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RASHELLE HOBBS
Recorder, Salt Lake County, UT
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WHEN RECORDED, RETURN TO:

Carl W. Barton, Esq.
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222 South Main Street
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Salt Lake City, Utah 84101

CT-108821-CAE
TIN 15-01-226-007 A 15-01-226-000

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
(Salt Palace Convention Center and Convention Center Hotel)**

This TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this "Agreement") is made this 30th day of December, 2019 ("Effective Date") by and between SALT LAKE COUNTY, a body corporate and politic of the State of Utah ("County") and SALT LAKE CITY CH, LLC, a Delaware limited liability company ("Hotel Owner"). Hotel Owner and the County, and each of their respective successors and assigns, are each individually referred to herein as a "Party" and collectively, as the "Parties."

RECITALS:

A. County and Hotel Owner are parties to that certain Development and Funding Agreement with an effective date of January 29, 2019, as amended by that certain Amendment to Development and Funding Agreement, effective as of July 12, 2019, that certain Second Amendment to Development and Funding Agreement, effective as of August 30, 2019, that certain Third Amendment to Development and Funding Agreement, effective as of September 16, 2019, that certain Fourth Amendment to Development and Funding Agreement, effective as of September 20, 2019, that certain Fifth Amendment to Development and Funding Agreement, effective as of September 27, 2019, and that certain Sixth Amendment to Development and Funding Agreement, effective as of October 4, 2019 (collectively, the "*Development Agreement*"), pursuant to which the County agreed to convey the Hotel Site (as defined below) to Hotel Owner and Hotel Owner agreed to develop the Hotel Project on the Hotel Site as a full-service convention center hotel that is physically and programmatically integrated with the Convention Center. All defined terms not otherwise defined herein shall retain the definition set forth in the Development Agreement.

B. As contemplated under the Development Agreement, the County has conveyed to Hotel Owner the Hotel Site, which is more particularly described in attached Exhibit A-1. The County continues to own the Convention Center improvements and real property located adjacent to the Hotel Site, as further described in attached Exhibit A-2 (the "*Convention Center Parcel*").

C. In order to allow for the construction of the Hotel Project on the Hotel Site as contemplated under the Development Agreement, Hotel Owner requires a temporary

construction easement over, across and under certain portions of the Convention Center Parcel, subject to the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Easement. The County hereby grants and conveys to Hotel Owner, for its exclusive use and the exclusive use of its General Contractor and each of their respective contractors, agents, and permittees, a temporary easement in gross (the "**Construction Easement**") over, across and under the Exclusive Easement Area (as defined below) for the laydown, staging and storage of equipment and materials used in connection with the demolition of existing improvements and construction of the Hotel Project in accordance with the Design Development Drawings (all such work is referred to herein as the "**Construction Work**"), together with the non-exclusive right of pedestrian ingress, egress, and access over and across the Non-Exclusive Easement Area for purposes of performing the Construction Work and the right to ingress, egress and access by construction vehicles and related equipment over the portion of the Non-Exclusive Easement Area located outside the Convention Center. The area of the Convention Center Parcel that Hotel Owner may use exclusively for the Construction Work is referred to herein as the "**Exclusive Easement Area**" and is generally depicted in attached Exhibit B. The area of the Convention Center Parcel that Hotel Owner may use non-exclusively for access, ingress and egress when performing the Construction Work is referred to herein as the "**Non-Exclusive Easement Area**" and is generally depicted in attached Exhibit B. The Exclusive Easement Area and the Non-Exclusive Easement Area are sometimes referred to herein as the "**Easement Area**." Notwithstanding anything to the contrary herein, Hotel Owner shall not use any portion of the Non-Exclusive Easement Area for the laydown, staging, or storage of vehicles, equipment, or materials at any time. Except as provided below, the Non-Exclusive Easement Area shall be accessible by the County and its Permittees.

2. Alterations. Subject to the terms and conditions of this Agreement and the Development Agreement, during the Term (as defined below), the County further authorizes Hotel Owner to undertake and complete the alterations and modifications to the Convention Center set forth in the Design Development Drawings, including, but not limited to, the demolition and removal of existing improvements located on and below the Convention Center Parcel, the construction of driveways, drive aisles, curb cuts and other improvements that may be necessary for ingress, egress and access by pedestrians and vehicles (including, without limitation, construction vehicles and related equipment) over and across the Non-Exclusive Easement Area located outside the Convention Center, and the replacement and construction of such new improvements to integrate the Hotel Project and Convention Center. Hotel Owner may close off access to the Non-Exclusive Easement Area only as necessary in order to safely conduct these alterations and modifications. Hotel Owner shall coordinate directly with the County or its designee on the timing and duration of any such closures and shall endeavor to provide at least thirty (30) days' prior written notice to the County prior to closing any portion of the Non-Exclusive Easement Area. Such notice shall include a written statement specifically identifying the portions of the Non-Exclusive Easement Area that will be closed and specifying

the anticipated length of time closure shall occur. Within ten (10) days of receipt of Hotel Owner's written statement, the County shall respond to Hotel Owner in writing to either approve or disapprove of timing or duration of the closure described in such statement. The County may only disapprove of the timing or duration of the closure if the Construction Work to be performed would unreasonably interfere with the use, operation, or enjoyment of the Convention Center, as determined by the County acting reasonably and in good faith. If such written response is provided by the County, no closure of the Non-Exclusive Easement Area shall occur until the Parties have resolved to each Party's reasonable satisfaction the issues raised by the County. If the County fails to respond in writing to Hotel Owner's written notice within such 10-day period, the provisions of Section 10.1 of the Development Agreement shall apply. Hotel Owner shall diligently complete Construction Work within the Non-Exclusive Easement Area as promptly as possible and shall promptly clean the area and restore and/or repair the affected portion of the Non-Exclusive Easement Area to a condition which is equal to or better than the condition which existed prior to the commencement of the Construction Work. At all times when conducting Construction Work under this Agreement, commercially reasonable measures shall be taken for dust control. Any such Construction Work shall be conducted in a manner so as to minimize interference as is reasonably possible with the County's use of the Non-Exclusive Easement Area.

3. Interference During Construction Work. Hotel Owner agrees to perform the Construction Work (and to cause its Permittees to perform such Construction Work) in a manner so as to minimize: (i) unreasonable interference with the use, occupancy or enjoyment of the Convention Center Parcel, or any part thereof, by the County or any of its Permittees, or (ii) impairment or endangerment of the Improvements on the Convention Center Parcel or the continuing right of Convention Center Parcel to full structural support. In furtherance of this obligation, Hotel Owner and its Permittees shall exercise commercially reasonable efforts to: (a) minimize the amount of debris and dust within the Non-Exclusive Easement Area caused by its Construction Work, and (b) to the extent feasible, minimize disruption to the County's business operations and use of the Non-Exclusive Easement Area resulting from deliveries of Construction equipment and supplies.

4. Restoration and Repair. Upon the expiration or termination of the Construction Easement and this Agreement, Hotel Owner agrees to remove, or cause to be removed, its and its General Contractor's equipment, materials, improvements, and refuse from the Convention Center Parcel. All Construction Work performed within or upon the Convention Center Parcel shall be completed in accordance with the terms of the Development Agreement, the General Construction Contract, and otherwise in a good and workmanlike manner and in accordance with all applicable governmental requirements and regulations.

5. Liens. Hotel Owner shall not permit any mechanics' or construction liens to be filed against the Convention Center Parcel as a result of its activities or the activities of its General Contractor upon the Convention Center Parcel. Hotel Owner may contest any such lien, so long as within thirty (30) days after it receives notice of the lien, Hotel Owner provides a bond or other security as the County may reasonably request, or otherwise removes such lien from the Convention Center Parcel pursuant to applicable law.

6. Removal of Property. Not later than ten (10) days after the Effective Date or such

other date that is mutually acceptable to the Parties ("**Property Removal Deadline**"), the County shall remove all of the County's personal property and equipment from the Exclusive Easement Area at the County's cost and expense; provided however that the County and Hotel Owner shall coordinate the removal of the public art installations identified as follows: (1) *Breeze* – two (2) rectangular granite columns, each with a stainless steel sculptural element on top; (2) *Windbreak* – cast bronze poplar trees on bronze base; and (3) 2002 Olympic legacy monument – structure approximately nine (9) feet tall with a concrete or stone base (collectively, the "**Public Art Installations**"), from the Hotel Site, which the County shall remove, store (as necessary) and/or relocate at the County's cost and expense, subject to reimbursement by Hotel Owner of the actual, reasonable cost of such removal, relocation, and storage (not to exceed \$25,000.00 in total, subject to a cap of up to ten percent (10%) of such funds (or \$2,500.00 in total) being used for reimbursement of storage costs incurred by the County). In addition, Hotel Owner shall not be (a) required to reimburse the County for any costs in excess of the \$2,500.00 cap for storage of the Public Art Installations (all such costs being solely the County's obligation), and (b) responsible for any costs whatsoever that are incurred after the Target Completion Date or billed to Hotel Owner more than thirty (30) days after the Target Completion Date. Hotel Owner may, at the County's cost and expense, remove and dispose of any such property remaining within the Exclusive Easement Area after the expiration of Property Removal Deadline.

7. **Term.** The term of the Construction Easement (the "**Term**") shall commence upon the Effective Date and shall expire upon the Completion of Construction (the "**Expiration Date**"). Upon such termination, the Parties shall record a notice of such termination against the Convention Center Parcel in the official records of Salt Lake County, Utah.

8. **Insurance.** At all times during the Term, Hotel Owner shall cause the General Contractor to maintain the insurance required in Sections 8.1.1 and 8.1.3 of the Development Agreement and shall comply with the provisions of Sections 8.1.2 and 8.1.4 of the Development Agreement as if fully set forth herein.

9. **No Interference.** The County's activities and any grant of rights by the County to any person or entity shall not unreasonably impede or interfere with the exercise of Hotel Owner's rights granted pursuant to this Agreement. During the Term, the County shall not grant any other easement, license, access or use rights on, under or over the Exclusive Easement Area to any person or entity without the prior written consent of Hotel Owner, which may be granted or withheld in Hotel Owner's sole discretion.

10. **Indemnity.** The indemnities and other agreements between the Parties set forth in Section 8.2 of the Development Agreement shall apply to any and all claims, actions, proceedings, and/or suits arising in connection with the Construction Work and other matters contemplated under this Agreement as if fully set forth herein and are incorporated herein by this reference.

11. **Default.** In the event of any alleged failure to perform any obligation under this Agreement (in each instance, a "**Default**"), the provisions of Article 9 of the Development Agreement shall apply to such Default as if fully set forth herein and are incorporated herein by this reference.

12. Quiet Enjoyment. As long as Hotel Owner observes the terms and conditions of this Agreement, it shall peacefully hold and enjoy all of the rights granted by this Agreement without unreasonable hindrance or interruption by the County or any person lawfully or equitably claiming by, through or under the County, or County's successor(s) in interest. Subject to the Hotel Owner's rights granted hereunder, Hotel Owner's use of the Non-Exclusive Easement Area shall not unreasonably interrupt or unreasonably interfere with the County's operation of the Convention Center.

13. Covenants and Equitable Servitudes. The Construction Easement granted hereunder is an easement in gross for the benefit of Hotel Owner and its successors and assigns and may be assigned in whole or in part by Hotel Owner in connection with any assignment of the Development Agreement pursuant to Section 10.16 thereof. All provisions of this Agreement shall be binding upon the successors and assigns of the parties and shall be deemed to be covenants running with the land or as equitable servitudes, as the case may be, and shall constitute burdens to the Convention Center Parcel, and to all persons hereafter acquiring or owning any interest in the Convention Center Parcel, however such interest may be obtained.

14. Notices. All notices or other communications required or permitted hereunder shall be delivered in accordance with Section 10.2 of the Development Agreement.

15. Miscellaneous Provisions.

a. Severability. If any term(s) or provision(s) of this Agreement or the application of any term(s) or provision(s) of this Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement and the application of such term(s) or provision(s) of this Agreement to other situations, shall remain in full force and effect.

b. Construction of Agreement. This Agreement has been reviewed and revised by legal counsel for both Hotel Owner and the County, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

c. Entire Agreement. This Agreement and all the documents, agreements, exhibits and schedules referenced herein constitute the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement. Notwithstanding the foregoing, nothing herein is intended to amend or modify, or shall be interpreted as an amendment or modification of, the Development Agreement. In the event of a conflict between this Agreement and the Development Agreement, the Development Agreement shall control.

d. No Waiver. No delay or omission by either Party in exercising any right or power accruing upon non-compliance or failure to perform by the other Party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions

hereof.

e. Time Is of the Essence. Time is of the essence for each provision of this Agreement for which time is an element.

f. Governing Laws/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah, without regard to conflicts of laws principles. The district courts of the State of Utah and the federal district court for the State of Utah shall be the exclusive places of venue with respect to any legal proceedings or legal actions arising out of or with respect to this Agreement.

g. Attorneys' Fees and Interest. Should any legal action be brought by either Party because of a breach of or a Default under this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and such other costs as may be found by the court (subject to the limitations set forth herein).

h. Third Party Beneficiaries. Except as otherwise expressly provided herein, the County and Hotel Owner hereby renounce the existence of any third-party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third-party beneficiary status.

i. Counterparts. This Agreement may be executed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one (1) single instrument.

j. Estoppel Certificates and SNDAs. Upon twenty (20) days' prior written notice and not more than twice in any 12-month period (except for any request by a Permitted Mortgagee, which may occur any number of times), the County and the Hotel Owner each agree to sign and deliver to the other Party and to such other Person as the requesting Party may reasonably designate a statement certifying: (a) that this Agreement is unmodified and in full force and effect (or, if that is not the case, so stating and setting forth any modifications); (b) that, to the responding Party's knowledge, the requesting Party is not in breach of this Agreement (or, if that is not the case, so stating and setting forth any alleged breaches); and (c) any other information reasonably related to the status of this Agreement. This certificate may only be relied upon by the party requesting the certificate and any parties specifically identified by name in the request, may only be used to estop the responding Party from claiming that the facts are other than as set forth in the certificate, and may not be relied upon by any person or entity, even if named in such estoppel certificate, who knows or reasonably should have known that the facts are other than as set forth in such certificate. The County shall also provide a subordination, non-disturbance, and attornment in a form reasonably approved by the County at any time within fifteen (15) days after a request therefor from the Hotel Owner or the Construction Lender.

(Remainder of Page Intentionally Left Blank)

(Signatures and acknowledgments on following pages)

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto as the Effective Date.

COUNTY:

SALT LAKE COUNTY,
a body corporate and politic of the State of Utah

By: Erin Litrack
Mayor Jennifer Wilson or Designee

By: Sherrie Swensen
Sherrie Swensen, Salt Lake County Clerk

Approved as to Form and Legality:

Dr. Clayton Porter
Deputy District Attorney

STATE OF UTAH)
) :ss
COUNTY OF SALT LAKE)

On this 20 day of December, 2019, personally appeared before me Erin Litrack, who being duly sworn, did say that (s)he is the Deputy Mayor of Salt Lake County, Office of Mayor, and that the foregoing instrument was signed on behalf of Salt Lake County, by authority of law.



M Hicks
NOTARY PUBLIC
Residing in Salt Lake County, Utah

HOTEL OWNER:

SALT LAKE CITY CH, LLC,
a Delaware limited liability company

By: [Signature]
Name: John Portman IV
Its: Authorized Signatory

STATE OF Georgia)
 :SS
COUNTY OF Fulton)

The foregoing instrument was acknowledged before me on December 10, 2019, by John Portman IV as Authorized Signatory of Salt Lake City CH, LLC, a Delaware limited liability company.

[Signature]
NOTARY PUBLIC
Residing at: Atlanta, Georgia

My Commission Expires:

07.04.2023

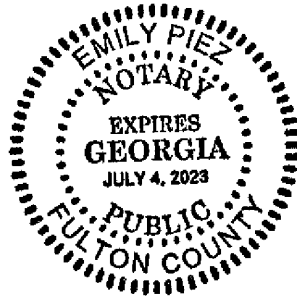


EXHIBIT A-1
(Description of the Hotel Site)

A parcel of land being part of Block 68, Plat "A," Salt Lake City Survey located in the Northeast quarter of Section 1, Township 1 South, Range 1 West of the Salt Lake Base and Meridian. The boundary of said parcel of land is described as follows:

Beginning at the Southeast corner of said Block 68, which point is 63.98 feet South $89^{\circ}56'38''$ West and 64.43 feet North $00^{\circ}02'52''$ West from the city monument located at the intersection of 200 South and West Temple Streets; thence South $89^{\circ}56'38''$ West (record = South $89^{\circ}58'16''$ West) 220.00 feet along the South line of said Block 68; thence North $00^{\circ}02'46''$ West 325.11 feet; thence North $89^{\circ}57'14''$ East 220.00 feet to the East line of said Block 68; thence South $00^{\circ}02'46''$ East (record = South $00^{\circ}00'59''$ East) 325.07 feet along said East line to the point of beginning.

Contains 71,520 square feet in area or 1.642 acres more or less.

Tax Parcel No.: 15-01-226-007

EXHIBIT A-2
(Description of Convention Center Parcel)

A PARCEL OF LAND BEING PART OF BLOCK 68, PLAT "A", SALT LAKE CITY SURVEY AND THE VACATED RIGHTS OF WAY OF 100 SOUTH STREET AND 200 WEST STREET. SAID PARCEL OF LAND IS LOCATED IN THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN. THE BOUNDARY OF SAID PARCEL OF LAND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID BLOCK 68, BEING THE SOUTHEASTERLY CORNER OF AN ENTIRE TRACT KNOWN AS PARCEL 15-01-226-005 AND DESCRIBED IN THAT QUIT CLAIM DEED RECORDED ON NOVEMBER 22, 1994 AS ENTRY # 5971108 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, WHICH POINT IS 63.98 FEET S. 89°56'38" W. AND 64.43 FEET N. 00°02'52" W. AND 660.30 FEET S. 89°56'38" W. FROM THE CITY MONUMENT LOCATED AT THE INTERSECTION OF 200 SOUTH AND WEST TEMPLE STREETS; THENCE ALONG THE BOUNDARY OF SAID ENTIRE TRACT THE FOLLOWING FOUR COURSES: 1) S. 89°56'38" W. (RECORD = S. 89°58'19" W.) 21.87 FEET; 2) N. 00°01'00" W. (RECORD = N. 00°01'07" W.) 737.44 FEET; 3) N. 89°59'21" E. (RECORD = N. 89°58'53" E.) 21.87 FEET; 4) S. 00°04'26" W (RECORD = S. 0°01'07" E.) 12.04 FEET TO THE CENTERLINE OF THE VACATED 100 SOUTH STREET DESCRIBED IN THAT QUIT CLAIM DEED RECORDED ON FEBRUARY 15, 1967 AS ENTRY # 2188364 IN THE OFFICE OF SAID RECORDER; THENCE N. 89°54'43" E. 660.01 FEET ALONG SAID CENTERLINE TO THE EASTERLY BOUNDARY LINE OF SAID STREET VACATION; THENCE S. 00°01'46" E. 65.75 FEET ALONG SAID EASTERLY VACATION LINE TO THE NORTHEAST CORNER OF SAID BLOCK 68; THENCE S. 00°02'46" E. (RECORD = S. 00°00'59" E.) 334.93 FEET ALONG THE EAST LINE OF SAID BLOCK 68; THENCE S. 89°57'14" W. 220.00 FEET; THENCE S. 00°02'46" E. 325.11 FEET TO THE SOUTH LINE OF SAID BLOCK 68; THENCE S. 89°56'38" W. (RECORD = S. 89°58'16" W.) 440.34 FEET ALONG SAID SOUTH LINE OF BLOCK 68 TO THE POINT OF BEGINNING.

EXHIBIT B
(Depiction of Easement Area)

(see attached)

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