

**OPERATING COVENANT AGREEMENT**

**by and between**

**CITY OF CLAREMONT,**

**a municipal corporation**

**(“City”)**

**and**

**SUSHIL CAPITAL LLC,**

**a California limited liability company**

**(“Owner”)**

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**LIST OF ATTACHMENTS**

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| Attachment No. 1 | - | Legal Description of the Site |
| Attachment No. 2 | - | Site Plan                     |
| Attachment No. 3 | - | Memorandum of Agreement       |

## **OPERATING COVENANT AGREEMENT**

This **OPERATING COVENANT AGREEMENT** ("Agreement") is dated for identification purposes as of \_\_\_\_\_, 2026, and is entered into by and between the **CITY OF CLAREMONT**, a municipal corporation of the State of California ("City"), and **SUSHIL CAPITAL LLC.**, a California limited liability company ("Owner"). The City and the Owner are hereinafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties." Capitalized terms are defined in Section 1.

### **RECITALS**

A. Owner is the owner of that certain real property located in the City of Claremont, County of Los Angeles, State of California, more particularly described in the Legal Description and as shown on the Site Plan (the "Site"). If the boundaries of the Site are changed by one or more lot splits or subdivisions after the approval of this Agreement, then the Site shall become the legal parcel that contains (or the legal parcels that contain) the Project, as defined below in the next Recital.

B. Owner desires to operate a four-story Residence Inn by Marriott (the "Hotel") containing not less than one hundred-twenty (120) "Guestrooms" (as defined below), as more specifically described herein (collectively, the "Project"). The Project is to conform to those provisions of the Southwest San Jose Specific Plan as approved by the City Council on September 27, 2016, as amended from time to time (the "Specific Plan"), which includes zoning for the Site; the environmental clearance(s) undertaken in connection with the Specific Plan and the City's approval of the Project; and the design of the Hotel as approved by the City's Architectural Commission on March 29, 2023 by its Resolution No. 2023-02 (the "Site Plan Resolution") and further by the City as "Site Plan Review" (as described below) (the Specific Plan, the Site Plan Resolution, the Site Plan Review, and the associated environmental clearances are collectively referred to herein as the "Entitlements").

C. The City has determined that the operation and maintenance of the Hotel of this level of quality in the City will serve the needs of the City's businesses, visitors, and residents as well as promote and enhance the economy of the City. Among other things, the Hotel will promote tourism by providing attractive and desirable facilities and experiences that will serve the needs of visitors and contribute to the growth and expansion of tourism opportunities in the City and provide employment opportunities for the residents of the City. The City anticipates the operation and maintenance of the Hotel of this level of quality will raise average daily rates for all hotels in the City.

D. Consistent with the above, the City desires to incentivize operation of a Residence Inn by Marriott or other hotel brand determined by the City to be of comparable or better quality in the City through the Operating Period of this Agreement. In exchange for the City sharing a portion of the Transient Occupancy Tax revenues generated by the Hotel with Owner, Owner has agreed to operate and maintain the Hotel in accordance with heightened quality standards outlined herein, which exceed the quality standards in the Entitlements.

E. The City Council has found and determined this Agreement is: (i) consistent with the City's economic goals and strategies; (ii) consistent with the preservation and protection of the public health, safety, and/or welfare of the community; (iii) beneficial by virtue of generating jobs and increasing property tax, sales tax, and Transient Occupancy Tax to the City; (iv) beneficial by enhancing the marketability and attractiveness of the South Claremont area; and (v) in accord with the public purposes and provisions of applicable State and local laws and requirements.

F. In order to create the financial feasibility necessary to allow the operation of the Hotel at the heightened level of quality, the Owner has requested certain financial assistance from the City. The Parties have determined that the Hotel cannot operate and be maintained at the heightened level of quality for the Operating Period without the assistance provided by this Agreement. This Agreement will only provide assistance to the Owner which is necessary to fund the feasibility gap created by the heightened quality standards the City desires to require for the Project.

G. The City Council finds and determines that this Agreement will provide economic incentives to encourage the operation and maintenance of the Hotel within the City which will, in turn: (i) provide desirable and attractive experiences for both residents and tourists; (ii) promote job creation opportunities in the City; (iii) encourage other property owners to upgrade and enhance their properties; (iv) maintain and enhance a consistent business-friendly environment; (v) generate a net increase in Transient Occupancy Tax revenue to the City which will assist in the revitalization of neighborhoods and support the public services provided by the City to its residents, visitors, and businesses; and (vi) increase the economic competitiveness of the City.

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

#### 1. **DEFINITIONS**

“**Affiliate**” means any Person directly controlling, controlled by, or under common control with another Person, which, in the case of a limited liability company, shall include each of the managing members thereof. The term “control”, as used in the immediately preceding sentence, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

“**Agreement**” means this Operating Covenant Agreement and all amendments or modifications hereto.

“**Applicable Transient Occupancy Tax Rate**” means the rate of Transient Occupancy Tax levied and collected pursuant to Chapter 3.28 of Title 3 of the Claremont Municipal Code as of the Effective Date of this Agreement (i.e., ten percent).

“**Approved Exceptions**” are defined in Section 5.1.

“**Breach**” is defined in Section 7.1.

“City”, as defined in the first paragraph hereof, means the City of Claremont, a municipal corporation, and all successors and assigns of the City of Claremont.

“City Bodies” is defined in Section 8.10.

“City Disbursement Conditions” is defined in Section 4.5.

“City Manager” means the City Manager of the City or his/her/their designee.

“City Rules and Powers” is defined in Section 8.10.

“County” means the County of Los Angeles.

“Covenants” is defined in Section 6.4.

“CPI” means the Consumer Price Index-All Urban Consumers for the Los Angeles-Orange-Riverside County Average, Subgroup “All Items” (1982-1984 = 100) as established by the Bureau of Labor Statistics of the U.S. Department of Labor.

“Day” or “Days” is defined in Section 8.8.

“Default(s)” is defined in Section 7.1.

“Designated Product” means Residence Inn by Marriott or such other product name as may hereafter be approved by the City Manager on behalf of the City at his or her discretion. A Designated Product means the distinctive name of the Hotel that, by virtue of its distinctive name, is identified by specific physical and operational features so that guests are assured that they will receive a specified level of service and amenities.

“Effective Date” means the latter of the date on which this Agreement is attested by the City Clerk of the City of Claremont after approval by the City Council and execution by both the City and Owner.

“Entitlements” is defined in Recital B. Entitlements shall also include future amendments to the Entitlements, if any, as may hereafter be approved or amended by the City.

“Governmental Requirements” means all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Owner, or the Site, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City’s Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, all governmental requirements applicable to public works, including without limitation the payment of prevailing wages in compliance with Labor Code Section 1720, *et seq.*, keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements

of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto (“Public Works Statutes”), the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Sections 51, *et seq.*

“Guestroom(s)” means a room or suite within the Hotel intended for Transient Occupancy by guests for compensation.

“Hazardous Material” or “Hazardous Materials” means and include any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, the Regional Water Quality Control Board, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a “hazardous waste,” “acutely hazardous waste,” “restricted hazardous waste,” or “extremely hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos and/or asbestos containing materials; (vii) lead based paint, pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, *et seq.*, specifically §§ 4821-4846, and the implementing regulations thereto, or any lead based or lead products; (viii) polychlorinated biphenyls, (ix) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. Section 6903); (xi) Methyl tertiary Butyl Ether; (xii) defined as “hazardous substances” pursuant to Section 1.1 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. Section 9601); and/or (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities below attainment levels identified in one or more of the enactments identified above as Governmental Requirements, including those products and amounts as are customarily used in the construction, maintenance, rehabilitation, management, and operation of hotels and/or commercial developments or associated buildings and grounds, or typically used in commercial activities in a manner typical of other comparable commercial developments, or substances commonly ingested by a significant population, including without limitation alcohol, aspirin, tobacco and saccharine.

“Hotel” is defined in Recital B.

“Hotel Operator” means a franchisee, manager, lessee, or licensee with whom the Owner has a contract to operate the Hotel pursuant to a franchise, management, lease, or license arrangement.

“Hotel Operating Agreement” means the Agreement between the Hotel Operator and the Owner governing the operation of the Hotel described in Section 2.4(b) or an amended or substantially similar agreement, as determined by the City Manager in consultation with the City Attorney.

“Incentive Payments” are the payments to be made by the City to the Owner pursuant to Sections 4 through 4.5 hereof.

“Include” or “Including” is defined in Section 8.8.

“Key Person” means Ashok Patel.

“Legal Description” means the legal description of the Site attached hereto as Attachment No. 1. If the boundaries of the Site are changed by one or more lot splits or subdivisions after the approval of this Agreement, then Owner and the City Manager may amend this Agreement administratively to replace Attachment No. 1 with the new legal description.

“Losses and Liabilities” as used herein shall mean and include all claims, causes of action, liabilities, losses, damages (including, without limitation, penalties, fines and monetary sanctions), injuries, expenses, charges, penalties or costs of whatsoever character, nature and kind, including reasonable attorney’s fees and costs incurred by the indemnified party with respect to counsel of its choice, whether to property or to person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected, latent or patent.

“Maintenance Standards” is defined in Section 6.2.

“Management Entity” is defined in Section 2.4(a).

“Maximum Amount” means that amount representing the sum of all Incentive Payments made by the City to the Owner pursuant to Sections 4 through 4.5 of this Agreement, but not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000.00).

“Memorandum of Agreement” means an instrument in a form of Attachment No. 3. The Owner and City Manager are authorized make non-substantive changes to Attachment No. 3.

“Notice of Breach” is defined in Section 7.3.

“Opening of the Hotel” means the day on which the Hotel opens for business to the general public.

“Operating Period” is the period commencing on the Opening of the Hotel and terminating ten (10) years after the Opening of the Hotel.

“Operating Year” means: (i) as to the initial operating year, that period commencing as of the Opening of the Hotel and ending on the first anniversary thereof (the “Initial Anniversary”), and (ii) each subsequent annual period (as measured from the Initial Anniversary or annual anniversary thereof) which occurs during the Operating Period.

“Owner” means Sushil Capital LLC.

“Ownership and/or Control” means and includes, without limitation, more than fifty percent (50%) of all voting rights and all beneficial ownership rights and interests, including without limitation, all such rights with respect to all classes of stock, interests in partnerships, limited liability company membership interests and/or beneficial interests under a trust, as may be applicable to the type of entity which is making the particular Transfer in question. Ownership and/or Control shall initially be held by an entity of which the Key Person exercises Ownership and/or Control of the Owner.

“Party” or “Parties” means the City and Owner, as applicable.

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

“Project” is described in Recital B and the Entitlements.

“Publicly Traded Stock Transfers” is defined in Section 2.3(e).

“Qualified Hotel Operator” is defined in Section 2.4(b).

“Representatives” as used herein shall mean the agents, employees, members, independent contractors, Affiliates, principals, shareholders, officers, directors, council members, board members, committee members, and planning and other commissioners, partners, attorneys, accountants, representatives, and staff of the referenced entity and the predecessors, heirs, successors and assigns of all such Persons.

“Site” means that certain real property, which property is more particularly described in the “Legal Description” attached hereto as Attachment No. 1.

“Site Plan” means the Site Plan approved by the Site Plan Resolution, as such approval may be modified from time to time by the City acting at its discretion. A copy of the Site Plan is enclosed as Attachment No. 2 hereto; provided that in the event of conflict between Attachment No. 2 and the Site Plan adopted by the City under the Site Plan Resolution or subsequent Site Plan Review, such Site Plan as so adopted by the City shall control over Attachment No. 2 hereto. If the City approves amendments to the Site Plan Resolution and/or the Site Plan, then Owner and the City Manager may amend this Agreement administratively to replace Attachment No. 2 with the new Site Plan.

“Site Plan Resolution” means Resolution No. 2016-12 of the Architectural Commission of the City of Claremont, as amended from time to time. A copy of the Site Plan Resolution is on file with the City as a public record.

“Site Plan Review” means that process undertaken by the City in connection with the Site Plan Resolution and, if applicable, such additional or further review as may become applicable in the event of proposed modifications to the Site Plan.

“Specific Plan” is defined in Recital B.

“State” means the State of California.

“Temporary Closure” means a period of time, no longer than reasonably necessary for repairs, reconstruction, or resolution following a casualty event or remodeling approved by the City of maintenance issues, but in no event longer than one hundred (100) days.

“Transfer” as used herein shall mean and include any direct or indirect conveyance, transfer, sale, assignment, lease, sublease, license, concession, franchise, gift, management agreement, operating agreement, hypothecation, mortgage, pledge, encumbrance, or the like of this Agreement, the Site, the Project and/or Ownership and/or Control of Owner. “Transferee” shall mean and refer to the person or entity receiving any Transfer.

“Transfer Documents” is defined in Section 2.1.

“Transient Occupancy” means a stay of less than thirty (30) consecutive calendar days.

“Transient Occupancy Tax” or “TOT” means the transient occupancy tax levied and collected pursuant to Chapter 3.28 of Title 3 of the Claremont Municipal Code, as it may be amended from time to time.

“Transient Occupancy Tax Rate” or “TOT Rate” means the rate of Transient Occupancy Tax levied and collected pursuant to Chapter 3.28 of Title 3 of the Claremont Municipal Code, as it may be amended from time to time.

“TOT Floor” means Two Hundred Fifty Thousand Dollars (\$250,000.00) for the initial Operating Year, increased on each anniversary of the Opening of the Hotel by the CPI increase for All Urban Consumers for the Los Angeles-Riverside-Orange County region for the preceding Operating Year.

## 2. RESTRICTIONS ON TRANSFER

2.1 Prohibition Against Assignment or Change of Ownership or Control. The restrictions contained in this Section 2.1 upon any Transfer to any Transferee are imposed because the qualifications and identity of Owner are of particular concern to the City, and it is because of those qualifications and identity that the City has entered into this Agreement with Owner. Owner hereby agrees that no voluntary or involuntary successor to any interest of Owner under a Transfer not permitted by this Agreement shall acquire any rights pursuant to this Agreement, and any purported Transfer of this Agreement in violation of the provisions set forth herein shall be of no legal force or effect. The Parties specifically affirm City’s reliance upon the qualifications and identity of Owner to undertake and perform the items set forth in the Agreement in exchange for City’s assistance, which assistance Owner intends to employ to generate additional income from

the Project, and that Owner's qualifications and performance under this Agreement were specifically bargained for by the City in exchange for City's assistance.

At any time Owner desires to effect a Transfer requiring the consent of City under this Agreement, Owner shall request consent from the City in writing and shall submit to City all proposed agreements and documents memorializing, facilitating, and evidencing the proposed Transfer (collectively, the "Transfer Documents"). City agrees to notify Owner in writing of its decision with respect to Owner's request for consent to such Transfer, as promptly as possible, and, in any event, not later than thirty (30) days after City receives the Owner's written request for consent to the Transfer and all of the Transfer Documents. In the event City consents to a proposed Transfer pursuant to this Section 2.1, then such Transfer shall not be effective unless and until City receives copies of all executed and binding Transfer Documents, which Transfer Documents shall conform in all material respects to the proposed Transfer Documents originally submitted by Owner to City, and a certificate, addressed to City, setting forth the representation of Owner, and, in the case of a Transfer of Owner's interest under this Agreement, of Transferee, stating that all requirements of this Section 2.1 applicable to such Transfer have been met. If such request is denied, City shall state the reasons for such disapproval in their notice of denial of Owner's request.

Notwithstanding anything in this Agreement which is or appears to be to the contrary, Owner agrees that, in addition to all other City rights with respect to Transfers subject to City approval under this Agreement, the City shall have the right to refuse to consent to any Transfer if Owner is then in Breach or Default of any of its obligations under this Agreement; provided that if such Breach or Default is a non-monetary Breach or Default for which the cure has commenced and which will be cured on or prior to the effectiveness of such proposed Transfer, City may, rather than withholding consent to the proposed Transfer solely because of such Breach or Default, condition such consent upon the complete cure of such Breach or Default on or prior to the effectiveness of the Transfer; and, provided further, that City's waiver of this restriction on Transfer shall not be construed as a waiver of any Breach or Default or of City's remedies arising therefrom, nor shall any Transfer in any way restrict or limit City's rights and remedies arising from any Breach or Default hereunder, whether such Breach or Default occurred prior to or after such Transfer.

The provisions of this Section 2.1 shall apply to each successive Transfer and Transferee in the same manner as initially applicable to Owner under the terms set forth herein.

2.2 Restrictions on Transfer of the Agreement, the Site, the Project and/or Ownership and/or Control of Owner.

(a) Except as set forth in Section 2.3, following the Effective Date and continuing until the expiration or termination of the Operating Period, Owner shall not Transfer all or any part of its interest in or rights under this Agreement, and/or any part of its interest in or rights to the Site and/or the Project, or any part thereof, and/or Ownership and/or Control of Owner, without the City's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Owner may not Transfer the right to receive the Incentive Payments separate and apart from the Project.

The failure of the City to consent to any proposed Transfer of Owner's rights under or interest in the Agreement, the Site, or the Project, or any part thereof, pursuant to this Section 2.2, shall be deemed to be reasonable if the City determines that (x) the proposed Transferee is not (i) financially capable and/or responsible, (ii) of good standing and repute, and/or (iii) able to demonstrate the capability and experience to successfully manage developments of the size and character of the Project and/or (y) the City has a reasonable basis for concluding that the proposed Transfer would have a material adverse impact upon the value, operation or quality of the Project or upon the timing or quantum of benefits to be received by the City in accordance with the implementation of this Agreement. In the event of any disapproval by the City based on the foregoing criteria, the City shall, in connection with such disapproval, identify in writing the reasons for the City's disapproval, and, in the event of Owner's disagreement with such determination, such dispute shall be resolved by a judicial reference proceeding under Section 7.5.1 below. Upon any approved assignment of this Agreement or the Project (other than for security purposes), and/or Ownership and/or Control of Owner, said assignee shall expressly assume the liability of Owner for the obligations of Owner under this Agreement to the extent of said assignee's interest, and, upon a Transfer of all of its interest in the Project which was approved by the City pursuant to this Section 2.2, the transferring owner shall be released from further liability hereunder with respect to events occurring or obligations first arising after the date of such sale.

2.3 Permitted Transfers. Notwithstanding the provisions of Sections 2.1 and 2.2 to the contrary, the following transfers shall be permitted without City consent ("Permitted Transfers"); provided that Owner shall nonetheless provide City with the Transfer Documents with respect thereto prior to the proposed Transfer:

(a) Transfers of Ownership and/or Control resulting from the death or mental or physical incapacity of an individual shareholder or member of Owner;

(b) Transfers of Ownership and/or Control in trust for the benefit of a spouse, children, grandchildren, or other immediate family members of any individual owner of Owner;

(c) The granting of easements to public or quasi-public entities in connection with operation of the Project in accordance with this Agreement;

(d) Public trading of stock or securities in any corporation or partnership if the stock or securities of such party are traded publicly on a national stock exchange or in the over-the-counter market and if the price of such stock or securities are regularly quoted in a recognized national quotation service, provided this exception shall not apply if the Transfer is the result of the original issuance of such stock or security interests or if the Transfer at issue is being undertaken for the purpose and with the intent of circumventing the restrictions on Transfer otherwise applicable under this Section 2.3 (the foregoing Transfers described in this Section 2.3 are referred to herein as "Publicly Traded Stock Transfers");

(e) Transfer of Ownership by foreclosure, bankruptcy, or court order due to a default on any loan.

2.4 Qualified Hotel Operator.

(a) Except as to a Qualified Hotel Operator, Owner shall not retain or authorize any Person to perform any management and/or supervisory functions (“Management Entity”) with respect to the operation of the Project without the prior written consent of City, which consent shall not be unreasonably withheld.

(b) Owner shall retain a reputable, responsible, and experienced operator (“Qualified Hotel Operator”) to supervise the operation of the Hotel. In complying with this provision, Owner has entered into a certain Hotel Operating Agreement (i.e. franchise agreement) with The Residence Inn by Marriott dated June 11, 2021 to serve as the Qualified Hotel Operator (the “Hotel Operating Agreement”). Owner shall provide such Hotel Operating Agreement to the City and the Hotel Operating Agreement shall not be amended or terminated without advance written approval of the City Manager. The Qualified Hotel Operator shall operate and manage the Hotel pursuant to the Hotel Operating Agreement and in strict compliance with all of the requirements hereof and thereof. Should the original Qualified Hotel Operator, or its successor, cease to manage the Hotel for any reason, a replacement Qualified Hotel Operator shall be secured within ninety (90) days after the occurrence of such an event, so that throughout the Operating Period, the Hotel will at all times be managed by a Qualified Hotel Operator. If the Hotel is operated under a franchise agreement, the identity of the franchisor and the terms of the franchise agreement shall be reasonably approved in writing by City to ensure consistency of the proposed franchise with City standards and the Hotel Operating Agreement. Without the prior written consent of City, which consent shall not be unreasonably withheld or delayed, Owner shall not materially amend any Hotel Operating Agreement or any permitted successor or transferee thereof with respect to the Site, nor shall Owner permit the Qualified Hotel Operator to alter any trade names or logos respecting the Hotel or perform any other act that may alter or impair the nature, character, or quality of the Hotel below the stricter of the City’s requirements and standards, and the requirements and standards set forth in the Hotel Operating Agreement. Notwithstanding anything to the contrary above, Owner may terminate its employment of a particular Qualified Hotel Operator for the Hotel without being required to secure City’s consent to said termination, but Owner shall thereafter be obligated to replace said Qualified Hotel Operator as provided above. Unless City’s prior written consent is obtained, which consent shall not be unreasonably withheld, Owner shall not permit the Transfer of more than forty-nine percent (49%) of the ownership and/or control in the aggregate, taking all transfers into account on a cumulative basis, of said original Qualified Hotel Operator or any permitted Transferee during the period it is supervising operation of the Hotel, excluding Transfers consisting of Publicly Traded Stock Transfers.

2.5 Termination of Restrictions on Transfer. The restrictions of this Section 2 shall terminate upon the expiration or termination of the Operating Period and shall not be construed or understood to terminate or modify any of the provisions of Section 6.4 hereof with respect to the Project or any restrictions applicable to the Project under any documents recorded against the Site or any portion thereof pursuant hereto.

3. [INTENTIONALLY OMITTED.]

#### 4. INCENTIVE PAYMENTS

In order to induce the Owner to operate the Project in accordance with the requirements of this Agreement, including the heightened quality standards outlined herein, the City has agreed to provide to Owner the incentive described in Section 4.2 upon the terms set forth herein.

##### 4.1 [Intentionally Omitted.]

##### 4.2 Incentive Payments for Hotel.

(a) Monthly Incentive Payments. Upon the fulfillment of all of the City Disbursement Conditions set forth in Section 4.5 of this Agreement, the City shall pay monthly Incentive Payments to the Owner within thirty (30) days of the City's receipt of Transient Occupancy Taxes from the Hotel. The amount of each monthly Incentive Payment shall be equal to fifty percent (50%) of the Transient Occupancy Tax collected and remitted to the City from the Hotel during the applicable calendar month (or partial month) based on the lesser of: (i) the Applicable Transient Occupancy Tax Rate (10%); or (ii) if the City has reduced the TOT Rate after the Effective Date of this Agreement, the then-current Transient Occupancy Tax Rate.

(b) TOT Floor. In no event shall the amount of TOT generated by the Hotel and received by the City during any Operating Year be less than the TOT Floor for such Operating Year. If the City determines the amount of TOT generated by the Hotel and received by the City during any Operating Year was less than the TOT Floor for such Operating Year, the City shall provide Owner with written notice of the amount of the deficit. Upon receipt of this written notice, Owner shall provide the City with a refund of the deficit within thirty (30) days. As an alternative to the Owner providing a refund payment, the City Manager and Owner may agree to allow the City to deduct the amount of the refund from future Incentive Payments the City owes to the Owner. In the absence of such an agreement, Owner's failure to provide a timely refund of the deficit is a Breach of this Agreement.

4.3 Termination of Incentive Payments. Incentive Payments shall terminate upon the first to occur of: (i) the receipt by Owner of the Maximum Amount; (ii) Owner fails to maintain compliance with the City's approval of the Project, including one or more of the lobby areas, recreation areas, room design and furnishings, common area furnishings and decorations, dining area design and fixtures, and meeting room design and appearance; (iii) expiration of the Operating Period; (iv) the Hotel ceases to operate consistent with City standards and/or the Hotel Operating Agreement for reasons other than Temporary Closure; (v) the Hotel ceases to operate consistent with City standards and/or the Hotel Operating Agreement for a reason which would constitute a Temporary Closure where Owner has failed to notify the City, in writing, of any Temporary Closure within ten (10) days of the initial occurrence of the onset of such condition or conditions that cause such a Temporary Closure.

In addition, the making of Incentive Payments for any Operating Year shall be subject to the continued satisfaction of the City Disbursement Conditions for the corresponding Operating Year. In addition, no Incentive Payment shall be made if the Opening occurs after January 1, 2027.

4.4 No Pledge. The making of Incentive Payments pursuant to this Agreement shall not be deemed to constitute a pledge of any particular funds by the City, but instead constitutes a

contractual obligation of the City which is expressly contingent upon the satisfaction of the City Disbursement Conditions throughout each applicable Operating Year.

4.5 City Disbursement Conditions. Notwithstanding anything in this Agreement which is or appears to be to the contrary, in no event will City pay any Incentive Payments to Owner unless all of the following conditions precedent (collectively, the “City Disbursement Conditions”) are satisfied on the date of the applicable disbursement and throughout the applicable calendar month: (i) the Owner has provided written notice to the City Manager of the Opening of the Hotel, such that, all Parties are on notice of the start of the Initial Operating Year and the start and end dates of each subsequent Operating Year; (ii) this Agreement is in full force and effect and has not been terminated; (iii) the Hotel has operated continuously under the name of a Designated Product with appropriate authorization of the holder of the trademark, trade name, or franchise for such Designated Product; (iv) the Hotel has operated continuously in compliance with the City standards and the Hotel Operating Agreement (to the extent any of these standards or requirements conflict, the Hotel has operated continuously in compliance with the most stringent standard, as determined by the City Manager); (v) Owner has paid prior to delinquency all property taxes and assessments assessed with respect to the Site and/or improvements thereto; (vi) Owner has maintained a business license with the City and has paid all amounts required thereunder; (vii) City has received the TOT Floor for all preceding Operating Years or, subject to the approval of the City Manager, the Owner has entered an agreement to provide for a refund of TOT Floor owed for one or more preceding Operating Years; (viii) there is no Breach or Default by the Owner under this Agreement and/or the Hotel Operating Agreement which remains uncured on the date such Incentive Payment would otherwise be made to the Owner, including, without limitation, failure to operate the Hotel consistent with the stricter of any City standard, any requirement of the Hotel Operating Agreement, and/or any other Qualified Hotel Operator’s requirement; and (ix) the City has not paid the Owner the Maximum Amount.

## 5. OPERATING COVENANTS

5.1 Operating Covenants. In consideration of the Covenants of the City set forth herein, including, without limitation, the City’s covenant to make the Incentive Payments upon the terms set forth herein, Owner shall, prior to cause the Memorandum of Agreement to be recorded against the Site, providing, among other things, that the Hotel shall be operated for a period of at least ten (10) years in accordance with the requirements of this Agreement.

This Agreement shall be senior to all monetary liens and encumbrances (other than non-delinquent property taxes and assessments) and shall be junior and subordinate only to such other covenants, conditions, restrictions and exceptions as are approved by the City (the foregoing are collectively referred to as the “Approved Exceptions”). In connection with the foregoing, the Owner has obtained a preliminary report of title, together with legible copies of all documents referenced as exceptions therein, for the entire Site, prepared by Stewart Title of California, Inc. (Order No. 2227372) dated as of January 4, 2024 (the “Title Report”), and has provided a copy of the Title Report to the City. The City hereby approves, as the Permitted Exceptions, the following exceptions shown in Schedule B of such Title Report: (i) property taxes, including any assessments collected with taxes, which are a lien upon the property but not yet due and payable; and (ii) exceptions 1 through 19 and 19, inclusive. The City will have no obligation to proceed with disbursement of any Incentive Payments if the Owner fails to cause the Memorandum of

Agreement to be timely recorded against the Site subject only to the Approved Exceptions, and, in that event, City shall have the right to terminate this Agreement pursuant to Section 7.7 below, and, upon such termination, to be excused of any further obligations under this Agreement.

5.2 Compliance with Laws; Prevailing Wage Law. Owner is not required by this Agreement to undertake improvements; provided that if Owner does undertake improvements, Owner shall carry out the design, construction and operation of the Project in conformity with all applicable Governmental Requirements, including all applicable state labor standards and federal prevailing wage laws (including without limitation provisions for payment of prevailing wages in connection with all construction of the Project to the extent applicable), City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Code, the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the California Building Standards Code, Health and Safety Code Section 18900, *et seq.* Owner, including but not limited to its contractors and subcontractors, shall comply with Labor Code Section 1720, *et seq.*, and its implementing regulations, regarding the payment of prevailing wages (the “State Prevailing Wage Law”) and, if applicable, federal prevailing wage law (“Federal Prevailing Wage Law”) and, together with State Prevailing Wage Law, “Prevailing Wage Laws”) with regard to the construction of the Project, but only if and to the extent such sections are applicable to the operation of the Project. Owner shall be solely responsible for determining and effectuating compliance with the Prevailing Wage Laws, and City makes no final representation as to the applicability or non-applicability of any applicable Prevailing Wage Laws to the Project, or any part thereof. Owner hereby releases from liability, and agrees to indemnify, defend, assume all responsibility for and hold City and its officers, employees, agents and representatives, harmless from any and all claims, demands, actions, suits, proceedings, fines, penalties, damages, expenses resulting from, arising out of, or based upon Owner’s acts or omissions pertaining to the compliance with the Prevailing Wage Laws for the Project.

Without limitation as to Section 8.9 of this Agreement, Owner shall indemnify, protect, defend and hold harmless City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or “increased costs” (including reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Owner of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and/or federal prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Owner to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development of the Project, including, without limitation, any and all public works (as defined by applicable law), Owner shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. “Increased costs,” as used in this Section 5.2, shall have the meaning

ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement.

5.3 City Reserved Discretion. This Agreement does not constitute a development agreement within the meaning of Article 2.5 of Chapter 4 of Title 7 of the California Government Code. Owner acknowledges and agrees that, if the Operating Covenant Agreement is approved by the City prior to consideration by the City of any potential future land use application, entering into the Operating Covenant Agreement does not commit the City to consider or undertake acts or activities requiring subsequent independent exercise of discretion, including, but not limited to, the approval of any development proposal (including the Project) or land use approval governing the Site where the Project is proposed. The Owner agrees that the City retains discretion on potential future actions to approve, deny, modify, and consider alternatives to a proposed project, as well as to impose adequate mitigation measures as may be required by the California Environmental Quality Act.

## 6. USE, OPERATION AND MAINTENANCE OF THE SITE

6.1 Uses and Operation. The Owner covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Owner, that during operation of the Project pursuant to this Agreement and thereafter, neither the Site nor the Project, nor any portion thereof, shall be improved, used, operated, or occupied in violation of any Governmental Requirements or the restrictions of this Agreement. Furthermore, Owner and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Site or within the Project, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Site and/or the Project, or any portion thereof. The Owner further covenants and agrees on behalf of itself and its successors and assigns to devote, use, operate and maintain the Site in accordance with this Agreement.

Notwithstanding anything to the contrary or that appears to be to the contrary in this Agreement, Owner hereby covenants, on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Owner, that Owner and such successors and assigns shall use the Site solely for the purpose of operating the Project.

6.2 Maintenance of Site; Damage or Destruction. Throughout the Operating Period, Owner shall, at its expense, maintain the Site and improvements thereon, including landscaping as well as the public right of way adjacent to the Site, in an attractive condition in accordance with the City Municipal Code, the Entitlements, the Hotel Operating Agreement, and all Governmental Requirements (the foregoing collectively constitute the “Maintenance Standards”). In the event of any damage or destruction of the Project, the Owner shall promptly commence and diligently pursue to completion the repair and reconstruction of those improvements damaged or destroyed so that they are returned to an operable whole in accordance with the Maintenance Standards at the earliest feasible date.

In the event Owner does not maintain the Site or the Project in the manner set forth herein and in accordance with the Maintenance Standards, City shall have the right to maintain such

private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to Owner. However, prior to taking any such action, City agrees to notify Owner in writing if the condition of said improvements does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Owner to cure the deficiencies. Upon notification of any maintenance deficiency, Owner shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety or graffiti at the Site, then Owner shall have forty eight (48) hours to rectify the problem.

In the event Owner fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after the period of correction has lapsed, then City shall have the right to maintain such improvements. Owner agrees to pay City such charges and costs. Until so paid, City shall have a lien on the Site for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Site. Upon recordation of a Notice of a Claim of Lien against the Site, such lien shall constitute a lien on the fee estate in and to the Site prior and superior to all other monetary liens except: (i) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; (ii) the lien or charge of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority of any such lien for costs incurred to comply with this Agreement shall date from the date of the recordation of the Notice of Claim of Lien. Any such lien shall be subject and subordinate to any lease or sublease of the interest of Owner in the Site or any portion thereof and to any easement affecting the Site or any portion thereof entered into at any time (either before or after) the date of recordation of such a Notice. Any lien in favor of City created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien describing such lien as aforesaid, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgage or beneficiary thereunder expressly subordinates his interest, of record, to such lien. No lien in favor of City created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien. Upon foreclosure of any mortgage or deed of trust made in good faith and for value and recorded prior to the recordation of any unsatisfied Notice of Claim of Lien, the foreclosure purchaser shall take title to the Site free of any lien imposed by City that has accrued up to the time of the foreclosure sale, and upon taking title to the Site, such foreclosure purchaser shall only be obligated to pay costs associated with this Agreement accruing after the foreclosure purchaser acquires title to the Site. If the Site is ever legally divided with the written approval of City and fee title to various portions of the Site is held under separate ownerships, then the burdens of the maintenance obligations set forth herein and in this Agreement and the charges levied by City to reimburse City for the cost of undertaking such maintenance obligations of Owner and its successors and the lien for such charges shall be apportioned among the fee owners of the various portions of the Site under different ownerships according to the square footage of the land contained in the respective portions of the Site owned by them. Upon apportionment, no separate owner of a portion of the Site shall have any liability for the apportioned liabilities of any other separate owner of another portion of the Site, and the lien shall be similarly apportioned and shall only constitute a lien against the portion of the Site owned in fee by the owner who is liable for the apportioned charges levied by City and secured by the apportioned lien and against no other portion of the Site. Owner acknowledges and agrees City

may also pursue any and all other remedies available in law or equity. Owner shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

### 6.3 Obligation to Refrain from Discrimination.

(a) There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion thereof or vendees of the Site. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

(b) Owner certifies and agrees that all persons employed or applying for employment by it, its Affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

6.4 Effect and Duration of Covenants. Except as otherwise expressly provided in this Agreement, the indemnities, covenants, conditions, restrictions, warranties and representations ("Covenants") established in this Agreement shall without regard to technical classification or designation, be binding upon and inure to the benefit of the successors, transferees and assigns of each of the Parties hereto, whether by merger, consolidation, sale, transfer, liquidation or otherwise and as to the Covenants of Owner, shall run with the land. Each of the Covenants is for the benefit of real property under the jurisdiction of the City and owned by City within the boundaries of the City.

City is a beneficiary of the terms and provisions of this Agreement and of the restrictions and Covenants running with the land, for and in its own right and for the purpose of protecting the interests of the community in whose favor and for whose benefit the Covenants running with the land have been provided. The Covenants in favor of the City shall run without regard to whether City has been, remains or is an owner of any land or interest therein in the Site, and shall be effective as both Covenants and equitable servitudes against the Site. City shall have the right, if any of the Covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. The

Covenants contained in Sections 5.1, 6.1 and 6.2 shall remain in effect for the Operating Period. The Covenants described in Section 6.3 shall remain in effect in perpetuity. The Covenants described in Section 5.2 shall remain in effect until the applicable statute of limitation expires with respect to the Public Works Statutes.

## 7. DEFAULTS, REMEDIES AND TERMINATION

7.1 Defaults. Occurrence of any of the following (a “Breach”) shall, after the giving of the notice required by Section 7.2, constitute a default (“Default(s)”) under this Agreement by the non performing Party:

(a) failure or delay in the due, timely and complete observance and performance of each and every condition, restriction, covenant or obligation applicable to the non-performing Party including, without limitation, the failure of a Party to comply with City standards and the Hotel Operating Agreement; or

(b) failure or delay in the due, timely and complete observance and performance of each and every condition, restriction, covenant or obligation to be observed or performed by Owner under this Agreement; or

(c) a default under any Hotel Operating Agreement which is not cured within the applicable cure period, if any, provided therein.

7.2 Right to Cure Following a Breach/Default. Unless a different cure period is expressly provided elsewhere in this Agreement, the Party whose acts or omissions to act give rise to a Breach as defined in Section 7.1 shall be entitled to cure, correct, or remedy such Breach, if (i) such defaulting Party commences curing said Breach within thirty (30) days of receipt of the Notice of Breach, as defined in Section 7.3, and (ii) such defaulting Party thereafter diligently and continuously pursues the curing of said Breach, and (iii) such defaulting Party fully completes such cure, correction or remedy within sixty (60) days of receipt of said Notice of Breach, or, if such Breach cannot reasonably be cured within said 60-day period, within such additional time as is reasonably necessary to cure such Breach, but in no event more than one hundred and fifty (150) days; provided, that (A) in the event the Breach is a failure to pay or discharge any monetary obligation hereunder when due (i.e., a monetary default), the defaulting Party shall fully complete such cure, correction or remedy within ten (10) days of receipt of the Notice of Breach and (B) in the event of a Breach under Section 7.1 (iii) above, there shall be no additional cure period under this Agreement. If a Breach is not cured within the applicable period provided above, it shall thereafter constitute a “Default”.

7.3 Notice of Breach. The non-breaching Party shall give written notice of default (“Notice of Breach”) to the non-performing Party, specifying the breach of this Agreement complained of by the non-breaching Party. Failure or delay in giving such notice shall not constitute a waiver of any breach of this Agreement.

7.4 Waiver of Breach or Default. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any rights or remedies in connection therewith or of any other rights and remedies provided by this Agreement

or by law, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7.5 Legal Actions and Remedies.

7.5.1 Institution of Legal Actions; Judicial Reference. Any of the Parties may institute legal action to enforce the provisions of Section 7.6. All actions arising under this Agreement or relating to its interpretation shall be heard by a referee of the Los Angeles County Superior Court pursuant to Code of Civil Procedure Sections 638, *et seq.* With respect to all judicial reference proceedings under this Agreement, Owner and City shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy. If Owner and the City are unable to agree on a referee within ten (10) days of a written request to do so by either Party, either Party may seek to have one appointed pursuant to Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by Owner and the City, but shall ultimately be borne by the Party who does not prevail. Any referee selected pursuant to this Section shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED WITHIN THE SCOPE OF THE JUDICIAL REFERENCE PROVISION ABOVE DECIDED BY A NEUTRAL REFEREE AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE JUDICIAL REFERENCE PROVISION OR THE STATUTES INCORPORATED THEREIN BY REFERENCE. IF YOU REFUSE TO SUBMIT TO JUDICIAL REFERENCE AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO SUBMIT UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS JUDICIAL REFERENCE PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF MATTERS INCLUDED IN THE JUDICIAL REFERENCE PROVISION TO A NEUTRAL REFEREE.



\_\_\_\_\_  
Owner's Initials

\_\_\_\_\_  
City's Initials

7.5.2 Applicable Law. The laws of the State of California applicable to agreements executed and to be performed in this state shall govern the interpretation and enforcement of this Agreement.

7.6 Limitation on Owner Remedies. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IF THE CITY COMMITS A DEFAULT UNDER THIS AGREEMENT, THE OWNER'S REMEDIES SHALL BE LIMITED TO THE RIGHT TO COMPEL PAYMENT OF ALL INCENTIVE PAYMENTS OWED. IN NO EVENT SHALL OWNER SEEK OR SHALL CITY BE LIABLE FOR ANY OTHER OR FURTHER DAMAGES,

INCLUDING, WITHOUT LIMITATION, ANY ACTUAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE. OWNER ACKNOWLEDGES THAT THE CITY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THIS LIMITATION UPON THE DAMAGES WHICH MAY BE RECOVERED FROM THE CITY IN THE EVENT OF A BREACH.

  
\_\_\_\_\_  
Owner's Initials

\_\_\_\_\_  
City's Initials

7.7 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Breach or Default or any other Breach or Default by the other Party.

7.8 Right of Inspection. City and its authorized Representatives shall have the right during business hours, upon not less than twenty-four (24) hours oral or written notice to Owner (except in the case of an emergency, the existence of which shall be determined by City in its reasonable discretion, in which event no advance notice shall be required) to enter upon the Site and/or Project for purposes of inspection and exercising its rights under this Agreement, provided that such inspections shall not unreasonably interfere with Owner's operation of the Site and/or Project. Inspection by City of the Site and/or Project is for the sole purpose of protecting the interests of the City and is not to be construed as an acknowledgment, acceptance or representation by City that there has been compliance with any plans approved pursuant to this Agreement or any terms or provisions of this Agreement, or that the Site and/or Project will be free of faulty materials or workmanship.

## 8. GENERAL PROVISIONS

8.1 Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the City and Owner shall be deemed sufficiently given if delivered to the principal offices of the City or the Owner, as applicable, by (i) personal service or (ii) express mail, federal express, or other like overnight delivery service, (iii) telecopy, if such telecopy is followed by a notice sent out on the same day by mail or overnight delivery service, or (iv) registered or certified mail, postage prepaid, return receipt requested. Such notice shall be addressed:

To City:                      City of Claremont  
   207 Harvard Avenue  
   Claremont, California 91711  
   Attention: City Manager

with a copy to:              Rutan & Tucker LLP  
   18575 Jamboree Road, 9<sup>th</sup> Floor  
   Irvine, California 92612  
   Attention: Alisha Patterson, Esq.

To Owner: Sushil Capital LLC  
1050 West Ball Road  
Anaheim, CA 92802  
Attention: Ashok Patel

Any such notices shall be deemed given on (i) actual receipt, if delivered personally, (ii) the date of actual or attempted delivery provided such attempted delivery is made on a business day, if by federal express, express mail or another like overnight delivery service, (iii) upon transmission on any business day (if prior to 5:00 p.m. in the recipient's time zone; but if after 5:00 p.m., then as of 9:00 a.m. on the next business day after such transmission) if transmitted by telecopy, if such telecopy is followed by a notice sent by mail or overnight delivery service on the same day as the telecopy transmission, or (iv) the date of actual delivery as shown by the addressee's registry or certification of receipt or the third business day after mailing, whichever is earlier, if mailed to the person to whom notice is to be given, by first class mail, registered or certified, postage prepaid, return receipt requested and properly addressed as provided above. The person and the place to which notices are to be mailed may be changed by either Party by notice to the other in accordance with this Section.

8.2 Conflict of Interest. No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

8.3 Owner's Covenants, Representations and Warranties. Owner jointly and severally covenants, represents, and warrants to City as follows:

8.3.1 Warranty Against Payment of Consideration for Agreement. Owner has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than the normal cost of conducting business and the costs of professional services such as architects, engineers, attorneys, and brokers' commissions payable in connection with the development of the Project.

8.3.2 Organization and Standing of Owner. Owner is a California corporation duly organized, qualified and validly existing and in good standing under the laws of the State of California, and duly qualified to do business in the State of California, and has all requisite power and authority to enter into and perform its obligations under this Agreement. Owner has provided to the City true and complete copies of all of its governing documents, and the percentage ownership interests reflected therein are accurate as of the date of this Agreement.

8.3.3 Licenses. Owner will obtain and maintain all material licenses, permits, consents and approvals required by all applicable governmental authorities to operate the Project.

8.3.4 Authorization And Consents. The execution, delivery and performance of this Agreement is consistent with Owner's articles of organization and operating agreement and has been duly authorized by all necessary action of Owner's managing members. All consents, approvals and authorizations of all applicable governmental authorities, other than City, and all consents or approvals of Owner's members required in connection with the execution and delivery

by Owner of this Agreement will have been obtained and delivered to the City on or before the Effective Date.

8.3.5 Due and Valid Execution. This Agreement and all other instruments to be executed in connection herewith, will, as of the date of their execution, have been duly and validly executed by Owner.

8.3.6 Tax Returns and Reports. All filings, reports and tax returns of Owner which are required to be made or filed with any governmental authority with respect to the Site or the Project have been duly made and filed, and all taxes, assessments, fees and other governmental charges upon Owner or upon the Site, which are due and payable by Owner, have been paid, other than those which are presently payable without penalty or interest, or which Owner is in good faith contesting.

8.3.7 Litigation and Compliance. To Owner's actual knowledge, there are no suits, other proceedings or investigations pending or threatened against, or affecting the business or the properties of Owner or any of its officers which could materially impair its ability to perform its obligations under this Agreement, nor is Owner or any of its officers in violation of any laws or ordinances which could materially impair Owner's ability to perform its obligations under this Agreement.

8.3.8 Default. To Owner's actual knowledge, there are no facts now in existence which would, with the giving of notice or the lapse of time, or both, constitute a "Default" hereunder, as described in Section 7.1.

8.3.9 Notice From Governing Jurisdiction. To Owner's actual knowledge, Owner has not received any notice from any governing jurisdiction of any violation of laws and ordinances with respect to the Site.

8.3.10 Adverse Conditions, Etc. To Owner's actual knowledge, there is no adverse condition or circumstance, pending or threatened litigation, governmental action, or other condition which could prevent or materially impair Owner's ability to operate the Project as contemplated by the terms of this Agreement.

#### 8.4 Insurance.

8.4.1 Liability Insurance. Prior to demolition of the existing structure on Site, Owner shall obtain and shall thereafter at all times maintain, at its sole expense, with a reputable and financially responsible insurance company that is acceptable to City, in its reasonable discretion, commercial general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy or condition of the Site, the Project thereon, or any abutting public rights-of-way, which insurance shall provide combined single limit protection, including contractual liability, of at least Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate, written on an occurrence form, naming, by endorsement, City and its respective officers, agents, representatives, volunteers, and employees as additional insureds. Provided it meets all applicable requirements set forth in this Section, a portion of such coverage may be provided pursuant to the terms of a customary umbrella coverage policy.

The insurance required by this Section 8.4 shall be carried only with responsible insurance companies licensed to do business in California. The City's minimum acceptable Best's rating of an insurer is generally A VII. The insurance required by this Section shall be nonassessable and shall contain language to the effect that (i) the policy is primary and noncontributing with any insurance or self-insurance that may be carried or maintained by City, and (ii) the policy cannot be canceled or materially changed except after thirty (30) days' notice by the insurer to City. All such insurance shall have a deductibility limit of not more than Fifty Thousand Dollars (\$50,000).

8.4.2 Property Insurance. During the Operating Period, Owner shall maintain comprehensive all-risk property insurance on the Site in an amount equal to the full replacement costs of all improvements, including equipment and contents, now or hereafter located on the Site. The form of such property insurance shall be: (i) during any construction, such coverage shall be written on an all-risk builders risk (course of construction) form, extended to include transportation risks, or (ii) during operations after substantial completion and with no gap in coverage from that provided by the builders risk insurance, such coverage shall be written on an all-risk property insurance form and shall include, without limitation, boiler and machinery coverage. The insurance carrier(s) providing such insurance shall have a rating by Bests of not less than A VII. Owner shall provide certificates evidencing such insurance to City upon request, and such insurance shall not be cancelled or modified without at least thirty (30) days prior written notice to the City. In the event of any physical damage to the Site or Project, City shall cooperate with Owner and any Mortgagee in connection with the repair and reconstruction of the Project and City shall not take any position inconsistent with repair and reconstruction of the Project.

8.5 Nonliability of City Officials; Joint and Several Liability. No City Representative shall be personally liable to the Owner, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Owner or any successor or on any obligation under the terms of this Agreement.

8.6 Inspection of Books and Records. Without limitation of any other provisions of this Agreement, City has the right to inspect (at the Owner's office, upon not less than seventy-two (72) hours' notice, and during regular business hours) the books and records of the Owner pertinent to the purposes of this Agreement.

8.7 Incorporation of Attachments. All Attachments referred to in this Agreement are hereby incorporated herein by such reference and made a part hereof.

8.8 Time of Essence: Context and Construction. Time is hereby declared to be of the essence of this Agreement and of every part hereof. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. Whenever the word "Day" or "Days" is used herein, such shall refer to calendar day or days, unless otherwise specifically provided herein. Whenever a reference is made herein to a particular Section of this Agreement, it shall mean and include all subsections and subparts thereof. The word "Include" or "Including" shall describe examples of the antecedent clause, and shall not be construed to limit the scope of such clause.

8.9 Indemnity. From and after the execution of this Agreement, Owner hereby agrees to indemnify, defend and hold harmless City and any and all City Representatives and each of them, from and against all Losses and Liabilities related directly or indirectly to, or arising out of or in connection with (i) any of Owner's acts or omissions under, related to, or in any respect connected with this Agreement and/or the ownership (or possession) and operation of the Site and/or the Project, the condition of the Site, and/or Owner's activities on the Site and/or the Project (or the activities of Owner's agents, employees, lessees, representatives, licensees, guests, invitees, successors, assigns, contractors, subcontractors or independent contractors on the Site and/or the Project), including without limitation the use or condition of the Project, (ii) the failure of Owner to pay the property, transient occupancy or other taxes, imposed on the Site and/or the Project or the operation thereof, (iii) any claim, litigation or administrative proceeding asserting that this Agreement, City's approval of this Agreement, or the Owner's actions pursuant to or in implementation hereof violate any Governmental Requirements, (iv) any claim, litigation or administrative proceeding concerning the Entitlements or this Agreement or the Prevailing Wage Statutes; or (v) any claim, litigation or administrative proceeding arising from the ownership (or possession), operation or use of the Site and/or the Project, including any claim relating to or arising from the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release on or from the Site and/or the Project of any Hazardous Materials, and any Losses and Liabilities arising from or related to any Governmental Requirements applicable to Hazardous Materials located on the Site and/or the Project; and (vi) any claim, litigation or administrative proceeding arising from this Agreement. Notwithstanding anything in this Agreement which is or appears to be to the contrary, this indemnity shall survive any termination or cancellation of this Agreement, regardless of how caused.

8.10 Police Power. Nothing contained in this Agreement shall be deemed to limit, restrict, amend or modify, nor to constitute a waiver or release of, any ordinances, notices, orders, rules, regulations or requirements (now or hereafter enacted or adopted and/or as amended from time to time) of the City, its departments, commissions, agencies and boards and the officers thereof (for the purposes of this Section 8.10, collectively referred to as "City Bodies"), including, without limitation, the Entitlements, the Specific Plan, the City's General Plan, the Claremont Municipal Code any zoning ordinances, or any duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of any City Bodies in the furtherance of the public health, welfare and safety of the community, including, without limitation, the right under law to make and implement independent judgments, decisions and/or acts with respect to planning, environmental, and development (including, without limitation, approval or disapproval of plans and/or withholding of building permits) whether or not consistent with the provisions of this Agreement, any Exhibit attached hereto, or any other documents contemplated hereby (collectively, "City Rules and Powers"). In the event of any conflict, inconsistency or contradiction between any terms, conditions, or provisions of this Agreement, the Attachments, or such other documents, on the one hand, and any such City Rules and Powers providing additional or broader rights to the City, on the other hand, the latter shall prevail and govern in each case. This Section shall be interpreted for the benefit of the City.

8.11 No Obligation to Third Parties. This Agreement shall not be deemed to confer any rights upon, nor obligate either of the Parties to this Agreement to, any person or entity not a Party to this Agreement, except that (i) with respect to a Lender owning or holding a mortgage encumbering the Site which is authorized by this Agreement, such Lender shall be entitled to the

benefit of the Lender protection rights included herein expressly for its benefit, and (ii) with respect to the statement of compliance provisions set forth in Section 8.21 below, the third parties described therein shall be entitled to rely upon the provisions expressly provided for their benefit in that Section.

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

8.13 Amendments in Writing. The provisions of this Agreement may not be amended or altered except by a written instrument fully executed by each of the Parties hereto.

8.14 Further Acts; No Deemed Approval. Each of the Parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the Parties and carry out the terms of this Agreement. City agrees not to unreasonably withhold its consent to any requested modification to the lender protection provisions of this Agreement requested by the project lender(s) financing the development of the Project, to the extent any such modification is necessary to facilitate the financing of the Project; provided, City shall not, in any event, be obligated to agree to any modification or amendment to this Agreement if it would result in any impairment of the rights or increase in the obligations and responsibilities of the City under this Agreement or any document to be executed pursuant hereto or include approval of a hotel that is not consistent with City requirements or which would materially change the Project. Except as otherwise expressly provided in this Agreement, in no event shall the failure of a Party to act within the time prescribed by this Agreement with respect to processing of any approval result in or be construed to constitute a deemed approval of any matter or item submitted to such Party for its review in accordance with the terms of this Agreement.

8.15 Severability. Should any part, term, portion or provision of this Agreement, or the application thereof to any person or circumstance be held to be illegal, invalid or in conflict with any Governmental Requirements, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

8.16 Waiver. The waiver by either Party of the breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach whether of the same or another provision of this Agreement.

8.17 Authority. Each person executing this Agreement on behalf of Owner and on behalf of City hereby represents and warrants (i) his authority to do so, and (ii) that such authority has been duly and validly conferred by that entity's governing body or board.

8.18 Enforced Delay; Extension of Times for Performance. In the event that any of the Parties to this Agreement are prevented from proceeding with any of their obligations under this Agreement by reason of events that are completely and strictly beyond that Party's control, such as supernatural causes, strikes, lockouts, earthquake, war, insurrection, riots, floods, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, unusually severe

weather, delays or inaction of independent contractors, delays caused by a shortage of materials or skilled labor due to circumstances beyond Owner's control, delays caused by actions or omissions of the City or any public or governmental entity (provided that the acts of, or failure to act by, the City shall not excuse performance by the City), litigation brought against the Site or the Project or a Party without that Party's consent, including a land use challenge, remediation of Hazardous Materials located upon the Site, or similar events which are completely and strictly beyond that Party's control, then that Party shall be entitled to an additional grace period or extension of time in which to perform the obligations whose performance is precluded by such event, equal to the period of delay caused by such event beyond that Party's control, which period shall commence to run from the time of the commencement of the cause for delay and shall terminate upon termination of that cause. A Party wishing to invoke this Section shall notify in writing the other Parties to this Agreement of that intention within thirty (30) days of the commencement of any such cause for delay and shall, at that time, specify the reasons therefor, the provisions of this Agreement that will be delayed as a result, and the period of such extension, if known, or, if not known, the party's best estimate thereof. The failure to so notify the other Parties within that period as to the cause for delay shall constitute a waiver of any right to later rely upon this Section with respect to that cause. In the event any such extension continues for more than one hundred eighty (180) days, any Party not then in Default of its obligations hereunder, shall be entitled to terminate this Agreement upon written notice to the other and, in that event, the Parties shall have no further obligations hereunder. Notwithstanding any provision of this Agreement to contrary effect, the lack of funding to operate the Project shall not constitute grounds of enforced delay under this Section 8.18.

8.19 Record of Extensions; Effect of Extension on Schedule of Performance. Any Party is also entitled, as often as reasonably required, to request any other Party to confirm in writing the then applicable deadlines for performance of each Party's obligations or the exercise of each Party's rights under this Agreement, and each Party shall, within twenty (20) days after receipt of such a written request, respond thereto. The failure of a Party to respond to a request from another Party under this Section as required above shall constitute a waiver of any right to later rely on any asserted extension(s) inconsistent with the deadlines set forth in such written request.

8.20 Administrative Extensions; Approval of Items. The City Manager or his designee is authorized to approve extensions of time hereunder (but shall have no obligation to do so) provided that:

(a) such extension is in writing and is signed by the City Manager or his designee and Owner; and

(b) no single extension of time granted under this Section shall exceed thirty (30) days and all such extensions in the aggregate shall not exceed ninety (90) days without a formal amendment hereto duly approved by the City Council.

Where City approval of any Owner submissions or requests specified in Sections 2 *et seq.* or 3 *et seq.* is required, the City Manager, or his designee, may, acting on behalf of the City, grant, in writing, such approval or, in the City Manager's sole discretion, refer such matters to the City Council for their approval or disapproval. If the City Manager, or his designee, elects to approve any Owner submissions or requests tendered pursuant to the foregoing Sections, such approval, in

order to be effective, shall be express and in writing. Once a final City approval is granted by the City Manager, or his designee, on behalf of the City, in the required written form, it may thereafter be relied upon by Owner.

8.21 Statement of Compliance. Within ten (10) days following receipt of any written request which either City or Owner may make from time to time, but no more frequently than twice annually, the other Party shall execute and deliver to the requesting Party a statement certifying that: (1) this Agreement is unmodified and in full force and effect, if such be the case, or, if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications; (2) to the knowledge of the certifying Party, there are no current Defaults under this Agreement or specifying the dates and nature of any such Defaults; and (3) any other reasonable information requested. The City Manager, or his designee, is hereby authorized to execute any certificate requested by Owner under this Section.

The Party requesting such statement shall reimburse the other Party, within ten (10) days after written request, for all actual and direct third party costs incurred by such Party in connection with preparation of such statement.

*[SIGNATURES FOLLOW ON NEXT PAGE]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**“CITY”**

**CITY OF CLAREMONT**  
a municipal corporation

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

Adam Pirrie  
City Manager

**ATTEST:**

\_\_\_\_\_  
Shelley Desautels, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Alisha Patterson  
City Attorney

**“OWNER”**

**SUSHIL CAPITAL LLC,**  
a California limited liability company

By:  \_\_\_\_\_  
Ashok Patel, President

**ATTACHMENT NO. 1**

**Legal Description of the Site**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CLAREMONT, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

A PARCEL OF LAND IN THE CITY OF CLAREMONT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING THAT PORTION OF LOT 21 OF THE NORTHEAST POMONA TRACT, AS PER MAP RECORDED IN BOOK 5 PAGE 461 OF MISCELLANEOUS RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE LAND DESCRIBED IN A DEED TO THE STATE OF CALIFORNIA, FILED ON APRIL 22, 1953 AS DOCUMENT NO. 7683-V, IN THE OFFICE OF THE REGISTRAR OF LAND TITLES AND NOW ON FILE IN SAID OFFICE OF THE COUNTY RECORDER, WITH A LINE THAT IS PARALLEL WITH AND DISTANT 50 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF ALEXANDER AVENUE "NOW INDIAN HILL BOULEVARD" AS SAID CENTER LINE IS SHOWN ON MAP OF TRACT NO. 24837 RECORDED IN BOOK 642 PAGE 44 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE ALONG SAID PARALLEL LINE NORTH 0° 09' 55" EAST, 150 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE PARALLEL WITH SAID NORTHERLY LINE, NORTH 85° 18' 08" EAST, 20.07 FEET TO A LINE THAT IS PARALLEL WITH AND DISTANT 30 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM SAID CENTER LINE;

THENCE ALONG SAID LAST MENTIONED PARALLEL LINE, NORTH 00° 09' 55" EAST, 165.95 FEET TO A LINE THAT IS PARALLEL WITH AND DISTANT 30 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF SAN JOSE AVENUE, AS SAID LAST MENTIONED CENTER LINE IS SHOWN ON SAID MAP OF TRACT NO. 24837;

THENCE ALONG SAID LAST MENTIONED PARALLEL LINE, SOUTH 85° 54' 10" WEST, 581.78 FEET;

THENCE SOUTH 4° 05' 50" EAST, 169.03 FEET; THENCE SOUTH 85° 54' 10" WEST 20 FEET;

THENCE SOUTH 4° 05' 50" EAST, 63 FEET; THENCE SOUTH 85° 54' 10" WEST, 40 FEET;

THENCE SOUTH 4° 05' 50" EAST, 89.53 FEET TO SAID HEREINBEFORE MENTIONED NORTHERLY LINE:

THENCE ALONG SAID NORTHERLY LINE, NORTH 85° 18' 08" EAST, 448.27 FEET TO A POINT DISTANT

THEREON SOUTH 85° 18' 08" WEST, 150 FEET FROM THE FIRST ABOVE MENTIONED PARALLEL LINE;

THENCE PARALLEL WITH SAID CENTERLINE OF INDIAN HILL BOULEVARD, NORTH 0° 09' 55" EAST, 150 FEET TO A LINE THAT IS PARALLEL WITH SAID NORTHERLY LINE AND WHICH PASSES THROUGH THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID LAST MENTIONED PARALLEL LINE, NORTH 85° 18' 08" EAST, 150 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE NORTHERLY FEET OF THAT PORTION OF LOT 21 OF THE NORTHEAST POMONA TRACT, IN THE CITY OF CLAREMONT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 5 PAGE 461 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, FILED ON APRIL 22, 1953 AS INSTRUMENT NO. 7683-V, IN THE OFFICE OF THE REGISTRAR OF LAND TITLES AND NOW ON FILE IN SAID OFFICE OF THE COUNTY RECORDER, WITH A LINE THAT IS PARALLEL WITH AND DISTANT 50 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF ALEXANDER AVENUE "NOW INDIAN HILL BOULEVARD" AS SAID CENTER LINE IS SHOWN ON MAP OF TRACT NO. 24837, RECORDED IN BOOK 642 PAGE 44 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE ALONG SAID PARALLEL LINE NORTH 0° 09' 55" EAST, 150 FEET;

THENCE PARALLEL WITH SAID NORTHERLY LINE, SOUTH 85° 18' 08" WEST, 150 FEET;

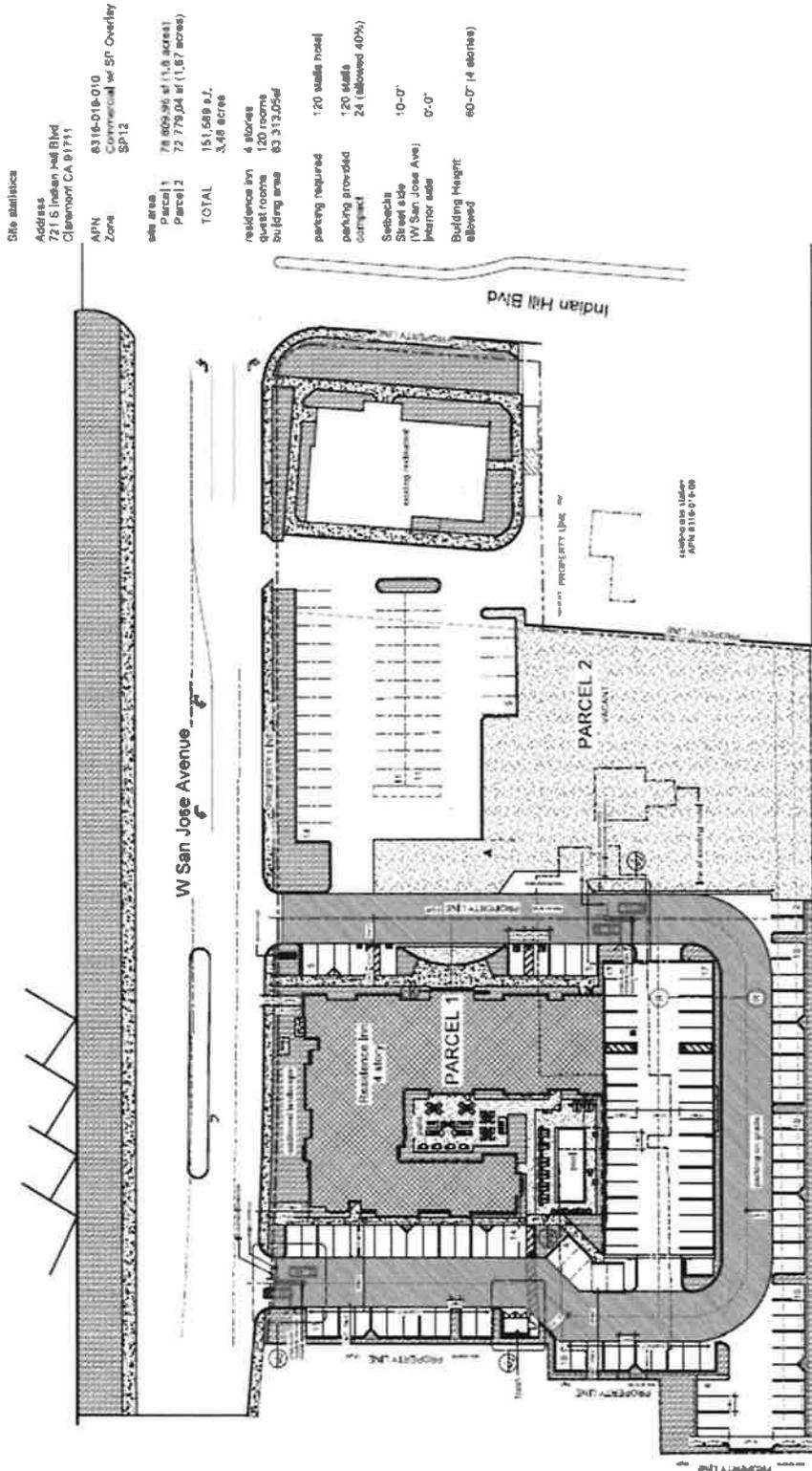
THENCE PARALLEL WITH SAID CENTER LINE, SOUTH 0° 09' 55" WEST, 150 FEET TO SAID NORTHERLY LINE;

THENCE ALONG SAID NORTHERLY LINE, NORTH 85° 18' 08" EAST, 150 FEET TO THE POINT OF BEGINNING.

APN: **8316-019-010**

# ATTACHMENT NO. 2

## Site Plan



**Sushil Capital LLC**  
 1100 WARD DR SUITE 200, CLAREMONT, CA 91715  
 917.43.2627

**Claremont Residence Inn**  
 W. San Jose Avenue, Claremont, California  
 91715

Robert F. Tuttle Architects, Inc.  
 414  
 A-1

**ATTACHMENT NO. 3**

**Memorandum of Agreement**

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
 )  
City of Claremont )  
207 Harvard Avenue )  
Claremont, California 91711 )  
 )

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Exempt From Recording Fee Pursuant to  
Government Code Section 27383

**MEMORANDUM OF AGREEMENT**

This **MEMORANDUM OF AGREEMENT** (the "Memorandum") is entered into as of \_\_\_\_\_, 2026 by and between the **CITY OF CLAREMONT**, a municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City"), and **SUSHIL CAPITAL LLC**, a California limited liability company (hereinafter referred to as "Owner").

**RECITALS**

1. Recordation of Memorandum of Agreement. This Memorandum of Agreement evidences that certain unrecorded agreement entitled "Operating Covenant Agreement" between the City and the Owner dated as of \_\_\_\_\_, 2026 ("Agreement") and when recorded shall encumber that certain property referred to herein as the "Site", which Site is more particularly described in Exhibit A attached hereto and incorporated herein by reference. If the boundaries of the Site are changed by one or more lot splits or subdivisions after the approval of the Agreement, then the Site shall become the legal parcel (or legal parcels) that contains the Project, as defined in Recital B of the Agreement. Capitalized terms not defined herein shall have the meaning set forth in the Agreement. The City and the Owners have agreed, among other things, that the Project shall contain the facilities and amenities, and be of a design, finish and overall quality meeting the standards set forth in the Agreement and be operated as an Hotel in compliance with the Agreement for a period commencing as of the Opening of the Hotel and continuing until the tenth (10th) anniversary of the Opening of the Hotel (the "Operating Covenant Period") in accordance with the requirements of the Agreement, including without limitation, the requirement that it be operated as a Residence Inn by Marriott. The Agreement is on file with the City as a public record.

2. Uses and Operation. Under the Agreement, the Owner has covenanted and agreed for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Owner, that during operation of the Project pursuant to this Agreement and thereafter, neither the Site nor the Project, nor any portion thereof, shall be improved, used or occupied in violation of any Governmental Requirements or the restrictions of the Agreement. Furthermore, Owner and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Site or within the Project, or any portion

thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Site and/or the Project, or any portion thereof. The Owner has further covenanted and agreed on behalf of itself and its successors and assigns to devote, use, operate and maintain the Site in accordance with the Agreement, including without limitation, the Residence Inn by Marriot brand standards.

Notwithstanding anything to the contrary or that appears to be to the contrary in the Agreement, Owner has covenanted, on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Owner, that Owner and such successors and assigns shall use the Site solely for the purpose of maintaining and operating the Project.

3. Maintenance of Site; Damage or Destruction. Owner shall, at its expense, maintain the Site and improvements thereon, including landscaping as well as the public right of way adjacent to the Site, in an attractive condition in accordance with the City Municipal Code, all Governmental Requirements, and the Residence Inn by Marriott brand standards (the foregoing collectively constitute the “Maintenance Standards”). In the event of any damage or destruction of the Project, the Owner shall promptly commence and diligently pursue to completion the repair and reconstruction of those improvements damaged or destroyed so that they are returned to an operable whole in accordance with the original approved plans at the earliest feasible date.

In the event Owner does not maintain the Site or the Hotel in the manner set forth herein and in accordance with the Maintenance Standards, City shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to Owner. However, prior to taking any such action, City agrees to notify Owner in writing if the condition of said improvements does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Owner to cure the deficiencies. Upon notification of any maintenance deficiency, Owner shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety or graffiti at the Site, then Owner shall have forty eight (48) hours to rectify the problem.

In the event Owner fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after the period of correction has lapsed, then City shall have the right to maintain such improvements. Owner agrees to pay City such charges and costs. Until so paid, City shall have a lien on the Site for the amount of such charges or costs, which lien shall be perfected by the recordation of a “Notice of Claim of Lien” against the Site. Upon recordation of a Notice of a Claim of Lien against the Site, such lien shall constitute a lien on the fee estate in and to the Site prior and superior to all other monetary liens except: (i) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; (ii) the lien or charge of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority of any such lien for costs incurred to comply with the Agreement shall date from the date of the recordation of the Notice of Claim of Lien. Any such lien shall be subject and subordinate to any lease or sublease of the interest of Owner in the Site or any portion thereof and to any easement affecting the Site or any portion thereof entered into at any time (either before or after) the date of recordation of such a Notice. Any lien in favor of City created or claimed hereunder is expressly made subject

and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien describing such lien as aforesaid, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgage or beneficiary thereunder expressly subordinates his interest, of record, to such lien. No lien in favor of City created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien. Upon foreclosure of any mortgage or deed of trust made in good faith and for value and recorded prior to the recordation of any unsatisfied Notice of Claim of Lien, the foreclosure purchaser shall take title to the Site free of any lien imposed by City that has accrued up to the time of the foreclosure sale, and upon taking title to the Site, such foreclosure purchaser shall only be obligated to pay costs associated with the Agreement accruing after the foreclosure purchaser acquires title to the Site. If the Site is ever legally divided with the written approval of City and fee title to various portions of the Site is held under separate ownerships, then the burdens of the maintenance obligations set forth herein and in the Agreement and the charges levied by City to reimburse City for the cost of undertaking such maintenance obligations of Owner and its successors and the lien for such charges shall be apportioned among the fee owners of the various portions of the Site under different ownerships according to the square footage of the land contained in the respective portions of the Site owned by them. Upon apportionment, no separate owner of a portion of the Site shall have any liability for the apportioned liabilities of any other separate owner of another portion of the Site, and the lien shall be similarly apportioned and shall only constitute a lien against the portion of the Site owned in fee by the owner who is liable for the apportioned charges levied by City and secured by the apportioned lien and against no other portion of the Site. Owner acknowledges and agrees City may also pursue any and all other remedies available in law or equity. Owner shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

4. Obligation to Refrain from Discrimination.

(a) There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion thereof or vendees of the Site. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

(b) Owner certifies and agrees that all persons employed or applying for employment by it, its Affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the

California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

5. This short form Memorandum is intended to provide notice of the Agreement and shall not be used to interpret the terms of the Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2026.

All signatures must be notarized.

**“CITY”**

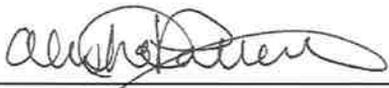
**CITY OF CLAREMONT**  
a municipal corporation

By: \_\_\_\_\_  
Adam Pirrie  
City Manager

**ATTEST:**

\_\_\_\_\_  
Shelley Desautels, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Alisha Patterson  
City Attorney

**“OWNER”**

**SUSHIL CAPITAL LLC,**  
a California limited liability company

By:   
\_\_\_\_\_  
Ashok Patel  
President

**EXHIBIT A**

**Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CLAREMONT, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

A PARCEL OF LAND IN THE CITY OF CLAREMONT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING THAT PORTION OF LOT 21 OF THE NORTHEAST POMONA TRACT, AS PER MAP RECORDED IN BOOK 5 PAGE 461 OF MISCELLANEOUS RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE LAND DESCRIBED IN A DEED TO THE STATE OF CALIFORNIA, FILED ON APRIL 22, 1953 AS DOCUMENT NO. 7683-V, IN THE OFFICE OF THE REGISTRAR OF LAND TITLES AND NOW ON FILE IN SAID OFFICE OF THE COUNTY RECORDER, WITH A LINE THAT IS PARALLEL WITH AND DISTANT 50 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF ALEXANDER AVENUE "NOW INDIAN HILL BOULEVARD" AS SAID CENTER LINE IS SHOWN ON MAP OF TRACT NO. 24837 RECORDED IN BOOK 642 PAGE 44 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE ALONG SAID PARALLEL LINE NORTH 0° 09' 55" EAST, 150 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE PARALLEL WITH SAID NORTHERLY LINE, NORTH 85° 18' 08" EAST, 20.07 FEET TO A LINE THAT IS PARALLEL WITH AND DISTANT 30 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM SAID CENTER LINE;

THENCE ALONG SAID LAST MENTIONED PARALLEL LINE, NORTH 00° 09' 55" EAST, 165.95 FEET TO A LINE THAT IS PARALLEL WITH AND DISTANT 30 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF SAN JOSE AVENUE, AS SAID LAST MENTIONED CENTER LINE IS SHOWN ON SAID MAP OF TRACT NO. 24837;

THENCE ALONG SAID LAST MENTIONED PARALLEL LINE, SOUTH 85° 54' 10" WEST, 581.78 FEET;

THENCE SOUTH 4° 05' 50" EAST, 169.03 FEET; THENCE SOUTH 85° 54' 10" WEST 20 FEET;

THENCE SOUTH 4° 05' 50" EAST, 63 FEET; THENCE SOUTH 85° 54' 10" WEST, 40 FEET;

THENCE SOUTH 4° 05' 50" EAST, 89.53 FEET TO SAID HEREINBEFORE MENTIONED NORTHERLY LINE:

THENCE ALONG SAID NORTHERLY LINE, NORTH 85° 18' 08" EAST, 448.27 FEET TO A POINT DISTANT

THEREON SOUTH 85° 18' 08" WEST, 150 FEET FROM THE FIRST ABOVE MENTIONED PARALLEL LINE;

THENCE PARALLEL WITH SAID CENTERLINE OF INDIAN HILL BOULEVARD, NORTH 0° 09' 55" EAST, 150 FEET TO A LINE THAT IS PARALLEL WITH SAID NORTHERLY LINE AND WHICH PASSES THROUGH THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID LAST MENTIONED PARALLEL LINE, NORTH 85° 18' 08" EAST, 150 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE NORTHERLY FEET OF THAT PORTION OF LOT 21 OF THE NORTHEAST POMONA TRACT, IN THE CITY OF CLAREMONT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 5 PAGE 461 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, FILED ON APRIL 22, 1953 AS INSTRUMENT NO. 7683-V, IN THE OFFICE OF THE REGISTRAR OF LAND TITLES AND NOW ON FILE IN SAID OFFICE OF THE COUNTY RECORDER, WITH A LINE THAT IS PARALLEL WITH AND DISTANT 50 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF ALEXANDER AVENUE "NOW INDIAN HILL BOULEVARD" AS SAID CENTER LINE IS SHOWN ON MAP OF TRACT NO. 24837, RECORDED IN BOOK 642 PAGE 44 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE ALONG SAID PARALLEL LINE NORTH 0° 09' 55" EAST, 150 FEET;

THENCE PARALLEL WITH SAID NORTHERLY LINE, SOUTH 85° 18' 08" WEST, 150 FEET;

THENCE PARALLEL WITH SAID CENTER LINE, SOUTH 0° 09' 55" WEST, 150 FEET TO SAID NORTHERLY LINE;

THENCE ALONG SAID NORTHERLY LINE, NORTH 85° 18' 08" EAST, 150 FEET TO THE POINT OF BEGINNING.

APN: **8316-019-010**

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of LOS ANGELES )

On MARCH 3, 2026, before me, SHELLEY A. BURCH DESAUTELS  
(insert name and title of the officer)

Notary Public, personally appeared ASHOK PATEL,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Shelley A Burch Desautels*

(Seal)



A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of LOS ANGELES )

On MARCH 3, 2026, before me SHELLEY A BURCH DESAUTELS  
(insert name and title of the officer)

Notary Public, personally appeared ASHOK PATEL,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Shelley A Burch Desautels*

(Seal)



A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
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in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
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I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)