HOSPITALITY MANAGEMENT & DEVELOPMENT, LLC (“**NorthPointe**”) on behalf of, and as the authorized representative of, DOWNTOWN DEVELOPMENT AUTHORITY OF LAWRENCEVILLE, GEORGIA (“**DDA**”) for professional services defined therein and required by DDA to develop a 120+ room hotel with 5,000 square feet of meeting space (the “**Hotel**”), retail space (the “**Retail**”), and a three-tiered parking garage to serve the Hotel and Retail and the downtown business district of the City of Lawrenceville, Georgia (the “**Parking Deck**”; and together with the Hotel and Retail, collectively, the “**Project**”) and the Agreement shall be amended as specifically set forth in this Addendum. In the event of any conflict between the terms of this Addendum and the terms of the Agreement, the terms of this Addendum shall control, otherwise, all of the provisions of the Agreement shall remain in full force and effect as stated in the Agreement. Any defined terms, which are not otherwise defined in this Addendum, shall have the meanings set forth in the Agreement.
2. To the extent Contractor generates any documents (including without limitation shop drawings, schedules, etc.) for the Project (“**Contractor Documents**”), such Contractor Documents will be deemed a “work for hire” product and DDA shall be deemed the owner of such Contractor Documents and shall have the right to use the Contractor Documents on the Project, including without limitation completion of the Project if this Contract is terminated for any reason. To the extent it is later determined that any Contractor Documents are not a “work for hire” product, the parties agree to treat any Contractor Documents as if they are a “work for hire” product. Contractor agrees to take any action necessary to transfer any and all intellectual property rights it may have with respect to any Contractor Documents to DDA. Contractor further represents and warrants that the use of any such Contractor Documents does not infringe upon the intellectual property rights of any third party and Contractor agrees to indemnify, defend and hold harmless the DDA and NorthPointe and their members, officers, agents and employees from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including but not limited to reasonable attorneys' fees and paralegals' fees, arising out of or resulting from the use of any Contractor Documents. The terms of this Section shall survive the termination of the Agreement.
3. DDA (or NorthPointe on behalf of the DDA) may terminate the Agreement (without fee, penalty, or other damages payable by DDA) upon written notice to Contractor. Upon such termination DDA shall pay Contractor all accrued fees due Contractor and reimbursements authorized under the Agreement that are due and owing through the effective date of termination.

4. If any action is brought to enforce the terms and conditions of the Agreement, the prevailing party in such action shall be awarded its reasonable attorney's fees and costs expended in prosecuting and/or defending the subject action.
5. The scope of work, including anticipated required permits, is based on Contractor's past experience. Contractor has included all services reasonably inferred from the requirements of the scope of work section of this Agreement.
6. Notwithstanding anything herein to the contrary, DDA and NorthPointe shall have no indemnification obligations of Contractor.
7. Notwithstanding anything herein to the contrary, if DDA (or NorthPointe on behalf of the DDA) asserts a good faith dispute with Contractor concerning Contractor's services, the DDA shall be permitted to pay the undisputed portion of Contractor's services, while withholding that portion of sums representing the amount in dispute. As long as DDA continues to make payment with respect to the undisputed portion of Contractor's services, Contractor shall be required to continue providing services with respect to the undisputed portion of its contract services.
8. Neither the DDA nor NorthPointe shall be responsible for any bodily injury, death or loss or damage to property damages suffered by Contractor and Contractor hereby \_\_\_waives of all rights that the Contractor may have against DDA or NorthPointe for any bodily injury, death or loss or damage to property at the Project.
9. Contractor shall, at all times, indemnify and save harmless DDA and NorthPointe, and their respective officers, agents, and employees on account of any claims, damages, losses, litigation, expenses, counsel fees, and compensation arising out of any claims, damages, personal injuries, property losses and/or economic damages sustained by or alleged to have been sustained by any person or entity, but only to the extent caused by the acts, omissions, or negligence of the Contractor, its agents, employees, or subcontractors in connection with the project. Contractor shall not be responsible for any damages caused by any act or omission whereby DDA committed a willful act, or gross negligence.
10. If applicable, along with each invoice for payment submitted by Contractor to DDA, Contractor shall provide DDA with an electronic CAD drawing file representing the most up to date version of Contractor's design documents and specifications.
11. If applicable, at all times hereto, Contractor shall use only qualified personnel, experienced in the work and services to be performed. Contractor shall use licensed design professionals whenever necessary.
12. Contractor shall issue DDA and NorthPointe written notification within five (5) calendar days of discovering any facts that would require additional services, or increase the cost of Contractor's services, or the cost of construction of the project. Said notification is for the purpose of allowing NorthPointe, on behalf of DDA, to take such action as is reasonably necessary to mitigate damages and control project related costs.

13. Contractor shall have sole responsibility for all other obligations to or for its employees arising from or connected with employment, including but not limited to, paying any and all salary, wages, commissions, fringe benefits and other remuneration, for paying any and all Social Security taxes, state and federal unemployment taxes, employment taxes and all other taxes and governmental assessments, and for paying all workers' compensation insurance and benefits. Contractor shall comply with all applicable laws regarding its employees, including, without limitation, compliance with the State of Georgia's E-Verify Private Employer Requirements.

14. PERSONS EMPLOYED, RETAINED OR ENGAGED BY CONTRACTOR, OR ANY PERMITTED SUBCONTRACTOR OF CONTRACTOR, TO PERFORM ANY SERVICES WITH RESPECT TO THE PROJECT SHALL IN EVERY INSTANCE BE EMPLOYEES OF [NAME OF CONTRACTOR OR ANY PERMITTED SUBCONTRACTOR OF SUCH CONTRACTOR] AND UNDER NO CIRCUMSTANCES SHALL ANY INDIVIDUAL EMPLOYED AT ANY TIME OR IN ANY CAPACITY IN RESPECT OF THE DEVELOPMENT SERVICES OR THE PROJECT, THE CONDUCT OF BUSINESS AND OPERATIONS OF THE PROJECT, OR ANY CONSTRUCTION, MAINTENANCE OR OPERATION THEREOF BE CONSIDERED EMPLOYEES OF THE DOWNTOWN DEVELOPMENT AUTHORITY OF LAWRENCEVILLE, GEORGIA, FOR ANY PURPOSE WHATSOEVER.

15. THE DDA'S LEGAL AND FINANCIAL RESPONSIBILITIES UNDER THIS CONTRACT ARE LIMITED TO FUNDS AVAILABLE FOR SUCH USES FROM THE SOURCES PROVIDED THEREFOR UNDER THE BOND FINANCING. CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE DDA IS NOT LIABLE OR OBLIGATED IN ANY MANNER TO PAY OR CAUSE TO BE PAID TO CONTRACTOR ANY FEES, COSTS, PENALTIES, DAMAGES, LIQUIDATED DAMAGES, EXPENSES INDEMNITIES, OR REIMBURSEMENTS OR TO MAKE ANY OTHER PAYMENTS IN CONNECTION WITH THE HOTEL OR ANY OTHER MATTER WITHIN THE SCOPE OF OR CONTEMPLATED BY THIS AGREEMENT EXCEPT ONLY TO THE EXTENT THAT MONIES ARE AVAILABLE FOR SUCH PURPOSE AS EXPRESSLY SET FORTH IN THE INDENTURE AND THEN ONLY TO THE EXTENT THAT FUNDS ARE AVAILABLE EXPRESSLY FOR SUCH PURPOSE UNDER THE PRIORITY OF PAYMENTS SET FORTH IN THE INDENTURE ("AVAILABLE MONIES").

16. Contractor shall, at all times, carry the following insurance:

1. General Liability (including contractual liability)

\$2,000,000 General Aggregate (per project)

\$1,000,000 Products/Completed Operations

\$1,000,000 Each Occurrence

\$1,000,000 Personal/Advertising Injury (any one person or organization)

\$ 50,000 Fire Damage (any one fire)



\$ 5,000 Medical payments (any one person or occurrence)

2. Automobile Liability

\$2,000,000 Bodily Injury/Property Damage combined single limit  
Statutory Personal Injury Protection. Coverage should also include  
owned, hired, non-owned and leased automobiles, garage-keepers  
liability, statutory uninsured and underinsured motorist's liability

3. Workers' Compensation

In amounts required by Applicable Law

4. Employer's Liability

\$100,000 Each Accident  
\$500,000 Disease – Policy limit  
\$100,000 Disease – Each Employee

5. Umbrella Liability

Umbrella Liability insurance in an amount not less than \$5,000,000 each occurrence and \$5,000,000 aggregate coverage, and listing the DDA as additional named insured. The policy must include, at a minimum, coverage for bodily injury, property damage and advertising/personal injury arising from premises, operations, independent contractors, products completed operations, and liability assumed under an insured contract both oral and written. This coverage may provide for a deductible not to exceed \$25,000 per incident.

Contractor shall deliver to the DDA and NorthPointe certificates, or at the request of the DDA or NorthPointe certified copies, of the policies evidencing the insurance required above before the commencement of the work and from time to time at the request of the DDA or NorthPointe for as long as the Contractor is required to maintain such insurance. Each policy shall: (1) require the insurer to notify the DDA and NorthPointe at least 30 days before any cancellation, nonrenewal or material modification of the policy; (2) be primary and without right of contribution of any other insurance carried by or on behalf of the DDA; (3) be written on an occurrence (and not "claims made") basis; (4) list the DDA and the Developer as additional insureds, except professional liability and worker's compensation insurance; and (5) waive all rights of subrogation against the DDA and or NorthPointe. Upon the DDA's receipt of any notice of cancellation, nonrenewal or material modification of a policy, the Contractor and subcontractors shall,

within ten (10) days thereafter, procure other policies of insurance that are acceptable to the DDA and similar in all respects to the policy or policies about to be canceled or altered.

**Schedule 5.01(a)**

**Developer Fees**

1. Developer Fees:           \$1,200,000.00
  
2. Developer Fees Payment Schedule: Subject to Section 3 below:
  - (a)     \$240,000 to be paid upon the later to occur of (x) closing of the Bond Financing, and (y) execution of the Construction Contract; and
  
  - (b)     the remaining \$960,000 to be paid in equal monthly installments on the first day of each month over the course of the Construction Schedule for the Project.
  
3. Construction Delays:
  - (a)     Notwithstanding Section 2 above, if the Architect at any time determines that (i) the construction of the Project has fallen behind the Construction Schedule by more than 60 days, or (ii) the Project Costs are in excess of the Project Budget (subject to any Change Orders), and such delay or overage results from a default in the performance of Developer's obligations under this Agreement (as determined by mediation in accordance with Section 11.09 hereof), then 40% of the Management Fee then or in the future due to be paid shall not be due and payable until and unless the Architect determines that the construction of the Project is no longer more than 60 days behind the Construction Schedule and/or the Project Costs are not in excess of the Project Budget (subject to any Change Orders), as applicable.
  
  - (b)     Notwithstanding Section 3(a) above, if the Project is completed after the completion date set forth in the Project Schedule without exceeding Project Budget (taking into account available contingencies and Change Orders), all Unpaid Developer Fees then due shall become due and payable upon the issuance of the certificate of occupancy for the Project and once all liens related to the construction of the Project have been extinguished or bonded over.

## EXHIBIT A

### **Index of Defined Terms**

“**AAA**” has the meaning set forth in Section 11.09.

“**A/E Team**” has the meaning set forth in Section 3.01(d).

“**Applicable Law(s)**” shall mean all existing and future laws (including common laws), rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any Governmental Authority, and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including, without limitation, (i) those pertaining to health, safety or the environment, (ii) those pertaining to the design, construction, use, operation or occupancy of the Property or any portion thereof, and (iii) the Georgia Local Government Public Works Construction Law, codified at Chapter 91 of Title 36 of the Official Code of Georgia Annotated).

“**Architect**” means the architect of record for the Project, Ponder & Ponder, Architects, or any replacement thereof.

“**Architect’s Contract**” means that certain Agreement between Ponder & Ponder, Architects, and Owner, dated September 19, 2018, as revised on March 18, 2019, on April 18, 2019, on October 26, 2022, on July 7, 2024, and on July 18, 2023.

“**Architectural Services Agreement**” means the Architect’s Contract and any other agreement with respect to architectural services entered into with respect to the Project, collectively or as applicable.

“**Assignment of Contracts**” means that certain Assignment of Contracts, dated as of [month 1] 1, 2024, from the DDA to the Trustee, including the Direct Agreement, dated as of [month 1] 1, 2024, among the Developer, the DDA, and the Trustee.

“**Authorized Authority Representative**” means the Chairman, Vice-Chairman or Secretary of the DDA and any other person authorized by resolution of the DDA to act as an Authorized Signatory under the Indenture or otherwise with respect to the Bonds or the Project, which Person(s) shall be acting solely in its representative capacity on behalf of the DDA and not individually.

“**Authorized Signatory(ies)**” means any officer, director or other person designated by resolution of the Board of Directors of the DDA (whether such resolution is adopted in connection with the issuance of the Bonds or otherwise) or by the DDA’s Bylaws as an “Authorized Signatory” or similar title empowered to, among other things, execute and deliver on behalf of the DDA, the Indenture and the Bonds.

“**Beneficial Owner**” means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including Persons holding Bonds through nominees, depositories or other intermediaries).

“**Bond Counsel**” means a firm of attorneys, selected by the DDA, whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized.

“**Bond Financing**” means the issuance of the Bonds.

“**Bonds**” has the meaning set forth in the Recitals hereof.

“**Business Day**” means any day other than a Saturday, Sunday, a legal holiday on which banking institutions located in the State of Georgia are authorized by law or executive order to remain closed.

“**Change Order**” means any amendment or modification of the Construction Contract.

“**City**” has the meaning set forth in the Recitals.

“**Conceptual Design Documents**” means the conceptual design documents of the Project illustrating, among other things, the site plan, configuration, scale and relationship of the Project components as further described in the Architectural Services Agreement.

“**Construction Contract**” means that certain [Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, AIA Documents A102™-2017, between Construction Contractor and [DDA], dated [\_\_\_\_\_].

“**Construction Contractor**” means [\_\_\_\_\_].

“**Construction Documents**” means the plans, architectural drawings, and specifications prepared by the Architect and its consultants setting forth in detail the requirements for construction of the Project.

“**Construction Schedule**” has the meaning set forth in Section 3.01(a)(2).

“**Control**” means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of a Person, and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise. The terms “controlled by,” “controlling” and “under common control with” shall have the respective correlative meaning thereto.

“**DDA Default**” means the occurrence and continuation of any of the following: (i) [to the extent that funds under the priority of payments in the Indenture are available therefor], the Trustee, having received a written request therefor approved by the DDA, fails to pay (A) within seven (7) Business Days after the date such payment is to be made under this Agreement, any

Developer Fees due to Developer, or (B) on or before the later of seven (7) Business Days after the date such payment is to be made under the Indenture or the date on which any such payment is due to a third party, any Request submitted in accordance with the Indenture; or (ii) the DDA's failure to cure any other material breach of any of its obligations hereunder within thirty (30) days after receiving written notice alleging a default and reasonably specifying the alleged material breach has been given by Developer to the DDA; provided, however, that if a particular default cannot reasonably be cured within such thirty day (30) day cure period, the DDA shall have an additional forty-five (45) days to cure any such default so long as the DDA begins efforts to cure within such period and pursues such cure with reasonable diligence.

**“DDA Indemnified Person(s)”** means, individually or collectively, as applicable, (i) the DDA, and (ii) each and all of the DDA's past, present and future directors, board members, governing members, trustees, commissioners, elected or appointed officials, officers, employees, Authorized Signatories, attorneys, contractors, subcontractors, agents and advisers (including counsel and financial advisers), and each of their respective heirs, successors and assigns.

**“DDA's Insurance”** has the meaning set forth in Section 5.01.

**“DDA Termination Notice”** has the meaning set forth in Section 7.01(a).

**“Design Development Documents”** means the documents developed during the Design Development Phase consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and other essential systems as further described in the Architectural Services Agreement.

**“Design Development Phase”** has the meaning set forth in the Architectural Services Agreement.

**“Design Documents”** means the Conceptual Design Documents, the Schematic Design Documents, the Design Development Documents, and the Construction Documents (as such may be amended from time-to-time consistent with this Agreement and the other Project Documents).

**“Developer Fees”** has the meaning set forth in Section 4.01(a).

**“Developer-Indemnified Liabilities”** means, subject to the restriction and limitations contained in Section 5.04(a), Liabilities arising from any acts or omissions of Developer, its agents, representatives, contractors or employees constituting gross negligence, willful misconduct, malice or fraud and/or criminal activity in connection with the services of Developer, its agents, representatives, contractors (including, without limitation, any subcontractors) or employees arising out of or relating to the Project Development Work.

**“Developer Sole Member”** has the meaning set forth in Section 11.12(c).

**“Developer Termination Default”** has the meaning set forth in Section 7.01(b).

**“Developer Standard”** has the meaning set forth in Section 1.04(a).

“**Development Services**” has the meaning set forth in Section 3.01(a).

“**Disbursement Agreement**” means the Construction Disbursement and Monitoring Agreement, dated as of [month 1] 1, 2024, among the DDA, the Developer, the Construction Monitor named therein, and the Trustee.

“**Earned Fees**” has the meaning set forth in Section 7.02.

“**Event of Loss**” has the meaning set forth in Section 5.03(a).

“**Event of Total Loss**” has the meaning set forth in Section 5.03(a).

“**Final Completion**” means the date set forth in the Construction Contract on which all of the Work has been completed in accordance with the Design Documents, the DDA has received all local governmental approvals for the use and occupancy of the Project, including, without limitation, a certificate of occupancy, and all of the other requirements and certifications set forth under the Construction Contract for completion of the Work have been satisfied (including, without limitation, completion of all punch list items).

“**Fiscal Year**” means the twelve (12) month period terminating on July 1 of each year, or any other annual accounting period hereafter selected and designated by the DDA as its Fiscal Year.

“**Franchise Agreement**” has the meaning set forth in Section 1.07.

“**Franchisor**” has the meaning set forth in Section 1.07..

“**Fund**” or “**Funds**” means any one or more, as the case may be, of the separate special funds established by the Indenture.

“**Fundamental Reps and Warranties**” has the meaning set forth in Section 7.01(b)(10).

“**Governmental Authority**” means any agency, authority, board, branch, division, department or similar unit of any federal, state, county, city, town, district, or other governmental entity or unit having jurisdiction over or validly imposing requirements on the applicable Person or the Project, but excluding the DDA.

“**Hotel Facility**” means a hotel, motel, inn or similar structure providing lodging.

“**Hotel Manager**” means the person engaged by the DDA to conduct the day-to-day operations of the Hotel, initially the Developer.

“**Improvements**” mean all buildings, fixtures, streets, curbs, sewers, drainage and flood control structures, sidewalks, fences, utilities, landscaping, signs and other structures or improvements of every kind and nature included in the Project and that exist, at any time, and any and all alterations, replacements, additions, upgrades or substitutions related thereto on, above and below the Property or any portion thereof.

“**Indenture**” means that certain Trust Indenture, dated as of [Month] 1, 2024, between the DDA and the Trustee, as the same may be amended from time to time.

“**Industry Practices**” has the meaning set forth in Section 1.04(b).

“**Liabilities**” means any and all fees, costs and charges, losses, damages, claims, actions, liabilities and expenses of any conceivable nature, kind or character (including, without limitation, reasonable fees and expenses of attorneys, accountants, consultants and other experts, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) in any way related to the Bonds or the Project to which the Indemnified Parties, or any of them, may become subject under any statutory law or regulation (including federal or state securities laws and regulations and federal tax laws or regulations) or at common law or otherwise.

“**Material Adverse Effect**” means (a) if a Person other than the DDA is referenced (i) a material adverse effect upon the business, operations, properties, assets or condition (financial or otherwise) of such other Person, or (ii) the cessation or material impairment of the ability of the DDA or such other Person to perform its non-monetary obligations under any Bond Document, or (b) if the Project is referenced, a material adverse effect upon the business, operations, assets or condition (financial or otherwise) of the Project, or upon the ability of the Project to be in compliance with the terms of the Indenture. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event does not of itself have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then-occurring events and existing conditions would result in a Material Adverse Effect.

“**Non-Material Contract**” has the meaning set forth in Section 3.08(b).

“**Party**” and “**Parties**” has the meaning set forth in the Preamble hereof.

“**Permits**” means licenses, approvals, permits, certificates, variances, authorizations, entitlements, registrations, and the like required by Applicable Law or any Governmental Authority having jurisdiction over the DDA or the Project for the performance of any construction of the Project and for any and all activities of the Developer in or about the Project.

“**Plans and Specifications**” has the meaning set forth in Section 3.01(e).

“**Project**” has the meaning set forth in the Recitals.

“**Project Budget**” has the meaning set forth in Section 3.01(e).

“**Project Development Work**” means all work required to be performed pursuant to the Project Documents to design, permit, develop, construct and furnish the Project in accordance with the Project Scope.

“**Project Documents**” means the Architect’s Contract, the Construction Contract, the Franchise Agreement, and all other agreements between the DDA and other Persons or professionals providing materials or services under agreements executed in connection with the Project Development Work.



“**Project Scope**” means the scope of the Project as set forth in the Design Documents.

“**Project Team**” means (i) the Architect, the engineer who prepares the plans and specifications (if different than the Architect), and such other design and design-related consultants as may be appropriate, (ii) the Construction Contractor and the general contractor’s subcontractors, suppliers, and materialmen, and (iii) such other consultants and professionals that perform consulting services for the Project, including without limitation, testing laboratories and surveyors.

“**Request**,” means, when used with reference to the DDA, a written certificate, statement, request, direction, requisition or order signed on behalf of the DDA by an Authorized Authority Representative (or, if required by the express provisions of the Indenture to be made by the Developer, then by an officer or employee authorized to sign on its behalf).

“**Restricted Period**” means the period of time during which the DDA or the City or any of its instrumentalities, divisions or units, owns the Project or any portion thereof.

“**Restricted Territory**” means the geographic area within the city limits of the City.

“**Restrictive Covenants**” has the meaning set forth in Section 10.01.

“**Schematic Design Documents**” means the schematic design documents of the Project illustrating, among other things, the scale and relationship of the Project components which also contain square footage for the building interior spaces, building exterior spaces (including plazas, balconies, decks and other similar components), as well as major architectural and interior finishes, as further described in the Architectural Services Agreement.

“**Specified Contract**” has the meaning set forth in Section 3.08(b).

“**Substantial Completion**” means the stage in the progress of the Work when the Project or designated portion thereof is sufficiently complete in accordance with the Construction Contract so that the DDA can occupy and operate the Project for its intended use; provided, however, the Work or any designated portion thereof will not be considered Substantially Complete until all Project systems and equipment included in the Project are safely operational and commission as designed, all designated or required governmental inspections and certifications (including, but not limited to, all applicable certificates of occupancy) for the Work have been made and posted, and the Certificate of Substantial Completion shall be submitted to and accepted by [the DDA] in accordance with the Construction Contract and this Development Agreement.

“**Substantial Completion Date**” means the date set forth in the Construction Contract when the Project or designated portion thereof is sufficiently complete in accordance with the Construction Contract so that the DDA can occupy and operate the Project for its intended use, subject only to the completion of minor punchlist items.

“**Taking**” has the meaning set forth in Section 5.03(a).

“**Term**” has the meaning set forth in Article II.

“**Termination Fee**” has the meaning set forth in Section 7.02.

“**Trustee**” means U.S. Bank Trust Company, National Association, a national banking association.

“**Trustee Indemnified Person(s)**” individually or collectively, as applicable, (i) the Trustee, and (ii) the officers, directors, agents, attorneys and employees of the Trustee.

“**Unpaid Developer Fees**” means any properly accrued but unpaid Developer Fees.

“**Work**” means all work to be performed pursuant to the Construction Contract to construct the Project in accordance with the Design Documents.