

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GLADSTONE, MISSOURI AND GLAD HOTEL DEVELOPERS, LLC.

WHEREAS, the City of Gladstone, Missouri (the “**City**”) is supportive and encourages high-quality development and redevelopment within the City, including the redevelopment of properties located within Downtown Linden and along the North Oak Corridor; and

WHEREAS, Glad Hotel Developers, LLC (the “**Company**”) has proposed to construct a multi-use development on property generally located within Downtown Linden and along the North Oak Corridor, as more specifically described in the Development Agreement and exhibits attached thereto (the “**Project**”),

WHEREAS, the City and the Company have agreed upon terms of a Development Agreement regarding the Project which sets forth the duties and obligations of the City and the Company concerning the acquisition of certain property contemplated by the Development Agreement and to be incorporated into the Project; the design and construction of the Project; and other matters pertinent to the Project; and

WHEREAS, the City Council desires to authorize the City Manager to execute said Agreement on behalf of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLADSTONE AS FOLLOWS:

Section 1. That the City Manager is hereby authorized to execute on behalf of the City the Development Agreement by and between the City and Glad Hotel Developers, LLC, substantially in the form attached hereto as **Exhibit A**.

Section 2. That the City Manager, City Clerk, and such other officials of the City may execute any other additional documents or take such other actions as necessary, incidental or expedient to carry out the intent of this Ordinance, and the authority granted herein.

Section 3. The Mayor is authorized to sign this ordinance approving it on behalf of the City.

Section 4. The City Clerk is hereby directed to attest to the Mayor’s signature.

INTRODUCED, READ, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 28TH DAY OF JANUARY 2019.



Mayor Bill Garnos

ATTEST:



Ruth E. Bocchino, City Clerk

First Reading: January 28, 2019

Second Reading: January 28, 2019

Bill 1907
Ord 4,458

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") entered into as of Feb 21st, 2019, by and between the **CITY OF GLADSTONE, MISSOURI**, a third class city organized and existing under the laws of the State of Missouri (the "City"), and **GLAD HOTEL DEVELOPERS, LLC**, a Nebraska limited liability company authorized to do business in the State of Missouri (the "Company") (the City and the Company are each a "Party" or collectively the "Parties"). Capitalized terms not defined elsewhere in this Agreement shall have the meaning set forth in **Section 1.01** hereof.

RECITALS:

WHEREAS, on March 15, 2018, the City entered into a nonbinding letter of intent with the Company for the development of a multi-use project within the corporate limits of the City, as more specifically described in **Exhibit B** attached hereto (the "Project"); and

WHEREAS, the City is the owner of the real property described in **Exhibit A-1** (the "City Property") and, subject to the provisions hereof, (1) the Company will assign to the City the real estate contract attached as **Exhibit A-3** (the "Company Property Contract") to acquire the real estate described in **Exhibit A-2** (the "Company Property"), (2) the City will acquire the Company Property, and (3) the Project will be constructed on both the City Property and the Company Property (the "Project Site"); and

WHEREAS, the parties desire to enter into this Agreement to address generally: (1) the assignment of the Company Property Contract to the City, (2) the acquisition by the City of the Company Property for inclusion in the Project, (3) the design and construction of the Project, (4) payments to the City for the Project Site, and (5) the development incentives to be provided to the Project.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.01. Definitions. Terms not defined elsewhere in this Agreement shall have the following definitions:

"Abandonment of Construction" means the cessation of development and construction of the Project evidenced either by: (1) no construction work on any significant portion of the Project being performed for a period of ninety (90) consecutive days after the Commencement of Construction and all regulatory approvals have been completed, subject to Excusable Delay; or (2) the Company declaring that it is abandoning the development and construction of the Project.

"Affiliate" means a person or entity which, directly or through one or more intermediaries, owns or controls, or is controlled by or which is under common control with the Company.

"Applicable Laws and Requirements" means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, policy, interpretation, judgment, decree, injunction, writ,

"City's Expenses" is defined in Section 7.03.

"City Lease Payment" is defined in Section 3.06(b).

"Closing" is defined in Section 3.03.

"Closing Date" is defined in Section 3.04.

"Commencement of Construction" means the occurrence of the issuance by the Company to the general contractor of a notice to proceed under the principal construction contract, which is anticipated in May of 2019.

"Company Event of Default" is defined in Section 9.01.

"Company Property" is defined in the Recitals.

"Completion of Construction" means the occurrence of substantial completion of the Project.

"Conditions of Performance" is defined in Section 4.01.

"Construction Inspector" means a City agent or employee designated by the City to perform inspections.

"Development Incentives" is defined in Section 7.01.

"Effective Date" means the date of this Agreement.

"Environmental Laws" means any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.* ("RCRA"), the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the Federal Water Pollution Control Act, 33 U.S.C. 1251 to 1387, as the foregoing may be amended from time to time.

"Event of Default" means any Event of Default as provided in Article IV hereof.

"Excusable Delay" means delays due or related to acts of terrorism, acts of war or civil insurrection, or any natural occurrence, strikes, riots, floods, earthquakes, fires, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargos, litigation, tornadoes, approval by regulatory authorities, or any other circumstances beyond the reasonable control of the applicable party using reasonable diligence to overcome which prevent such party from performing its specific duties hereunder in a timely manner, including the Conditions of Performance set forth in Section 4.01 below; provided, however, Excusable Delay does not include circumstances directly or indirectly related to lack of financing; unanticipated, or unexpected increases in the costs of construction; or errors in business judgment by the Company; and provided that Excusable Delay shall only extend the time of performance for the period of such Excusable Delay, which shall begin on the day following the date on which the Company has knowledge of the event of Excusable Delay first occurring and shall thereafter extend until the date on which the event which has caused the Excusable Delay has been materially corrected or substantially performed, or reasonably should have been materially corrected or substantially performed, given reasonable efforts.

of such agreement, instrument or document; provided, that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement other than in accordance with **Section 10.04** below.

(b) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection and exhibit references are to this Agreement unless otherwise specified. Whenever an item or items are listed after the word "including", such listing is not intended to be a listing that excludes items not listed.

(c) Words of gender shall be deemed and construed to include correlative words of the masculine, feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

(d) The table of contents, captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(e) In the event of some ambiguity in this Agreement, the Parties shall be deemed to have jointly authored this Agreement and nothing shall be construed against or in favor of one party based on it being deemed the sole author.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties of the City. The City hereby represents and warrants to the Company that:

(a) **Due Authority.** The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

(b) **No Defaults or Violation of Law.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(c) **No Litigation.** There is no litigation, proceedings or investigations pending or, to the knowledge of the City, threatened against the City with respect to the Project, the Project Site, or this Agreement. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of, the terms and provisions of this Agreement.

contemplated by the execution, delivery, validity or performance by the Company (or any member or Affiliate of the Company) of, the terms and provisions of this Agreement, or that would have a material adverse effect on the financial condition of the Company (or any member or Affiliate of the Company).

(d) No Material Change. (i) The Company has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (ii) there has been no material adverse change in the business, financial position, prospects or results of operations of the Company, or any Affiliate of the Company, which could affect the Company's ability to perform its obligations pursuant to this Agreement.

(e) Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Company of this Agreement, other than the permits, licenses, consents, approvals and other authorizations that the Company commits to obtain and comply with as set forth in Section 4.06 hereof.

(f) No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Company under this Agreement, or any other material agreement or material instrument to which the Company is a party or by which the Company is or may be bound.

(g) Approvals. Except as otherwise provided herein, the Company has received and is in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business as heretofore conducted by it and to own or lease and operate its properties as now owned or leased by it.

(h) Compliance with Laws. The Company is in compliance with all Applicable Laws and Requirements with respect to its affairs, business, and operations as contemplated by this Agreement.

The representations and warranties set forth in this Section 2.02 shall survive the Closing and termination of this Agreement.

ARTICLE III

TRANSFER OF THE PROJECT SITE

Section 3.01. Company Property. The Company agrees that it will assign the Company Real Estate Contract to the City and the City agrees that, pursuant to such contract, it will acquire a fee simple interest in the Company Property at its sole cost and expense, which real property will be a portion of the Project Site, provided that the total cost of such acquisition does not exceed \$400,000. The Company Property will be acquired by the City on or before August 30, 2019, or this Agreement will automatically terminate without the necessity of notice in accordance with Article VIII, unless extended by mutual agreement of the City and the Company.

Section 3.02. City Property. The City currently owns fee simple title to the City Property. The City Property will be a portion of the Project Site.

Section 3.03. Closing. The Closing will consist of the performance of all of the following, unless otherwise agreed by the Parties (the "Closing"):

The monthly lease payment shall be due on the 15th day of each month (or the next business day thereafter if the 15th day is not a business day) and, to the extent applicable, shall be based on the prior month's Monthly Occupancy Percentage as set forth above. The first City Lease Payment shall be payable the earlier of (i) the 15th day of the second month following the month of issuance of the certificate of occupancy for the hotel that is a part of the Project (for example, if the certificate of occupancy is issued on December 10, 2019, the first City Lease Payment will be due February 15, 2020, and will be based on the Monthly Occupancy Percentage for January, 2020), or (ii) October 15, 2020. The Chapter 100 Lease will provide that at the end of its term the Project Site may be purchased for \$1,000, provided that if the Chapter 100 Lease terminates prior to its full term the price to exercise the purchase option will be \$1,000 plus all remaining lease payments through the end of the lease term calculated on the basis of \$3,600 per month.

(c) The City shall have the right to audit the books and records of the hotel to verify the accuracy of the City Lease Payments made for the prior calendar year. If the City intends to perform such an audit, it shall provide 30 days prior written notice to the Company.

ARTICLE IV

DEVELOPMENT OBLIGATIONS

Section 4.01. Conditions Precedent to Performance. The obligations of the Parties to consummate the Closing shall be conditioned upon completion of the items set forth in this Section 4.01 (the "Conditions of Performance"):

- (a) **Agreement.** The City and Company shall have entered into this Agreement.
- (b) **Land Use Approvals.** The City shall have approved all Land Use Applications necessary for the construction of the Project on the Project Site, the Public Improvements, the Public Art, and the Project Screening, which the Company agrees to diligently pursue.
- (c) **Governmental Approvals.** The Company shall have obtained all certificates, permits, licenses, consents, approvals, and other authorizations required from Governmental Authorities necessary for construction of the Project, the Public Improvements, the Public Art, and the Project Screening, and a building/construction permit shall have been issued for the Project, the Public Improvements, the Public Art and the Project Screening.
- (d) **Approval of Chapter 100 Bonds.** The City shall have approved the issuance and delivery of the Chapter 100 Bonds, and the Company is satisfied, in its sole discretion, with the terms and conditions of the Chapter 100 Bonds, the Chapter 100 Lease, and the Chapter 100 Performance Agreement.
- (e) **Development Incentives.** In addition to the Chapter 100 Bonds, the parties shall have entered into all necessary agreements to implement the Development Incentives described in **Article VII** below.
- (f) **Financing.** The Company shall have closed on all financing necessary for the design, engineering and construction of the Project, the Public Improvements, the Public Art, and the Project Screening. "Closed" means funds have been irrevocably committed by a lender, capital investor, or a group of lenders or capital investors, and may be expended by the Company subject to normal and customary disbursement requirements.

and sewer components of the Public Improvements shall not exceed the sum of Ten Thousand and No/100 Dollars (\$10,000.00) and City imposed permit fees associated with all components of the Project shall not exceed the sum of Forty-Five Thousand and No/100 Dollars (\$45,000.00).

Section 4.07. Land Uses and Land Use Restrictions. In addition to the land use restrictions that are established pursuant to the City's zoning and subdivision regulations, unless approved in writing by the City, the types of land uses set forth in the attached **Exhibit E** shall not occur on the Project Site.

ARTICLE V

DESIGN OF THE PROJECT

Section 5.01. General. The Company will be responsible for the design of the Project, the Public Improvements, the Public Art, and the Project Screening subject to the City's right of review in accordance with this Article and all City rules, regulations and ordinances. The Project, the Public Improvements, the Public Art, and the Project Screening will be designed and constructed in substantial conformance with the Site Plan, unless otherwise approved as provided in this Agreement.

Section 5.02. Review and Approval of Preliminary Plans and Specifications. The Company will provide the City with preliminary Plans and Specifications for the Project, the Public Improvements, the Public Art, and the Project Screening. The City shall review such Plans and Specifications to determine whether they are in substantial conformance with the rules, regulations and ordinances of the City, the Site Plan, and this Agreement. The City shall provide the Company with its approval or reasonable objection to the Plans and Specifications within thirty (30) business days of the City's receipt of the Plans and Specifications. In the event the City has reasonable objections to the preliminary Plans and Specifications, the City shall provide a written notice of such objections detailing the substantial non-conformance of the preliminary Plans and Specifications with the rules, regulations and ordinances of the City, the Site Plan, and this Agreement and its specific demands of modification to the Plans and Specifications. The City and the Company shall meet within five (5) business days to discuss any such objections by the City. The Company shall thereafter exercise reasonable good faith efforts to modify the Plans and Specifications to respond to the demands of the City and shall submit the Plans and Specifications to the City for final approval.

Section 5.03. Final Plans and Specifications. Upon approval of the preliminary Plans and Specifications for the Project, the Company will:

(a) Prepare final Plans and Specifications, including detailed drawings, construction plans, design data, estimates, and technical specifications to show the character and scope of the work to be performed by contractors for the Project, the Public Improvements, the Public Art, and the Project Screening.

(b) Furnish to the City copies of such final Plans and Specifications as may be required to secure approval of such Government Authorities as may have jurisdiction over design criteria applicable to the Project, the Public Improvements, the Public Art, and the Project Screening.

(ii) shall be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved as evidenced by a written report delivered to the City.

(e) All such policies, or a certificate or certificates of the insurers that such insurance is in full force and effect, shall be deposited with the City and, prior to expiration of any such policy, the Company shall furnish the City with satisfactory evidence that such policy has been renewed or replaced or is no longer required by this Agreement; provided, however, the Company may choose to satisfy this requirement by providing blanket policies now or hereafter maintained by the Company if the City's insurance consultant certifies to the effect that such coverage is substantially the same as that provided by individual policies. All policies evidencing such insurance required to be obtained under the terms of this Agreement shall provide for prior written notice to the City of any cancellation or reduction in amount of coverage.

(f) In accordance with section 427.120 of the Revised Statutes of Missouri, as amended, in the event the Company shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement, the City shall provide notice of such failure to the Company. In the event the Company does not provide evidence of such insurance within ten (10) days of such notice, the City may (but shall be under no obligation to) contract for the required policies of insurance and pay the premiums on the same; and the Company agrees to reimburse the City to the extent of the amounts so advanced, with interest thereon at the rate of 7% per annum. The City shall notify the Company in writing that the Company has failed to maintain the insurance coverage required by this Agreement prior to purchasing any such insurance. This insurance obtained by the City may, but need not, protect the Company's interests. The coverage that the City may purchase may not pay any claim that the Company may make or any claim that may be made against the Company in connection with the Project. The Company may later cancel any insurance purchased by the City, but only after providing evidence that the Company has obtained insurance as required by this Agreement. The costs of the insurance obtained by the City may be more than the cost of insurance the Company may be able to obtain on their own.

(g) The City shall be named as an additional insured on all policies, if and to the extent that the City has an insurable interest, including all policies on which the Company is named as an insured. Nothing in this Agreement shall be deemed to waive the City's sovereign immunity or a defense against any tort claim based on sovereign immunity.

(h) The Company shall not permit its general contractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Section and the City's Applicable Laws and Requirements. The Company shall also require its general contractor to require all of its subcontractors to obtain all insurance required under this Section and the City's Applicable Laws and Requirements (unless general contractor's insurance satisfies all of the requirements above and covers the applicable subcontractor(s)). Said insurance shall be maintained in full force and effect until the issuance of a Certificate of Completion of Construction for the phase of improvements being constructed by such contractor or subcontractor.

Section 6.04. Progress Reports. During the period of construction of the Project, the Public Improvements, the Public Art, and the Project Screening the Company shall meet with representatives of the City and provide written progress reports to the City on a monthly basis for the purposes of reporting upon the progress of the design of the Project, the Public Improvements, the Public Art, and the Project Screening. In order to enable the City to monitor the Company's compliance with this Agreement following the Commencement of Construction of the Project, the Public Improvements, the Public Art, and the Project Screening, the Company shall meet with representatives of the City and provide written progress reports to the City on a quarterly basis for the purposes of reporting upon the progress of the

(a) **Performance Bond and Payment Bond.** Prior to commencement of construction and ending upon acceptance of the Public Improvements and any other public facilities which will be dedicated to the City in connection with the Project, the Developer shall, or shall ensure that its contractors shall, maintain a performance and payment bond in a form approved by the City Attorney, in an amount equal to the cost of the Public Improvements and any other public facilities which will be dedicated to the City in connection with the Project covered by such bond, as determined by the City Engineer, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The performance and payment bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.

(b) **Maintenance Bonds.** Prior to acceptance and dedication of the Public Improvements and any other public facilities which will be dedicated to the City in connection with the Project, the Company shall provide a maintenance bond in a form approved by the City Attorney, in an amount equal to the full cost of the Public Improvements and any other public facilities which will be dedicated to the City in connection with the Project as approved by the City Engineer, which shall be in effect for a term of two (2) years from the date that the City, issues a Certificate of Completion of Construction for such improvements covered by the bond, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The maintenance bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City. With respect to maintenance issues which may arise after dedication of the such improvements to the City, the City shall first make any claim which arises related to such improvements for which a bond claim may be made against the bonding company, and shall make reasonable efforts to pursue the claim, prior to making demand upon the Company to satisfy the claim.

(c) **Indemnity for Failure to Provide Bonds.** The Company will, or shall ensure that the Company's contractors shall, indemnify the City and its officers and employees for any damage resulting to the City, its officers or employees from failure of the Company to provide the bonds set forth in this Section.

Section 6.10. Prevailing Wage. The Company will comply with all applicable laws regarding the payment of prevailing wages to contractors or subcontractors of the Company, and the Company will indemnify the City for any damage resulting to the City from failure of either the Company or any contractor or subcontractor to pay prevailing wages pursuant to applicable laws, and pay the costs of defense of the City in response to any such claims. Company shall be responsible for payment of all costs associated with the payment of any applicable prevailing wages as required by law.

ARTICLE VII

DEVELOPMENT INCENTIVES

Section 7.01. Cooperation to Implement Development Incentives. As a condition of the Company's consummation of the Closing, and to the extent allowed by applicable law, the Company shall cooperate and the City shall use best faith efforts to authorize and implement the development incentives described in this Article VII (the "Development Incentives").

Section 7.02. Timing of Implementation of Development Incentives. The Parties shall cooperate to complete all steps necessary to implement the Development Incentives in order to ensure that the City has adequate time to complete the statutory processes necessary for approval of the Development Incentives in time to fully realize the benefits of the Development Incentives.

(b) The Company agrees that, so long as the City has legal title to the Project Site, the City must approve any use or additional development of the Project Site other than for the Project.

(c) The City hereby understands and agrees that the Company may withdraw its application for tax abatement at any time prior to issuance of the Chapter 100 Bonds, in which event the bonds shall not be issued.

(d) The approval of this Agreement shall not affect or constitute any approval required by any City department or pursuant to any City ordinance, resolution, code, regulation or any other governmental approval required by law, nor does any approval by the City pursuant to this Agreement constitute approval of the quality, structural soundness or safety of any portion of the Project. The City will not unreasonably withhold any consent or approval required by any City ordinance, resolution, code, regulation or any other governmental approval required by law related to the Project; provided that nothing herein shall be construed to obligate the City to grant municipal permits or other approvals the City would not be obligated to grant, acting as a political subdivision, absent this Agreement. The City agrees that the City will not adopt or approve any ordinance, resolution, code, or regulation not in force and effect on the Effective Date which would materially adversely affect the Project and which would exclude or exempt other similarly situated properties or facilities within the City.

Section 7.08. Issuance of Bonds.

(a) The Company will cooperate with the City in the City's issuance of all or a portion of the Chapter 100 Bonds in an amount to be agreed upon by the City and the Company. Company covenants to cooperate and take all reasonable actions necessary to assist the City and its bond counsel and financial advisors in the preparation of the financing documents to issue the Chapter 100 Bonds.

(b) At the time of issuance of the Chapter 100 Bonds, the Company further agrees (i) to provide a closing certificate in a form mutually agreeable to the Parties (which shall include a certification regarding the accuracy of the information relating to the Company and the Project), and (ii) to cause its counsel to provide a legal opinion, subject to reasonable assumptions, qualifications and limitations from the Company's counsel. Company shall provide information on an ongoing basis so that the City can comply with its continuing disclosure obligations, as requested by the City.

Section 7.09. City to Select Bond Counsel, Bond Trustee, and Financial Advisor. The City shall have the right to select the designated bond counsel, the bond trustee and the financial advisor (and such additional consultants as the City deems necessary for the issuance of the Chapter 100 Bonds).

Section 7.10. Sales Tax Exemption. The City shall issue the Company sales and/or use tax exemption certificates for the purpose of providing a sales and/or use tax exemption on (i) materials used in the construction of the Project pursuant to the provisions of Section 144.062, RSMo, and (ii) personal property included in the Project which is not manufacturing equipment pursuant to the provisions of Section 144.054, RSMo, if and when approved for such exemption by the Missouri Department of Economic Development. It is the City and the Company's expectation that the purchase of any and all such materials shall be exempt from taxation pursuant to Article III, Section 39(10) of the Missouri Constitution and either Section 144.062, RSMo, or Section 144.054, RSMo. The Company will account for all purchases for which the sales tax exemption is used and to provide such accounting to the City at least quarterly. The Company will reimburse the City and/or the other recipients of sales and/or use tax if it is determined that such exemption was improperly used by the Company or its contractors, and to otherwise indemnify and defend the City pursuant to Section 8.01 with respect to the mis-use of the sales and/or use tax exemption certificates.

Section 7.11. Community Improvement District.

Costs”) and to pay certain costs of public improvements (which may include the costs of parking improvements and associated grading and landscaping improvements, if qualified as a public improvement under the CID Act) and demolition, removal, renovation, reconstruction or rehabilitation of buildings or structures and maintenance and services, all as authorized in the petition forming the CID, the CID Cooperative Agreement, and the CID Act, subject to annual appropriation.

(c) Cooperative Agreement. The Company and City agree that the City, the Company, and the CIDs shall enter into a cooperative agreement which will memorialize the provisions of this Article 6 and provide for the operation of the CIDs and the administration of CID Revenues (the “CID Cooperative Agreement”).

ARTICLE VIII

INDEMNIFICATION AND RELEASE

Section 8.01. Indemnity. The Company agrees to indemnify, defend, and hold the City, its officials and employees (collectively, the “City Indemnified Parties”) harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, including court costs and reasonable attorneys’ fees, directly resulting from:

(a) the Company’s actions and undertaking in design, construction and implementation of the Project, the Public Improvements, the Public Art, the Project Screening and this Agreement;

(b) the negligence or willful misconduct of Company, their employees, agents or independent contractors in connection with the design, construction and implementation of the Project, the Public Improvements, the Public Art, the Project Screening and this Agreement; or

(c) any unreasonable delay or expense resulting from any litigation filed against the Company by any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor.

Section 8.02. Notification of Action. In the event any suit, action, investigation, claim or proceeding (collectively, an “Action”) is begun or made as a result of which the Company may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties shall give prompt notice to the Company of the occurrence of such event. After receipt of such notice, the Company may elect to defend, contest or otherwise protect the City Indemnified Parties against any such Action, at the reasonable cost and expense of Company, utilizing counsel of the Company’s choice. The City Indemnified Parties shall assist, at Company’s sole discretion, in the defense thereof. In the event that the Company shall fail to timely defend, contest or otherwise protect any of the City Indemnified Parties against such Action, the City Indemnified Parties shall have the right to do so, and (if such defense is undertaken by the City Indemnified Parties after notice to the Company asserting the Company’s failure to timely defend, contest or otherwise protect against such Action) the reasonable and necessary cost of such defense shall be at the expense of the Company.

Section 8.03. Settlement. Any one of the City Indemnified Parties shall submit to the Company any settlement proposal that the City Indemnified Parties shall receive which may only be accepted with the approval of the Company. Neither the Company nor the City Indemnified Parties will unreasonably withhold its consent to a proposed settlement.

Section 8.04. Survival. The right to indemnification set forth in this Agreement arising during the term of this Agreement shall survive the Closing.

the Company is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Company shall, immediately upon receipt of such notice, diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 9.02. City Event of Default. A "City Event of Default" shall include the following:

(a) The failure of the City to consummate the Closing of the transfer of the Project Site in accordance with the requirements of **Article III** hereof and the continuance of such failure for a period of fifteen (15) days after the Company has notified the City in writing of a default under **Article III**;

(b) Any representation or warranty made by the City herein proves untrue in any material respect as of the date of the issuance or making thereof and shall not be corrected or brought into compliance within forty-five (45) days after there has been given to the City by the Company a written notice specifying such untruth and requiring it to be remedied; provided, that if such untruth cannot be fully remedied within such forty-five (45) day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such untruth, such untruth shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such untruth and shall thereafter prosecute and complete the same with due diligence and dispatch; or

(c) The occurrence and continuance of any default in the performance or breach of any covenant or agreement of the City in this Agreement, and continuance of such default or breach for a period of sixty (60) days after there has been given to the City by Company a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such sixty (60) day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall, immediately upon receipt of such notice, diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 9.03. Remedies.

(a) Upon the occurrence of a Company Event of Default, the City shall have the right to pursue any one or more of the following courses of action: (i) to declare an event of default under the Chapter 100 Lease; (ii) to take such actions as deemed necessary by the City to remedy the breach, the costs of which may be charged to the defaulting party, or offset against any payments due under this Agreement, the Chapter 100 Lease or the Chapter 100 Performance Agreement to the defaulting Party; (iii) to terminate this Agreement by written notice to the defaulting party, which termination shall be effective as of the effective date which is set forth in said notice, provided that said effective date shall be at least thirty (30) days after the date of said notice; and (iv) to institute any and all proceedings permitted by law or equity including, without limitation, actions for specific performance (but in no event shall the Company be enjoined to construct any improvement). The City specifically waives the right to claim or obtain money damages against the Company for breach of this Agreement.

(b) Upon the occurrence of a City Event of Default, the Company shall have the right to pursue any one or more of the following courses of action: (i) to take such actions as deemed necessary by the Company to remedy the breach, the costs of which may be charged to the City or offset against any payments due under this Agreement to the City; (ii) to terminate this Agreement by written notice to the City, which termination shall be effective as of the effective date which is set forth in said notice, provided that said effective date shall be at least thirty (30) days after the date of said notice; and (iii) to institute any and all proceedings permitted by law or equity including, without limitation, actions for

Section 10.09. Notices. Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally or by a reputable overnight delivery service:

In the case of the Company to: MAG PARTNERS LLC
11550 I Street, Suite 200
Omaha, NE 68137
Attention: John Hughes

With a copy to:

In the case of the City to: City of Gladstone, Missouri
7010 North Holmes
Gladstone, Missouri 64118
Attention: City Manager

With a copy to: City of Gladstone, Missouri
7010 North Holmes
Gladstone, Missouri 64118
Attention: City Counselor

With a copy to: Armstrong Teasdale LLP
2345 Grand Boulevard, Suite 1500
Kansas City, Missouri 64108
Attention: Rick McConnell

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

Section 10.10. Waiver. The failure of either Party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either Party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party.

Section 10.11. Negotiation of Agreement. The City and Company are governmental and business entities, respectively, each having been represented and advised by competent counsel, and each has fully participated in the negotiation and drafting of this Agreement and has had ample opportunity to review and comment on all previous drafts. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

Section 10.12. Tax Implications. The Company acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents have provided to them any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Company is relying solely upon its own tax advisors in this regard.

Section 11.02. Assignment or Sale After Completion of Construction. Following Completion of Construction of the Project, the Public Improvements, the Public Art, and the Project Screening this Agreement and the rights, duties and obligations hereunder as they relate to the Project may be fully and freely assigned by the Company subject to the following:

(a) The Company shall represent to the City that in the sole and subjective opinion of the Company the assignee is reputable, credit-worthy and possesses the management experience to operate the Project. Notwithstanding the foregoing, the Company shall have no liability to the City in the event that the assignee is later found not to be reputable, credit-worthy or have the management experience to operate the Project.

(b) Every assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Company under this Agreement, the Chapter 100 Lease, the Chapter 100 Performance Agreement, and any other agreements associated with the Chapter 100 Bonds, and agree to be subject to all the conditions and restrictions to which the Company is subject.

In the event this Agreement is assigned in whole pursuant to this Section 10.02 upon delivery to the City of the assumption document required by subparagraph (b), the Company shall be released from any further obligations set forth herein accruing after the date of such assignment. The Company shall notify City of any such assignment including presentation of the assumption of obligation instrument within ten (10) days of closing on such assignment. At all times, without the consent of the City, the Company may collaterally assign this Agreement to lenders providing financing for the Project.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the Parties have executed this Development Agreement on the date first written above.

CITY OF GLADSTONE, MISSOURI

By: Scott Wingerson
Scott Wingerson
City Manager

(SEAL)

ATTEST:

Ruth E Bocchino

Ruth Bocchino
City Clerk



GLAD HOTEL DEVELOPER, LLC

By: MAG PARTNERS, LLC, its manager

By: Todd Hughes
Name: Todd Hughes
Title: Manager

EXHIBIT A-1

DESCRIPTION OF THE CITY PROPERTY

Linden, Block 25, all of lots 4,5,6,7,8,9, and Tract 2 of the Replat of lots 1, 2, and 3, Block 25, Linden, Clay County, Missouri.

EXHIBIT A-3
COMPANY PROPERTY CONTRACT

Money"). The Earnest Money shall be held by the Title Company in escrow. The Title Company shall apply the Earnest Money in accordance with this Agreement. The Earnest Money is refundable pursuant to the terms and conditions of this Agreement.

(ii) At "Closing" (as hereinafter defined), the Earnest Money shall be credited to the Purchase Price, and Purchaser shall pay the balance of the Purchase Price in cash, certified check or wire transfer of funds.

3. SURVEY.

Purchaser may cause a certified as-built survey of the Property ("Survey") to be prepared by a surveyor licensed by the state in which the Property is located. The Survey shall be certified to Purchaser and the Title Company and shall refer to the Title Commitment (hereinafter defined) and depict all pertinent facts as requested by Purchaser. The Survey shall be accompanied by a current surveyor's certificate in a form reasonably acceptable to Purchaser and the Title Company. The Survey, when approved by Purchaser, shall conclusively establish the legal description for the Land. Seller shall be responsible for the cost of the Survey, which may be paid by a credit against the Purchase Price at Closing.

4. TITLE

(a) Purchaser shall obtain from the Title Company a commitment (the "Title Commitment") for a standard ALTA Form B owner's title insurance policy (except that the standard exceptions relating to survey matters, rights of parties in possession, mechanic's liens, easements or claims of easements not of record, and taxes and assessments not shown by the public records, shall be eliminated) (the "Title Policy") to be issued upon Closing by the Title Company in the amount of the Purchase Price, insuring that as of the recording of trustee's deed from Seller to Purchaser (the "Deed") good and marketable fee simple title to the Property is vested in Purchaser subject only to the "Permitted Exceptions" (as hereinafter defined). The Title Policy shall include such endorsements as Purchaser shall reasonably require, each in form satisfactory to Purchaser. The Title Commitment shall identify the Land by the legal description set forth on the Survey, provided that if the Survey has not been prepared at the time the Title Commitment is ordered, by a preliminary legal description. In the event the description contained on the Survey differs from the preliminary legal description, Purchaser shall cause the Title Company to update the Title Commitment following its receipt of the Survey description. Seller shall be responsible for 50% of the premium costs of the Title Policy (except for any special endorsements to coverage requested by Purchaser, which shall be Purchaser's responsibility), which may be paid by a credit against the Purchase Price at Closing.

(b) Purchaser shall have a period of ninety (90) days after the Final Execution Date (the "Inspection Period") to notify Seller of any objections to or defects it has with respect to the Seller's title to the Property as shown on the Title Commitment and Survey ("Objections"); PROVIDED, HOWEVER, that title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount that may be removed by the payment of money ("Liens") at Closing shall not be deemed to make the Title Commitment unacceptable and Seller, at Seller's option, may use the Purchase Price to satisfy such Liens, but in any and all events, Seller must remove such Liens at or before Closing; the removal of such Liens being a condition of Purchaser to Closing. Those exceptions to title which are disclosed by the Title Commitment (other than Liens) and are not objected to by Purchaser shall be deemed to be the "Permitted Exceptions". After receipt of the Objections, if Seller shall elect not to cure any Objection(s), Seller must give written notice ("Seller's Objections Response") thereof to Purchaser within fifteen (15) days of Seller's receipt of the Objections, and within 15 business days of receipt of such Seller's Objections Response, Purchaser shall elect in writing either (i) to terminate this Agreement or (ii) to proceed to close on the Property subject to such Objection(s) as Permitted Exceptions, EXCEPT, HOWEVER, Purchaser may, in its sole discretion, alternatively elect in writing to extend the Closing Date for a period that Purchaser deems reasonable for curing such Objections, but not to exceed sixty (60) days, and if all Objections to title are not cured within such extended period, if any, Purchaser shall then elect either (i) or (ii) above. Failure of Purchaser to notify Seller of Purchaser's election within fifteen (15)

(b) Purchaser represents and warrants to Seller that Purchaser has the full authority and power to execute this Agreement and to close the sale of the Property, which representation and warranty shall be deemed made by Purchaser to Seller as of the Final Execution Date and as of the Closing Date, shall survive the Closing and, but for such representation and warranty, Seller would not execute this Agreement.

(C) PURCHASER ACKNOWLEDGES, REPRESENTS, WARRANTS AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, (I) THAT PURCHASER IS PURCHASING THE PROPERTY IN ITS EXISTING PHYSICAL CONDITION "AS IS, WHERE IS AND WITH ALL FAULTS", (II) SELLER HAS NO OBLIGATION TO INSPECT FOR, REPAIR OR CORRECT ANY CONDITION OR DEFECT OR TO COMPENSATE PURCHASER FOR SAME, (III) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES AS SET FORTH IN THIS AGREEMENT, PURCHASER IS NOT RELYING UPON ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE MADE BY SELLER OR SELLER'S REPRESENTATIVES, AGENTS OR EMPLOYEES, AND PURCHASER AGREES THAT ANY REPORTS, SURVEYS OR STATEMENTS PROVIDED BY SELLER, OR SELLER'S REPRESENTATIVES, AGENTS OR EMPLOYEES RELATING TO THE PROPERTY WERE PROVIDED AS AN ACCOMMODATION TO PURCHASER AND NOT FOR PURCHASER'S RELIANCE

6. RISK OF LOSS, CONDEMNATION.

(a) Seller shall bear the risk of loss until Closing. In the event of the damage or destruction of all or any of the Property, including any damage to any building or other improvement located thereon, prior to Closing, Purchaser, at its option, may either (i) terminate this Agreement by notice to Seller, whereupon the Earnest Money shall be returned to Purchaser and neither party shall have any further obligations hereunder, or (ii) enforce this Agreement whereupon Seller shall assign to Purchaser any insurance proceeds payable as a result of such damage or destruction. All hazard insurance, if any, maintained by or on behalf of Seller in respect to the Property shall be canceled as of the Closing Date.

(b) If all or any part of the Property shall be condemned by governmental or other lawful authority, Purchaser shall have the option, by giving notice of its election to Seller before the Closing Date, either of (i) completing this transaction, in which event (a) there shall be no reduction of the Purchase Price, (b) Seller shall have no duty to repair or restore, (c) Seller shall pay to Purchaser all condemnation proceeds theretofore or thereafter received by Seller with respect to such condemnation, (d) Seller shall assign to Purchaser all rights of Seller in and to such condemnation proceeds, and (e) Seller shall furnish to Purchaser such documents, cooperation and assistance as Purchaser requires to enforce the rights of Seller with respect thereto, or (ii) terminating this Agreement, in which event the Earnest Money shall immediately be returned to Purchaser and neither party shall have any further obligation to the other hereunder.

7. SUITABILITY, INSPECTION PERIOD, LICENSE TO ENTER.

(a) In addition to all other conditions to Purchaser's obligations hereunder, Purchaser's obligations shall be conditioned upon Purchaser's approval, in its sole discretion, of the "Purchaser's Criteria" (hereinafter defined). Purchaser shall have the Inspection Period to inspect and approve the "Due Diligence Materials" (hereinafter defined) and to determine whether the Property is suitable for Purchaser's intended use with regard to the following criteria (the "Purchaser's Criteria"), PROVIDED, HOWEVER, in the event that Purchaser shall be diligently pursuing the satisfaction of the Purchaser's Criteria as of the expiration of Inspection Period (the "Original Expiration Date"), then Purchaser may extend the Inspection Period for one (1) successive additional period of sixty (60) days (the "Extension Period") by giving notice of its election to do so to Seller on or before the Original Expiration Date:

(i) Purchaser shall have conducted or caused to be conducted inspections, examinations, investigations, tests and studies of the Property, including, without limitation, soil condition

8. Seller agrees to deliver to Purchaser within fifteen (15) days after the Final Execution Date true, correct and complete copies of all of the following in its possession or reasonable control (collectively, the Due Diligence Materials): (i) Service Contracts, (ii) Warranties, (iii) Permits, (iv) environmental studies and assessments, (v) soil tests and studies, (vi) engineering reports, (vii) traffic studies, (viii) market reports, (ix) documents and correspondence regarding governmental approvals, (x) as-built building and improvement plans and architectural renderings, (xi) all financial and accounting records, relating to the Property, including appraisals and records of capitalized improvement costs, (xii) existing title policies and surveys and site plans in its possession or under its control, (xiii) copies of the Lease (together with all exhibits thereto and any amendments or correspondence relating thereto), and (xiv) a rent roll (the "Rent Roll") as prepared as of the first day of the month in which this Agreement is executed, reflecting, with respect to each tenant: the suite number and address, name, square footage leased, monthly rental, security deposit amount (and any other deposits, if any), the date through which tenant's rental is paid, the expiration date of the lease, any options to renew and any additional rent. Notwithstanding anything to the contrary, the Inspection Period shall be extended one day for each day after the initial fifteen (15) days from the Final Execution Date that the Due Diligence Materials have not been delivered to Purchaser.

9. PRORATIONS

All general real estate taxes and installments of special assessments and other fees and taxes imposed on the ownership or use of real property (collectively, "Taxes") respecting the Property for the tax periods prior to the year in which Closing occurs shall be paid by Seller before or on the Closing Date, and all Taxes for the tax fiscal period in which the Closing Date occurs (the "Proration Period") shall be apportioned between Purchaser and Seller on and as of the Closing Date, with Purchaser bearing only the expense of that proportion of such Taxes that the number of days in the Proration Period following the Closing Date bears to 360. If the amount of Taxes to be borne by the parties as above provided is not ascertainable on the Closing Date, then 105% of the total thereof paid for the preceding tax fiscal period shall be used for purposes of such proration. Seller's portion of the Taxes shall be a credit to the Purchase Price at Closing. Purchaser shall cause all utilities to be placed in Purchaser's name as of the day after the Closing, and all utility charges (for which cut-off billing is not available) shall be prorated at Closing.

Rent and all other reimbursements and amounts (other than security deposits) due to Seller as landlord under the Lease (collectively, "Rents") shall be apportioned between Purchaser and Seller on and as of the Closing Date (with Purchaser allocated revenues/expenses for the Closing Date). On the Closing Date there shall be credited to Buyer, as a credit against the Purchase Price, all security and other refundable deposits held by the Seller under the Lease.

10. CONDITIONS PRECEDENT.

(a) This Agreement and all obligations of Seller hereunder are expressly conditioned on the following conditions precedent being in effect or complied with on and as of the Closing Date, and Purchaser covenants that it will use diligent, good faith efforts to cause such conditions to be in effect or complied with

(i) Purchaser's representation and warranty set forth in Section 5 shall remain true and correct in all material respects

(ii) Purchaser shall have executed and delivered or caused to be executed and delivered to Seller and/or the Title Company, as herein provided, all documents, instruments and information required hereby to be delivered by Purchaser.

(iii) Purchaser shall have complied with all of its other obligations under this Agreement which are required to perform on or before the Closing Date

(3) A bill of sale for all Personal Property, in a form approved by Purchaser.

(4) Such instruments and documents relating to the organization, existence, good standing and authority of Seller as the Title Company and Purchaser shall reasonably require.

(5) Such other documents, instruments, certificates and assurances as are necessary to consummate the transaction contemplated by this Agreement.

(6) Seller's closing statement, duly executed.

(7) Such closing instructions to the Title Company as Seller shall desire, which shall not be inconsistent with the provisions of this Agreement.

(8) Seller's FIRPTA certification

(9) Possession of the Property free from all encumbrances except the Permitted Exceptions.

(10) An assignment of Intangible Property, except for any Service Contracts that are terminated at Purchaser's request, and in which case, evidence of termination of any such Service Contracts.

(11) Affidavits as to rights of parties in possession and mechanics' liens and claims as may be required by the Title Company in order to issue to Purchaser the Title Policy as specified in Section 4

(12) An assignment and assumption of the Lease in form reasonably approved by Purchaser, attaching a copy of the Lease (together with all amendments and correspondence related thereto), assigning all of the landlord's right, title and interest in and to the Lease.

(13) An updated Rent roll dated no later than five (5) days from the Closing Date.

(14) Tenant Estoppel Certificate (and, if requested, Subordination Non-Disturbance and Attornment agreement in benefit to Purchaser's Lender) from the tenant under the Lease in form provided by Purchaser (or its Lender).

(15) A Tenant notification letter, dated as of the Closing Date executed by Seller notifying the tenants that the Property has been sold to Purchaser.

(iii) On or before the Closing Date, Purchaser shall deliver or cause to be delivered to the Title Company the following:

(1) By federal wire transfer of funds to the Title Company's escrow account, an amount equal to (i) the balance of the Purchase Price due at Closing, adjusted as herein provided, plus (ii) the aggregate amount of closing costs for which Purchaser is responsible as provided herein, all as shown on Purchaser's closing statement.

(c) The failure of either party to act upon a default of the other in any of the terms, conditions or obligations under this Agreement shall not be deemed a waiver of any subsequent breach or default under the terms, conditions or obligations hereof by such defaulting party.

13. **NOTICES.** All notices, demands, consents and other communications herein required or which either party desire to give to the other ("Notices") shall be in writing and shall be delivered by (i) personal delivery; (ii) United States registered or certified mail, return receipt requested; (iii) facsimile, if followed immediately by notice through the mail or overnight commercial package courier; or (iv) overnight commercial package courier providing confirmation of delivery, in all events prepaid and addressed as provided below:

(a) If to Seller: Beverly R. Bodker Marital Trust
9401 Nail Avenue, Ste 101
Shawnee Mission, KS 66207
Attn: Harvey S. Bodker

With copy to:

Stinson Leonard Street LLP
1201 Walnut, Suite 2900
Kansas City, Missouri 64106
Attn: Richard Cook

(b) If to Purchaser: MAg Partners, LLC
11550 Street, Ste 200
Omaha, NE 68137
Attn: John Hughes

Each party hereto shall have the right to change its foregoing address for notices by written notice to the other party to such effect. All Notices shall be effective upon being deposited in the United States mail or delivered to the overnight courier in the manner prescribed above; however, the time period in which a response to any such Notice must be given shall commence to run from the date of receipt by the addressee thereof as shown on the return or courier receipt of the Notice. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice as of the date of such rejection, refusal or inability to deliver.

14. **ASSIGNMENT.**

Purchaser shall have the absolute right to assign its rights under this Agreement to any parent, subsidiary, successor by merger, qualified buyer or any entity affiliated with or under common ownership with Purchaser, or to a qualified intermediary in connection with a tax deferred exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, (collectively, "Related Party"). Upon Purchaser's assignment of this Agreement to a Related Party, the assignee shall be deemed substituted, by novation, for the named Purchaser above and such assignee shall assume Purchaser's obligations hereunder and the named Purchaser above shall have no further liability hereunder.

LIKE KIND EXCHANGE. Either party may effectuate the sale of the Property by means of an exchange of "like-kind" property which will qualify as such under Section 1031 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder. Each party expressly reserves the right to assign its rights, but not its obligations, hereunder to a qualified intermediary as provided in I.R.C. Reg. 1.1031(k)-1(g)(4) on or before the date of Closing. Upon written notice from Seller to Purchaser or from Purchaser to Seller, the party receiving the notice agrees to cooperate with the other to effect a like-kind exchange, provided that such cooperation shall be subject to the following conditions: (a) such exchange shall not delay the date of Closing and shall occur either simultaneously with the Closing or the sale proceeds payable to Seller shall be paid to a third party escrow agent or intermediary

presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

(g) The paragraph headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the scope, extent or intent of this Agreement or any part hereof. Unless otherwise specifically set forth in this Agreement to the contrary, all references to exhibits contained in this Agreement refer to the exhibits which are attached to this Agreement, all of which exhibits are incorporated in, and made a part of this Agreement by reference.

(h) The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

(i) This Agreement may be executed in multiple originals or counterparts, each of which will be an original and, when all of the parties to this Agreement have signed at least one (1) counterpart, such copies together will constitute a fully executed and binding Agreement. This Agreement may be executed and delivered by email, pdf or fax, and same shall be deemed an original signature for all purposes hereof.

(j) If either party files any action or brings any proceeding against the other arising out of this Agreement, or is made a party to any action or proceeding brought by a third party arising out of this Agreement, then as between Purchaser and Seller, the prevailing party shall be entitled to recover, as an element of its costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court.

(k) If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, weather, fires, Acts of God, natural disasters, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under this Agreement, the period for the performance of any such work or act shall be extended for a period equivalent to the period of such delay.

(l) The parties agree that the Title Company assumes no liability under this Agreement other than that of a stakeholder. If there is any dispute as to whether Title Company is obligated to deliver the funds or as to whom the sum is to be delivered and notice of which dispute in reasonable specificity is given to Title Company and the other party hereto, then Title Company shall not be obligated to make any delivery of the sum, but in such event may hold the sum until receipt by Title Company of an authorization in writing signed by all persons having such dispute, directing the disposition of the sum, or in the absence of such authorization, Title Company may hold the sum until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given, or proceedings for such determination are not begun and diligently continued, Title Company is not required to bring an appropriate action or proceeding for leave to deposit the sum in court, pending such determination. No provision of this Agreement shall be construed to relieve Title Company of any obligations or liabilities which may now exist or hereafter accrue by virtue of any writing other than this Section.

(m) It is the intent of the parties that each and every provision of this Agreement shall survive Closing and shall not merge into any deed or other document given at Closing.

17. BROKERS

Seller represents and warrants to Purchaser that it nor its agents or representatives have engaged or dealt with any other broker, agent or finder with respect to the transaction contemplated herein and no person is entitled to a seller's/listing broker's commission or fee as a result of the

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year beneath the respective signatures below.

"SELLER"

Harvey S. Bodker, trustee of the Beverly R. Bodker Marital Trust

By: Harvey S. Bodker

Print Name: Harvey S. Bodker

Title: Trustee

Executed by Seller this 3rd day of July, 2018

"PURCHASER"

MAG Partners, LLC,
a Nebraska limited liability company

By: John Hughes

Print Name: John Hughes

Title: Manager

Executed by Purchaser this 5th day of July, 2018

EXHIBIT A

Legal Description of the Land

Linden Lots 10, 11, & South 10.72 ft Lot 12, Block 25 in the City of Gladstone, Clay County, Missouri

EXHIBIT C

List of Service Contracts

(See next page)

in good faith to prepare a reasonable and customary form of deed of trust for execution as part of the Closing.

6. Section 9 of the Purchase Agreement is hereby amended so that January Rent will not be apportioned between Purchaser and Seller on and as of the Closing Date. January Rent stays with the Seller, and Seller shall warrant that the Property is free and clear of all Leases.
7. The Purchase Agreement is hereby amended in the foregoing particulars. All other terms and provisions of the Purchase Agreement which are not expressly amended by this Amendment shall remain the same. As amended above, the Purchase Agreement is hereby ratified and confirmed and remains in full force and effect.
8. This Amendment may be executed in counterparts, and all such counterparts shall constitute the same document. Executed counterparts delivered electronically, by fax or email, shall be deemed to be binding and effective for all purposes.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

SELLER:

BEVERLY R. BODKER MARITAL TRUST

By: Harvey S. Bodker

Name: Harvey S. Bodker

Title: Trustee

Date: 12/20/18

BUYER:

MAG PARTNERS, LLC

By: John Hughes

Name: John Hughes

Title: Manager

Date: 12-20-18

**NEBRASKA NOTARY ACKNOWLEDGEMENT
(LIMITED LIABILITY COMPANY)**

**State of Nebraska
County of Douglas**

**The foregoing instrument was acknowledged before me this ____ day of _____,
by John Hughes, Manager, on behalf of MAg Partners, LLC a Nebraska limited liability
company.**

[Seal]

Notary Public

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

| **SELLER:**

BEVERLY R. BODKER MARITAL TRUST

By: Harvey S. Bodker

Name: Harvey S. Bodker

Title: Trustee

| **BUYER:**

MAG PARTNERS, LLC

By: John Hughes

Name: John Hughes

Title: Manager

7. Real Estate Taxes, Assessments, and Personal Property. Real Estate Taxes and Assessments. Tenant shall pay directly to the taxing authority, prior to delinquency, all real estate and property taxes, as well as special and general assessments, ("Taxes") levied against the Premises throughout the Term of this Lease. Tenant's liability for the Taxes for the Term will be reasonably prorated based on a 365-day calendar year. Taxes shall be paid by Tenant on or prior to the last day of the Term based on taxes for the prior year of the Term, if the actual amount of such taxes is not then known. Landlord shall cooperate with Tenant in changing the name and address in the appropriate taxing authority's records to Tenant's name and address, and until the change is completed, will forward any bills or related notices to Tenant promptly after receipt by Landlord.

8. Insurance. Throughout the Term, Tenant shall maintain, at its sole cost and expense, property insurance covering damage or destruction by fire and the perils commonly covered under a special form policy, covering the Premises in an amount no less than the Purchase Price for the Premises, Three Hundred Eighty-Five Thousand and No/100 Dollars (\$385,000.00). In addition, Tenant shall at all times during the Term hereof, and at its own cost and expense, procure and continue in force commercial general liability and property damage liability insurance at commercially reasonable amounts, as determined by Landlord but in no case less than Two Million and 00/100 Dollars (\$2,000,000) per occurrence, and such policies shall name Landlord as an additional insured. All policies and certificates naming Landlord as an additional insured or certificate holder shall notify Landlord, [Landlord's property manager, and all mortgagees of Landlord (of which Tenant has written notice)], in writing, not less than 30 days before any lapse, non-renewal or cancellation, including cancellation for nonpayment of premium, or other termination thereof. Tenant shall not knowingly conduct or permit to be conducted in the Premises any activity, or place any equipment in or about the Premises, which shall invalidate the insurance coverage in effect or increase the rate of insurance on the Premises, and Tenant shall comply with all requirements and regulations of Landlord's property and liability insurers. Tenant shall deliver certificates of all insurance to Landlord prior to, or simultaneous with, execution of this lease by Tenant, and shall name Landlord as an additional insured.

9. Indemnification. Tenant agrees to indemnify and save and hold harmless the Landlord from all claims and demands occurring on and arising out of Tenant's use of the Premises. Tenant agrees that any damage to Tenant's personal property shall be at Tenant's risk.

10. Tenant's Default. If Tenant shall default in any of the other covenants, conditions, agreements or provisions of this Lease to be observed or performed by Tenant, then Landlord shall then have the right to retake possession of the Premises and recover any costs, expenses and reasonable attorneys' fees incurred by Landlord in connection with the same.

11. Use of Premises. Subject to the terms and conditions of this Lease, Tenant shall have the right to use the Premises for all lawful commercial uses.

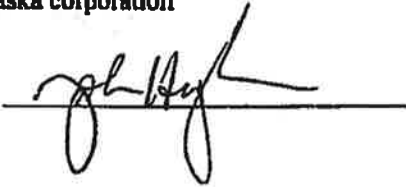
12. Assignment and Subletting. Tenant shall not assign or sublet any portion of the Premises without the approval of Landlord.

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

TENANT:

MAGNUM REALTY, INC.,
a Nebraska corporation

By: _____
Name: _____
Title: _____

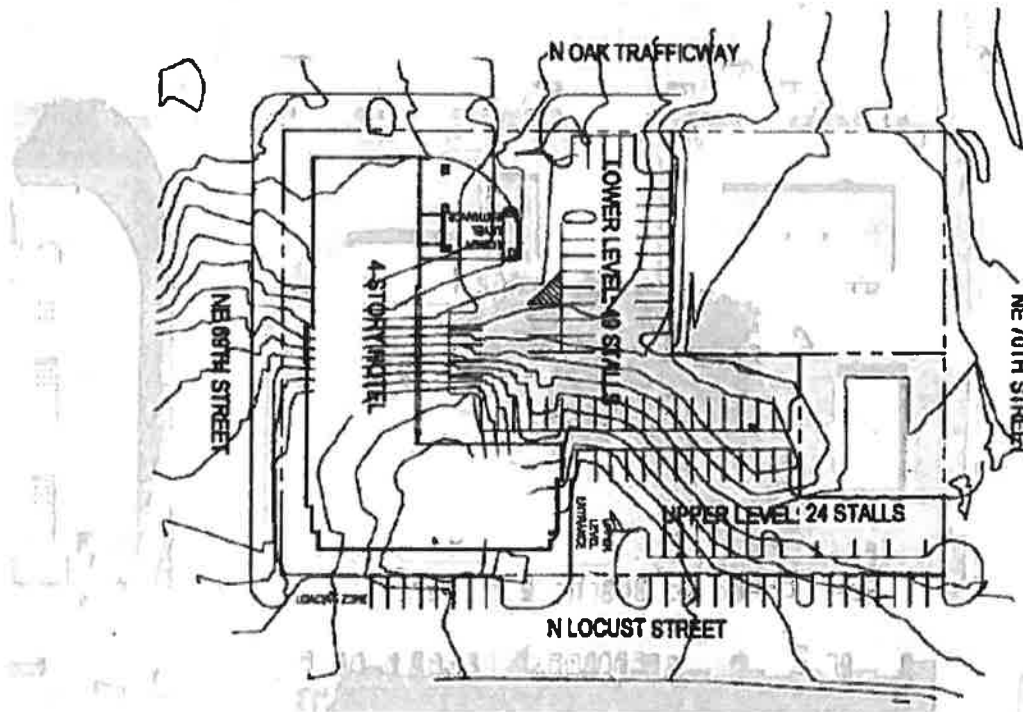


LANDLORD:


Harvey S. Bodker, Trustee of the
Beverly R. Bodker Marital Trust

EXHIBIT C

SITE PLAN



ACCEPTED:

CITY OF GLADSTONE, MISSOURI

By: _____
Name: _____
Title: _____

(Insert Notary Form(s) and Legal Description)

EXHIBIT F


PILOTs SCHEDULE

Year 1	\$10,000
Year 2	10,200
Year 3	10,404
Year 4	10,612
Year 5	10,824
Year 6	11,041
Year 7	11,262
Year 8	11,487
Year 9	11,717
Year 10	11,951
Year 11	12,190
Year 12	12,434
Year 13	12,682
Year 14	12,936
Year 15	13,195
Year 16	13,459
Year 17	13,728
Year 18	14,002
Year 19	14,282
Year 20	14,568

EXTENSION OF DEVELOPMENT AGREEMENT DEADLINE

1. The City of Gladstone, Missouri (the "City") and Glad Hotel Developers, LLC (the "Company") entered into a Development Agreement, dated February 21, 2019 (the "Development Agreement").
2. Section 3.04 of the Development Agreement provides that if closing (as described therein) does not occur by August 30, 2019, the Development Agreement will automatically terminate unless extended by mutual agreement of the City and Company.
3. Section 10.01 of the Development Agreement provides that any consent or approval required by the City may be provided by the City Manager.
4. The Developer and the City believe that all closing contingencies identified in the Development Agreement can be satisfied if the August 30, 2019, deadline is extended by approximately 90 days.
5. The City, by the action of the City Manager, and the Company hereby agree to extend the deadline set forth in Section 3.04 of the Development Agreement to November 27, 2019.
6. This agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

CITY OF GLADSTONE, MISSOURI

By:  8/23/19
Scott Wingersen
City Manager

GLAD HOTEL DEVELOPER, LLC

By: MAG PARTNERS, LLC, its manager

By: 
John Hughes
Manager