

**FINAL DRAFT 5-5-2017**

WHEN RECORDED, RETURN TO:

City of Bullhead City  
City Clerk  
2355 Trane Road  
Bullhead City, Arizona 86442

**LEASE AGREEMENT FOR DEVELOPMENT AND  
OPERATION OF HOTEL AT 1300 SILVER CREEK ROAD  
LOT NO. 3**

This Lease Agreement for Development and Operation of Hotel at 1300 Silver Creek Road Lot No. 3 (“Lease”) is executed to be effective the 16<sup>th</sup> day of May, 2017, between the City of Bullhead City, an Arizona municipal corporation (“Lessor”), and Colorado River Hospitality, LLC, a South Dakota limited liability company authorized to do business in the State of Arizona (“Lessee”).

RECITALS

WHEREAS, Lessor is the owner of real property located at 1300 Silver Creek Road, Bullhead City, Arizona, which had previously been utilized as a wastewater treatment site; and

WHEREAS, Lessor has retired the wastewater treatment facilities on the property and desires to put the property to good economic use; and

WHEREAS, Lessee has demonstrated the capability to develop and operate a hotel available for Lessee’s customers; and

WHEREAS, this Lease is authorized under Arizona Revised Statutes § 9-500.05.

AGREEMENT

THEREFORE, In consideration of the following mutual covenants and conditions, the parties to this Lease hereby agree as follows:

1. LEASE; PRIVILEGES; RESTRICTIONS

- A. Lessor hereby leases to Lessee, approximately \_\_\_\_\_ acres of real property located at 1300 Silver Creek Road, Mohave County Assessor Parcel No. \_\_\_\_\_, Bullhead City, Arizona (“Property”), and as further set out in Exhibits A (Property Diagram) and B (Property Legal Description) attached and incorporated herein.
- B. Lessor leases the Property to Lessee and grants the following privileges, uses and rights:

- 1) The use of the Property for a hotel and other amenities as may be approved by Lessor (“Improvements”).
  - 2) The right of ingress and egress from adjoining public property and public parking areas, to be utilized by the Lessee, its agents, employees and invitees.
- C. Lessee shall not use the Property for any purposes other than those specified above unless authorized in writing by Lessor.

2. TERM

The term of this Lease shall be for 50 years from May 16, 2017, through May 15, 2067, unless sooner terminated pursuant to the provisions contained herein. Lessee may renew the Lease upon the same terms and conditions for an additional 50 years upon payment at that time of the equivalent, in cash or instrument acceptable to Lessor, or 20% of the then annual rent. This amount is not subject to any type of set-off or credit for any other transaction pending or required between the parties.

3. RENT

A. Fair Market Value.

- 1) Based upon a third party appraisal, the fair market value rent for the Property as vacant land would, upon execution of this Lease, approximate \$4,000 annually. This rate will remain applicable until a certificate of occupancy is issued for the Improvements.
- 2) Lessee avers through proprietary, but verifiable business documentation, that three percent of projected revenues upon commencement of operation of the Improvements on the Property could approximate \$20,000 annually.
- 3) Therefore, total fair market rent concurrent with the execution of this Lease is determined to be \$20,000. No set market escalator will be applied to the rental rate due to ongoing increases anticipated by Lessee in the provision of the services underlying the in-kind rent pursuant to sub-section (C) below, which are deemed to be substantially commensurate with any market increases associated with rental values.
  - a) If Lessee, any successor Lessee or a Mortgagee under a Foreclosure Event defined in Exhibit C hereto no longer desire to pay rent through the in-kind provisions or exercise a change of use from hotel as authorized under Exhibit C “Permitted Uses” of this Lease, a cash fair market rent will be established.
  - b) For purposes of this sub-section 3(A)(3)(a) and (b), cash rent at any particular time will be calculated as an increase from the \$20,000 stated

in sub-section (C)(1) below at 1.5% per year for every year after the effective date until invoked.

- B. Periods. Except as stated immediately above, in lieu of any cash rental payment, the parties therefore agree that rent will be paid to Lessor solely through in-kind provision of services to be available with the Improvements as set forth in 3(C) below. Rent may be deferred by Lessor during the planning and construction phase of the Improvements. If rent is deferred it will be recovered, unless otherwise agreed, in three equal installments over the first three years of operation of the Improvements. Deferred rent will accrue interest, until paid, at the rate of ten percent annually or by in-kind services of the cash equivalent.
- C. In-Kind Provision.
  - 1) Rooms. The parties agree that the use of an individual standard room has an average value of \$150.00 per night. Lessee commits, at no charge to Lessor, to make the hotel available for 134 nights annually to Lessor for occupancy of persons such as sports officials, entertainers, event organizers and persons organizing and or those executing tasks directly related to and on behalf of Lessor in support of public special events sponsored by Lessor, with such availability therefore having an in-kind rental value of approximately \$20,000 annually. Any availability for room use which is not used by Lessor in any calendar year shall expire with that year and shall not carry forward to future periods.
  - 2) Availability. Lessor's use of the rooms will be scheduled reasonably in advance of the desired use by written notice to Lessee and will be subject to Lessee approval of such scheduling provided that Lessee will exercise diligent efforts to accommodate Lessor's requests.
- D. Any other fees, charges or taxes outlined in this Lease are in addition to the rent required under this section.
- E. Any further commercial activity authorized on the Property by Lessor may incur further rents in the form of cash or in-kind services as may be negotiated between the parties.

#### 4. IMPROVEMENTS

- A. Lessee's Obligations.
  - 1) Construct a Holiday Inn Express Hotel (or like facility in quality, name familiarity and features as approved by Lessor) under proper licensing of the franchisor, consisting of at least 80 rooms; and

- 2) Lessee assumes all construction costs and the continued operation, maintenance and repair of the Improvements. However, it being understood and agreed, that so long as the improvements are constructed and opened for business, the initial or any subsequent Lessee as may be authorized under this Lease, shall have no affirmative ongoing obligation to operate that is personal to that Lessee.
- B. Lessee will complete the Improvements and have them in operation within 60 months of the effective date of this Lease, and continue their operation or their functional equivalent, or as may be permitted by a Leasehold Mortgagee under Exhibit C, for the term of this Lease.
- C. During the term of the Lease, or any renewal, Lessee will be and remain the owner of all Improvements constructed on the Property.

5. LESSOR OBLIGATIONS

- A. Lessor will provide to Lessee from the Arizona Department of Environmental Quality a letter indicating successful closure of the wastewater treatment plant previously located on the Property.
- B. Lessor will assist in the applications for and processing of any necessary building permits and land use or zoning actions.
- C. Lessor agrees in concept, subject to required legal processes, to the placement of signage, including digital displays, on authorized locations(s) proximate to the Property and adjacent to Highway 95.

6. ACCEPTANCE; MAINTENANCE; REPAIRS

- A. Lessee warrants that it has inspected the Property and accepts possession of the Property and any facilities thereon "as is" in its present condition.
- B. Lessee shall maintain the Property and the Improvements and keep them at all times, in a clean and orderly condition and appearance. Lessee shall perform reasonable periodic major maintenance such as painting, lighting, flooring and plumbing replacement, resurfacing of paved driveways and parking areas, repair of irrigation and drainage systems, signage, water facilities equipment and decking and the replacement of aging or unattractive personal property.
- C. If Lessee fails to repair or maintain the Property so that, in the opinion of Lessor, its economic value is significantly diminished or to the point of becoming a public safety concern, Lessor may, within a period of 30 days after written notice to Lessee, enter and perform any maintenance or repair work it deems necessary. Entry by Lessor will not cause or constitute a termination of this Lease or any interference with the possession of the Property, and all costs thereof are payable by Lessee to Lessor on demand.

7. ADDITIONAL OBLIGATIONS OF LESSEE

- A. Lessee will not commit nor permit to be done anything which may result in the commission of a nuisance, waste or injury on the Property.
- B. Lessee will ensure the security of the Property and implement any reasonable additional security measures as requested in writing by Lessor. All security costs are borne by Lessee.
- C. Lessee acknowledges that the Property is only authorized for the purposes stated herein and that other uses are expressly prohibited.
- D. Lessee acknowledges that transaction privilege and transient occupancy taxes are due to City for the uses authorized under this Lease for occupancies of 29 days or less or as amendment to the Bullhead City Tax Code may require. However, notwithstanding the minimum requirements of the tax code, Lessee hereby agrees that Lessee will still collect the full transaction privilege and transient occupancy taxes for any occupancy of 30 days or more. If any issue arises as to Lessee's ability to legally collect the taxes for occupancies of 30 days or more, Lessee is still obligated to remit the required amounts as a contractual obligation to City regardless of the actual source of payment.

8. ASSIGNMENT AND SUB-LETTING

- A. Without Lessor's consent, Lessee may assign this Lease at any time, so long as the assignment is to an entity that will operate under this Lease with a hotel brand that provides lodging in the midscale and higher segment of the hotel industry. Lessee must provide Lessor a copy of the assignment with written acknowledgment that the assignee shall be subject to the same required use and operation provisions as are set forth in this Lease.
- B. Lessee may grant a Leasehold Mortgage. A "Leasehold Mortgage" means any deed of trust, mortgage, or other lien (each as modified from time to time) encumbering this Lease and the leasehold estate. Under no circumstances will any lien created or caused by a Leasehold Mortgage, or any other encumbrance or assignment granted by Lessee attach to or affect the City's fee title to the Property. With respect to any Leasehold Mortgage granted by the Lessee, the provisions of Exhibit "C" shall apply for the benefit of the holder of the Leasehold Mortgage (the "Leasehold Mortgage") and its successors and assigns.
- C. With Lessor's consent, which will not be unreasonably withheld, Lessee may sub-lease the Property so long as the sub-lease is in support of and advances the primary use granted within the Lease.

9. DEFAULT; TERMINATION

- A. Lessor may terminate this Lease by giving Lessee 180 days written notice after any of the following events:
- 1) Failure of Lessee to perform any of its obligations under this Lease. If Lessee fails to cure, or if not reasonably susceptible to cure within 30 days, commence diligent actions to cure its default within the 30 day notice period; or
  - 2) The taking of possession for a period of ten days or more of substantially all of the personal property used on the Property belonging to Lessee by or under lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
- B. Lessor may place Lessee in default of this Lease by giving Lessee 30 days written notice of Lessee's failure to timely pay or coordinate in-kind rent provided for in this Lease or any other charges required to be paid by Lessee pursuant to this Lease or otherwise. During the 30 day notice period, Lessee shall cure any default; otherwise, the Lessor may elect to terminate this Lease or do any of the following:
- 1) Institute action(s) to enforce this Lease;
  - 2) Exercise any other remedy allowed by law or equity.
- C. Failure by the Lessor to take any authorized action upon default by Lessee of any of its obligations hereunder does not constitute a waiver of default nor of any subsequent default by Lessee. Lessee and Lessor agree that acceptance of rent and other fees by the Lessor under this Lease for any period after a default by Lessee of any of its obligations will not be considered a waiver or estoppel of the Lessor's right to terminate this Lease for any subsequent failure by Lessee to comply with its obligations.
- D. The creditor who holds a security interest in the overall financing on the Improvements may, upon written notice to Lessor, stand in the place of and assume Lessee's rights and obligations under this Lease, and thereafter, will, subject to the provisions of Exhibit "C" attached, assume and be responsible for the performance of all of the terms and conditions of Lessee under this Lease and be considered as being in privity of contract with Lessor.
- E. Notwithstanding any other provision of this Lease, if Lessee has not commenced construction of the Improvements within 60 months of the effective date of this Lease, Lessee will pay all rent that had been deferred and accrued to that point in cash to Lessor unless another form of consideration is agreed to between the parties. Lessee will then continue making rental payments for the duration of the Lease in cash unless another form of consideration is agreed to between the parties. Cash

rent at any particular time, or its equivalent as may be agreed to, will be calculated as an increase from the \$4,000 stated in sub-section 3(A)(1) above at 1.5% per year for every year after the effective date until invoked. Deferred rent will also accrue interest, until paid, at the rate of ten percent annually from the effective date. "Construction" for the purposes of this sub-section means, at the least, obtaining a building permit and the pouring of the concrete foundation for the hotel.

10. SURRENDER OF POSSESSION

- A. No later than two years from the expiration date of this Lease, or that of a renewal, Lessor may provide to Lessee notice of intent to purchase the Improvements to the exclusion of any other purchaser. Any purchase will be at the then currently appraised value, or Lessor may renegotiate another lease term with Lessee or its legal successor. Absent expressed notice of intent to purchase or negotiation of another lease term, Lessee must demolish and remove all Improvements on the Property within 180 days after the expiration of this Lease. Under the circumstances of removal, the Lease will be deemed to continue for the post-expiration period with rent to be assessed at the then currently appraised monthly land lease rate. This rate applies for the post-expiration period and for only so long as it takes to complete the demolition, removal and clean-up ("Restoration") of the Property. Restoration means returning the Property to a state as close as possible as existed when this Lease was originally executed.
- B. Upon surrender to or re-possession of the Property by Lessor, for any reason besides expiration of this Lease, Lessor may require Lessee to demolish and remove all Improvements made by Lessee or Lessee's successors to the Property or Lessor may continue, at its sole discretion, the operation of the Improvements. All Improvements on the Property become the sole property of and owned by the City the first day after the last day of authorized possession and Lessee or Lessee's successor, including a Mortgagee, shall have no further liability or obligation for performances or damages under this Lease.

11. PURCHASE OF PROPERTY

- A. At any time during the term of this Lease, Lessee may request that Lessor commence the legal process for the sale of the Property to Lessee.
- B. Upon request for sale Lessee will fund and obtain a certified appraisal of the value of the Property at that point in time (separate and apart from any Improvements). The appraised value then becomes the minimum sale price of the Property. Lessor may also obtain its own independent appraisal of the Property's value. If Lessor's appraisal indicates a value higher value than of Lessee's appraisal, then the value of Lessor's appraisal becomes the minimum sale price for legal processes.

12. INSURANCE

- A. Lessee shall obtain the following insurance coverages and maintain those coverages during the term of this Lease with a carrier holding no less than a rating of "A" with AM Best:
- 1) General commercial liability in an amount of not less than ten million (\$10,000,000) dollars.
  - 2) Worker's Compensation in the amount as required by the State of Arizona.
  - 3) Property damage or casualty in sufficient amounts to restore or reconstruct existing Improvements or as may be approved by Lessor.
- B. Insured amounts may be satisfied through a combination of general commercial and umbrella liability coverages.
- C. Lessee shall ensure that policies will not be cancelled, reduced, discontinued or otherwise materially altered during the period of coverage without 30 days prior written notice to Lessor and that they contain waivers of subrogation as against Lessor.
- D. Lessee shall provide to Lessor, upon execution of this Lease, and maintain thereafter during its term, policy endorsements of the above naming Lessor as an additional insured. Certificates of insurance merely reciting coverage types and limits are insufficient.
- E. The proceeds of all policies of fire and extended coverage insurance required by this Lease shall provide that the proceeds shall be paid directly to Lessee and/or the Leasehold Mortgagee if required by the Leasehold Mortgagee.
- F. If AM Best ceases to function as the insurance indicator required herein, a rating shall be determined by City from a service with similar commercial acceptability and rating system. The amount of coverage will be increased and maintained by Lessee in accordance with requirements imposed by any franchisor licensing the hotel operation to Lessee and may also be increased by City, with Lessee's concurrence, upon periodic review and in amounts deemed advisable by City.

13. INDEMNIFICATION

It is understood and agreed between the parties that in the design, construction and development of the Improvements, and in the parties' satisfaction of the terms and conditions of this Lease, each party is acting independently, and that Lessor assumes no responsibility or liability to any third parties in connection with these actions. Lessee shall defend, indemnify and hold harmless Lessor, its employees, officers, appointed and elected officials and agents from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, which arise out of any act or



omission of Lessee, including its agents, employees, contractors and invitees in connection with Lessee's operations on the Property and which result directly or indirectly in the injury to or death of any persons or the damage to or loss of any property, or that arising out of the failure of Lessee to comply with any provision of this Lease.

14. NO JOINT VENTURE

The parties agree that the terms of this Lease are not intended, and shall not be deemed, to create any partnership or joint venture between the parties. Lessor, its past, present and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with the development, design, construction or operation of the Improvements. Lessee agrees that there shall be no recourse against any of preceding entities or individuals above for any claims based upon or relating to this Lease.

15. QUIET ENJOYMENT

So long as Lessee pays rent of whatever kind and performs all of its other obligations under this Lease, Lessee may peaceably have and enjoy the exclusive use of the Property and all the privileges granted herein.

16. NOTICE

A. All notices required or permitted under this Lease may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO LESSOR: City of Bullhead City  
City Manager  
2355 Trane Road  
Bullhead City, Arizona 86442

*with a copy to:* City of Bullhead City  
City Attorney  
2355 Trane Road  
Bullhead City, Arizona 86442

TO LESSEE: Colorado River Hospitality, LLC  
205 6<sup>th</sup> Avenue, SE  
Suite 300  
Aberdeen, South Dakota 57401-4317  
Attention: Jeffrey G. Lamont

B. Any notice given by certified mail is considered received on the next business day after the date of mailing. Either party may designate in writing a different address for notice purposes under this Section.

C. Notice shall also be provided to a Leasehold Mortgagee as may be required under Exhibit C.

17. SEVERABILITY

If any provision of this Lease is declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective if elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations.

18. TAXES AND LICENSES

Lessor is responsible for all taxes assessable on the Property or its transactions, whether transaction privilege taxes, transient lodging or lease excise taxes of any kind.

19. LITIGATION

This Lease is governed by the laws of the State of Arizona. In the event of any litigation or arbitration between Lessor and Lessee arising under this Lease, the successful party is entitled to recover its reasonable attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration. Both parties hereby waive any right to a jury trial and consent to a trial to the court.

20. RULES AND REGULATIONS

Lessee shall comply with all federal, state and local laws, ordinances, rules and regulations applicable to its operations and the Property (including the Americans with Disabilities Act), including all laws, ordinances, rules and regulations adopted after the effective date of this Lease, provided that the laws, ordinances, rules and regulations adopted by Lessor after the effective date of this Lease with which the Lessee must comply shall be limited to matters related to health and safety which are of general application to all similarly situated properties within Lessor's jurisdiction, and shall not include changed zoning or land use laws, ordinances, rules or regulations.

21. RIGHT OF ENTRY RESERVED

- A. Lessor may, upon 48 hours written notice, enter upon the Property for any lawful purpose if the action does not unreasonably interfere with Lessee's use, occupancy or security of the Property.
- B. Without limiting the above, the Lessor and any utility provider may, at their own cost, whether for their own benefit or for the benefit of adjacent users, enter the Property at all reasonable times so long as entry does not unreasonably interfere with Lessee's operation, to: maintain, repair or replace existing and future utility, mechanical, electrical or other systems which, in the opinion of the Lessor, are necessary or advisable; or construct or install over, in or under the Property systems or parts in connection with maintenance and use of the Property.

22. SURVIVAL OF LESSEE'S OBLIGATIONS

- A. If this Lease is terminated by the Lessor in accordance with the provisions herein or if the Lessor re-enters or resumes possession of the Property as provided herein, all

of Lessee's obligations under this Lease shall survive the termination, re-entry or resumption of possession and remain in full force and effect for the full term of this Lease, and the amounts of damages or deficiencies will become due and payable to Lessor to the same extent, at the same times, and in the same manner as if no termination, re-entry or resumption of possession had taken place.

- B. If Lessee purchases the Lessee's obligations concerning Lessor's use of the hotel, Lessor's use may continue for one year after the purchase without any additional charge to Lessor. Thereafter, Lessee agrees that the hotel will still remain available to Lessor under the same type and extent of activities as set out herein, except that Lessor may pay a reasonable fee for the uses as agreed upon between Lessee and Lessor.

23. REMEDIES TO BE NONEXCLUSIVE

All remedies provided in this Lease are cumulative and additional, not in lieu of or exclusive of, each other, or of any other remedy available to Lessor or Lessee at law or in equity, and the exercise of any remedy, or the existence of other remedies, shall not prevent the exercise of any other remedy.

24. TIME IS OF THE ESSENCE

Time is of the essence with regard to the performance of all of the parties' obligations under this Lease.

25. CONFLICTS

This Lease is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

26. APPROVALS

Lessee understands that this Lease is not effective unless approved by a majority of the sitting members of the City Council of the City of Bullhead City and presented on an agenda of a regularly scheduled and open public meeting of the City Council.

27. MISCELLANEOUS

This Lease constitutes the entire agreement between the parties and supersedes all prior negotiations, understandings, memorandums and agreements between the parties concerning the subject matter of this Lease. This Lease shall be interpreted, applied and enforced according to the fair meaning of its terms and not construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Lease may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Lease run with the land and are binding upon and inure to the benefit of the parties' successors and assigns.

EXECUTED to be effective May 16, 2017.

LESSOR  
CITY OF BULLHEAD CITY

\_\_\_\_\_  
Toby Cotter, City Manager          Date

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Garnet K. Emery, City Attorney

\_\_\_\_\_  
Susan Stein, City Clerk

State of Arizona      )  
                                    ) ss.  
County of Mohave     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Toby Cotter, City Manager, for Lessor, City of Bullhead City.

My Commission Expires:

\_\_\_\_\_  
Notary Public

LESSEE  
COLORADO RIVER HOSPITALITY

\_\_\_\_\_  
Jeffrey G. Lamont, Member          Date

State of Arizona      )  
                                    ) ss.  
County of Mohave     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Jeffrey G. Lamont, Member, for Lessee, Colorado River Hospitality, LLC.

My Commission Expires:

\_\_\_\_\_  
Notary Public

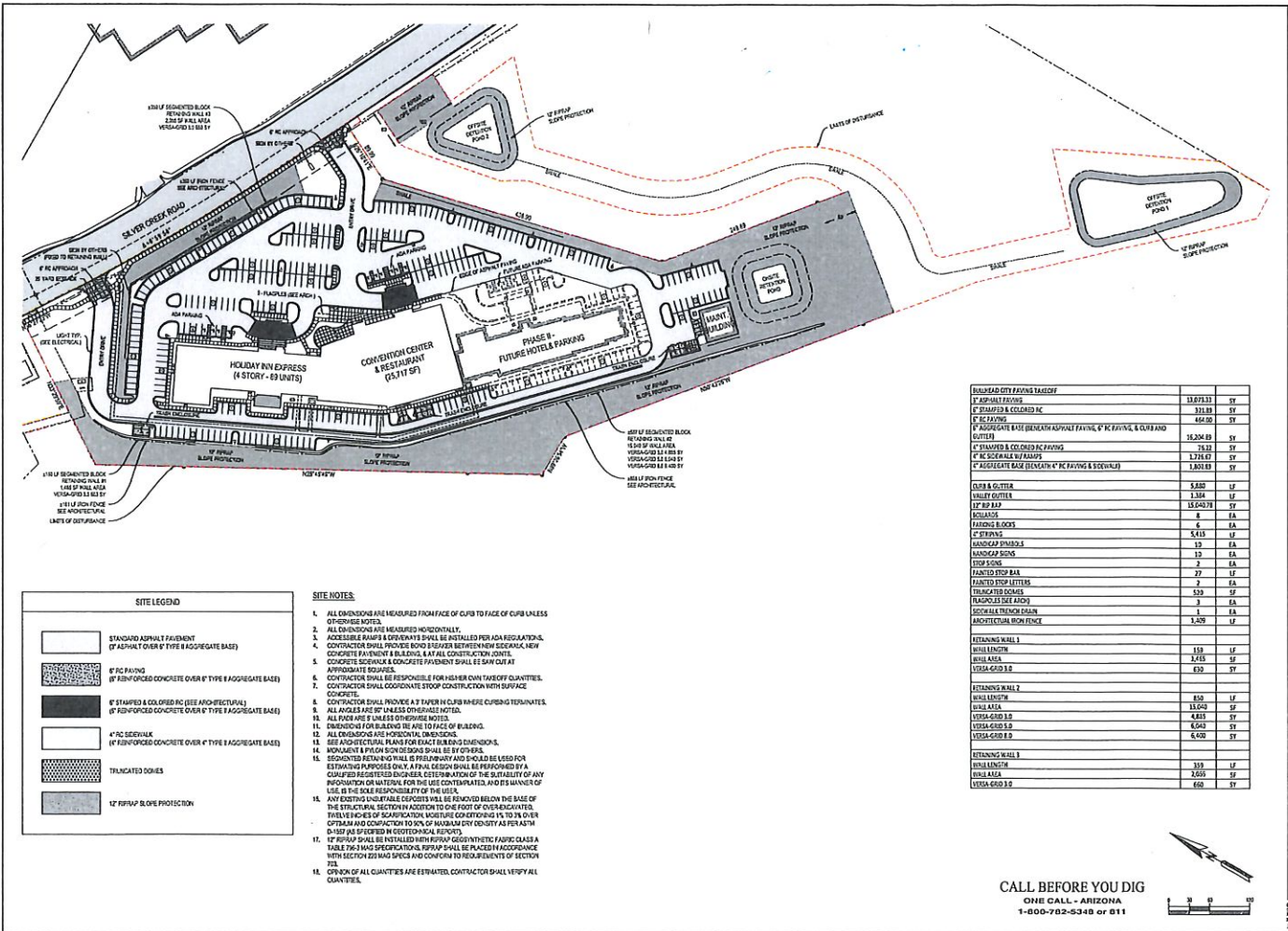
**LEASE AGREEMENT FOR DEVELOPMENT AND  
OPERATION OF HOTEL AT 1300 SILVER CREEK ROAD**

**EXHIBIT A**

Property Diagram

*(see attached)*

# EXHIBIT A




ITEM	QUANTITY	UNIT
STANDARD ASPHALT PAVEMENT (7\"/>		

[Symbol]	STANDARD ASPHALT PAVEMENT (7\"/>
[Symbol]	8\"/>
[Symbol]	8\"/>
[Symbol]	4\"/>
[Symbol]	12\"/>

- SITE NOTES:**
1. ALL DIMENSIONS ARE MEASURED FROM FACE OF CURB TO FACE OF CURB UNLESS OTHERWISE NOTED.
  2. ALL DIMENSIONS ARE MEASURED HORIZONTAL.
  3. ACCESSIBLE RAMP & OVERWAYS SHALL BE INSTALLED PER ADA REGULATIONS.
  4. CONTRACTOR SHALL PROVIDE 8\"/>


CALL BEFORE YOU DIG  
 ONE CALL - ARIZONA  
 1-800-762-5348 or 811





**LJA**  
 ARCHITECTURE ENGINEERING  
 CONSULTING PLANNING  
 PLANNING LAND SERVICES  
 1300 Silver Creek Rd  
 Bullhead City, AZ 86426

**Site Improvements**  
 Holiday Inn Express, Convention Center & Future Hotel  
 1300 Silver Creek Rd  
 Bullhead City, AZ 86426



5/17/2014

DATE:	05-13-14
PROJECT:	1300 Silver Creek Rd
FILE NO.:	1300SC
DRAWN BY:	1300SC
CHECKED BY:	1300SC
SCALE:	AS SHOWN
SHEET NO.:	01-46-7

**OVERALL SITE PLAN**

**C400**

**LEASE AGREEMENT FOR DEVELOPMENT AND  
OPERATION OF HOTEL AT 1300 SILVER CREEK ROAD**

**EXHIBIT B**

Property Legal Description

*(see attached)*

[to be inserted when parcel splits are finalized]

**LEASE AGREEMENT FOR DEVELOPMENT AND  
OPERATION OF HOTEL AT 1300 SILVER CREEK ROAD**

**EXHIBIT C**

Leasehold Mortgagee Protection Provisions

**Leasehold Mortgages**

Without Lessor's consent, at any time(s) any Leasehold Mortgagee may initiate and complete any Foreclosure Event and exercise any other rights and remedies against Lessee and the Leasehold Estate (but not the fee estate) under its Leasehold Mortgage. A "*Foreclosure Event*" means any: (a) foreclosure sale (or trustee's sale, assignment in lieu of foreclosure, bankruptcy sale, or similar transfer) affecting the leasehold estate or (b) Leasehold Mortgagee's exercise of any other right or remedy under a Leasehold Mortgage (or applicable law) that divests Lessee of its leasehold estate. After a Foreclosure Event Mortgagee may exercise surrender of the Improvements and Property as outlined under sub-section 10(B) of the Lease.

**Permitted Uses**

Notwithstanding any more stringent use limitations set forth in the Lease, if Leasehold Mortgagee acquires the Lessee's interest in the Lease and the leasehold estate through a Foreclosure Event, the permitted uses of the Property shall include, in addition to anything otherwise permitted by the Lease, the right to use the Property and any Improvements thereon for assisted living, memory care purposes, or similar or related purposes if the Leasehold Mortgagee or a New Lessee (as defined below) reasonably determines, after consultation with Lessor, that hotel related uses are not feasible.

**Lease Impairments**

Any Lease Impairment made without Leasehold Mortgagee's consent shall be null, void, and of no force or effect, and not bind Leasehold Mortgagee or any New Lessee. A "*Lease Impairment*" means Lessee's: (a) canceling, modifying, surrendering, or terminating this Lease, including upon any loss; (b) exercising any bankruptcy termination option under 11 U.S.C. § 365(h)(1)(A)(i) or any comparable provision of law; (c) subordinating this Lease or the Leasehold Estate to any other estate or interest in the Property; or (d) waiving any term(s) of this Lease.

**Notices**

Provided that the Leasehold Mortgagee has given Lessor notice (with a notice address) of its Leasehold Mortgage, any notice from Lessor to Lessee shall have no effect unless Lessor gives a copy to Leasehold Mortgagee. If any default on the part of Lessee occurs for which Lessor intends to exercise any remedy, Lessor shall promptly give Leasehold Mortgagee a notice of the default, describing the default in reasonable detail.

**Opportunity to Cure**

Lessor shall accept Leasehold Mortgagee's cure of any Lessee default at any time until 30 days after both: (a) Lessee and Leasehold Mortgagee have received the Lessee default notice for that default; and (b) Lessee's cure period for that default has expired. If Leasehold Mortgagee cannot reasonably cure the Lessee default within Leasehold Mortgagee's cure period under the preceding sentence, it shall have such further time as it reasonably needs so long as it proceeds with reasonable diligence. If Leasehold Mortgagee cannot reasonably cure a Lessee default without possession, or if any Lessee-Specific Default(s) occur(s), Leasehold Mortgagee shall be



entitled to such additional time as it reasonably needs to consummate a Foreclosure Event and obtain possession, provided Leasehold Mortgagee timely exercises its cure rights for all other Lessee defaults. If Leasehold Mortgagee consummates a Foreclosure Event, Lessor shall waive all Lessee-Specific Defaults. For purposes hereof, a “*Lessee-Specific Default*” means any Lessee default that: (a) arises from any lien or encumbrance attaching solely to the Leasehold Estate (not the fee estate) but junior to the Leasehold Mortgage; or (b) Leasehold Mortgagee or its designee or nominee, and any of their successors and assigns (collectively referred to herein as the “*New Lessee*”) cannot reasonably cure.

### **Cure Rights Implementation**

Whenever Leasehold Mortgagee’s time to cure a Lessee default or consummate a Foreclosure Event has not expired, Lessor shall not terminate this Lease or otherwise interfere with Lessee’s or Leasehold Mortgagee’s possession and quiet enjoyment of the Leasehold Estate. Leasehold Mortgagee may enter the Property to seek to cure a Lessee default. This right or its exercise shall not be deemed to give Leasehold Mortgagee possession.

### **New Lease**

If this Lease terminates for any reason (except with Leasehold Mortgagee’s consent), even if Leasehold Mortgagee failed to timely exercise its cure rights for a Lessee Default, Lessor shall promptly give Leasehold Mortgagee a notice of such termination. By giving notice to Lessor on or before the day that is 30 days after Leasehold Mortgagee receives Lessor’s termination notice, Leasehold Mortgagee may require Lessor to promptly enter into a New Lease with New Lessee. Lessor need not do so, however, unless New Lessee has: (a) cured all reasonably curable Lessee defaults (except Lessee-Specific Defaults) described with reasonable detail in the termination notice; and (b) reimbursed Lessor’s reasonable costs and expenses (including attorneys’ fees and expenses) to terminate this Lease, recover the Property, and enter into the New Lease. The term “*New Lease*” means a new lease of the Property which shall: (a) commence immediately after this Lease terminated; (b) continue for the entire remaining term of this Lease, as if no termination had occurred; (c) give New Lessee the same rights to the Improvements that this Lease gave Lessee; (d) have the same terms and the same priority, as this Lease, subject to any subsequent written amendments that bind New Lessee; and (e) require New Lessee to cure, with reasonable diligence and continuity, within a reasonable time, all Lessee defaults (except Lessee-Specific Defaults) not otherwise cured or waived.

### **New Lease Implementation**

If Leasehold Mortgagee timely requests a New Lease in conformity with this Lease, then from the date this Lease terminates until the parties execute and deliver a New Lease, Lessor shall not: (a) operate the Property in an unreasonable manner; (b) lease any of the Property except to New Lessee. When the parties sign a New Lease, Lessor shall transfer to New Lessee all subleases (including any security deposits Lessor held), service contracts, Property operations, and net income Lessor collected from the Property during the period described in the previous sentence, and Lessor shall cause every fee mortgagee to subordinate unconditionally to the New Lease.

### **No Personal Liability**

No Leasehold Mortgagee or New Lessee shall ever have any liability under this Lease beyond its interest in this Lease, even if it becomes Lessee or assumes this Lease. Any such liability shall: (a) not extend to any Lessee default that occurred before such Lessee took title to this Lease (or a New Lease), except as identified in a default notice (or termination notice) delivered to Leasehold Mortgagee before such Lessee took title; and (b) terminate if and when any such Lessee assigns (and the assignee assumes) or abandons this Lease (or a New Lease).

**Multiple Leasehold Mortgagees**

If at any time multiple Leasehold Mortgagees exist: (a) any consent by or notice to Leasehold Mortgagee refers to all Leasehold Mortgagees; (b) except under clause "a," the most senior Leasehold Mortgagee may exercise all rights of Leasehold Mortgagee(s), to the exclusion of junior Leasehold Mortgagee(s); (c) to the extent that the most senior Leasehold Mortgagee declines to do so, any other Leasehold Mortgagee may exercise those rights, in order of priority; and (d) if Leasehold Mortgagees do not agree on priorities, a written determination of priority issued by a title insurance company licensed in the State shall govern.

**Miscellaneous**

Notwithstanding anything to the contrary in this Lease, Leasehold Mortgagee may: (a) exercise its rights through an affiliate, assignee, designee, nominee, subsidiary, or other person, acting in its own name or in Leasehold Mortgagee's name (and anyone acting under this clause "a" shall automatically have the same protections, rights, and limitations of liability as Leasehold Mortgagee); (b) refrain from curing any Lessee default; (c) abandon such cure at any time; or (d) withhold consent or approval for any reason or no reason, except where this Lease states otherwise. Any such consent or approval must be written. To the extent any Leasehold Mortgagee's rights under this Lease apply after this Lease terminates, they shall survive such termination.