

DEVELOPMENT AGREEMENT

This Development Agreement, dated **(insert date here)**, (the effective date of this Agreement), is entered into between the **City of Brookings**, a South Dakota municipal corporation (the “City”), and, **Linchpin Corporation**, a South Dakota corporation, (the “Developer”). This Agreement refers to City and Developer collectively as the “Parties” and singularly as a “Party”.

RECITALS

WHEREAS, City is the owner of real property located within the City of Brookings at 221 Main Avenue, and legally described as:

Lot 1, Front Street Addition, City of Brookings, Brookings County, South Dakota.

hereinafter referred to as “the Property;” and

WHEREAS, in order to strengthen the public planning process and to encourage private participation in comprehensive planning, City has solicited proposals for development of the Property and has selected Developer to develop the Property, pursuant to this Agreement; and

WHEREAS, on November 26, 2019, the City Council voted to enter into with Developer a development agreement for the Adaptive Reuse/Redevelopment of the Historic Armory Building located on the Property (the “Project”); and

WHEREAS, Developer has presented to City a development proposal for a commercial development, to include the completion of Developer’s due diligence activities for the Project (the “Phase 1” portion of the Project), the reconstruction of the Armory Building located on the east one-half (approximately) of the Property (the “Armory Property”) into office, retail and hotel amenity spaces (the “Phase 2” portion of the Project), and the construction of a Hotel (the “Phase 3” portion of the Project) to be located on the west one-half (approximately) of the Property (the “Hotel Property”); and

WHEREAS, the parties agree the Project is a three-phased development, the development costs will be financed by Developer, a portion of the development costs will be repaid over time through the use of property tax increment financing generated from the Project, and City will have approval over all development plans of the Project prior to Developer commencing construction of each of Phase 2 and Phase 3; and

WHEREAS, this Agreement permits Developer to proceed with its due diligence, inspections, design, pre-leasing and financing with assurance that, subject to the conditions of this Agreement, the Project may proceed and be completed as agreed upon by the Parties; and

WHEREAS, this Agreement is intended to: (1) minimize uncertainty in planning for, and securing orderly development of the Project; (2) provide the certainty necessary for Developer to make significant investments in public infrastructure, building renovations and other improvements; (3) assure the timely and progressive installation of necessary improvements; (4)

provide public services appropriate for each Phase of the Project's development; (5) establish phasing for the orderly and measured build-out of the Project consistent with the desires of City and Developer so the Property may be developed in a manner consistent with the development objectives of City, as set forth in the City's request for proposals; (6) allow development to occur at a pace that will assure integration of the Project into the existing community; and (7) provide significant public benefits to City that City would not necessarily receive without this Agreement; and

WHEREAS, in exchange for the benefits to City, Developer desires to receive from City (1) the assurance it may proceed with this Project in accordance with the existing land use plan, city ordinances, and the terms and conditions contained in this Agreement, and (2) the benefits afforded Developer under this Agreement; and

WHEREAS, City agrees Developer may utilize a Related Party, or more than one Related Party, for all or part of the work contemplated by this Agreement, with "Related Party" meaning any party related to Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended, or any party controlled by or under common control with Developer;

NOW THEREFORE, in consideration of the terms and conditions of this Agreement, Developer and City agree to the foregoing recitals and as follows:

1. PHASED DEVELOPMENT.

A. Description of Phases.

The Parties anticipate and agree the development of the Property will occur in a phased and staged manner. Phase 1 consists of the due diligence activities contemplated by this Agreement during the Due Diligence Period, as identified in Section 3. Presuming Developer does not provide notice of termination as is allowed in Section 3, Developer will proceed with Phase 2 of the Project by purchasing the Armory Property and Armory Building in their "as is" condition. Developer will, thereafter, be responsible for any operating and renovation expenses involving the Armory Property and Armory Building, unless otherwise agreed with City in writing. Phase 2 of development will consist of renovations to the Armory Building located on the Armory Property, with Phase 2 of the Project consisting of 5-6 leasable office suites, public event/conference space (as requested/required in the Armory redevelopment RFP), Proposed Restaurant with bar/lounge, and back-of house spaces required to support such event/conference spaces and dining establishment.

Developer will be allowed a Hotel Due Diligence Period (defined below) in connection with Phase 3. Phase 3 of the Project will consist of improvements to the Hotel Property, which is currently a paved parking lot. Phase 3 will consist of the construction of a hotel (the "Hotel"), containing lobby, circulation cores connecting the Armory and Hotel spaces, Parking structure (the "Parking Ramp") for approximately 90 conventional spaces (assuming self-park, not counting increases for valet parking configurations), approximately 60-70 hotel rooms, with

proposed fitness, amenity, and back-of-house support spaces necessitated by the proposed franchise requirements. The final square footage and room counts in Phase 3 will depend on historic preservation review and any unique height limitations imposed by the city, state, or other authority having jurisdiction with regards to the project.

The current design plans for the Project, as of the date of this Agreement, are set forth in the attached Exhibit B.

2. PROPOSED PROJECT SCHEDULE.

A. Schedule Milestones.

Subject to satisfaction of Armory Sale Conditions and Hotel Sale Conditions contained in this Agreement, the preliminary proposed schedule for the Project is as follows:

- a. Execution of this Development Agreement: November 20, 2020.
- b. Completion of Armory Initial Due Diligence Period by Developer: 8 months from execution of Development Agreement.
- c. Completion of the Armory Supplemental Due Diligence Period by Developer, if Developer exercises an option to extend the Due Diligence Period pursuant to Section 3.
- d. Phase 2 Armory Property and Armory Building transfer within 30 days of completion of the Due Diligence Period.
- e. Commencement of construction of the renovations for the Armory Building within 30 days following the transfer to Developer of title to the Armory Property and Armory Building.
- f. Completion of Phase 2 construction/development: 12 months from closing/final possession of the Armory Building.
- g. Completion of Hotel Due Diligence by Developer: 20 months from execution of Development Agreement.
- h. Phase 3 Hotel Property transfer within 30 days of completion of the Hotel Due Diligence Period.
- i. Commencement of construction of the Hotel and Parking Ramp within 30 days following the transfer to Developer of the Hotel Property.
- j. Completion of Phase 3 construction/development: 18 months from the date of closing on the Hotel property.

3. DUE DILIGENCE.

A. Due Diligence Period.

Following execution of this Agreement, Developer will have a period of time to perform its due diligence activities, to inspect the Property, to complete the 11.1 Historic Preservation Review (as contemplated by SDCL 1-19A-11.1), to arrange equity commitments and financing, and to fully satisfy all Armory Sale Conditions contained in this Agreement. Developer will have until **July 1, 2021** to perform the due diligence activities and determine if the Armory portion of the

Project will proceed (“Armory Initial Due Diligence Period”). If Developer is pursuing its due diligence activities in good faith and with diligent efforts, as is reasonably determined by City, Developer may, at its option, by written notice to City no later than **(June 1, 2021**, request an extension for a supplemental due diligence period (the “Armory Supplemental Due Diligence Period”). If Developer requests and is granted the Armory Supplemental Due Diligence Period with which to complete its due diligence activities for the Armory Property, then the Armory Supplemental Due Diligence Period and the Armory Initial Due Diligence Period are collectively referred to as the “Armory Due Diligence Period.” If Developer does not request or is not granted the Armory Supplemental Due Diligence Period, then the Armory Initial Due Diligence Period will be the Armory Due Diligence Period. City will have unilateral authority to accept or reject Developer’s request for an extension of the Armory Initial Due Diligence Period, but such authority will be exercised in a reasonable fashion and will seek to minimize to Developer any material detriment. During the Armory Due Diligence Period, Developer will have access to the Armory Property for any inspections. During the Armory Due Diligence Period, Developer agrees to maintain the Armory Property as nearly as possible in its pre-inspection condition, and Developer will pay for and be responsible for any damages to the Armory Property during this Armory Due Diligence Period which are caused by a negligent act of Developer or its employees, agents, consultants, contractors or subcontractors in performance of Developer’s due diligence activities. Notwithstanding the foregoing, City agrees Developer’s due diligence activities may require testing of the physical conditions of the Armory Property including, but expressly not limited to, testing of existing physical conditions of the Armory Building. However, except for the Armory roof, Developer will restore to its pre-due diligence condition the Armory Building and the Property, ordinary wear and tear excepted. It is acknowledged and agreed Developer will selectively remove portions of the existing ceiling in the Armory to allow Developer to inspect the structural conditions for the roof and floor framing. Developer will not be obligated to restore such removed portions, or other inspection-related construction or demolition, back to the pre-due diligence condition.

The parties acknowledge and agree Phase 2 and Phase 3 of the Project are separate, distinct, and the success of Phase 2 is not dependent on the successful completion of Phase 3. The parties intend and agree for purposes of this Agreement, Developer will not be required to finalize all plans, financing, permitting, etc., for the Hotel and Parking Ramp construction prior to the commencement of Phase 2, including the Armory Sale to Developer. Notwithstanding the foregoing, if Developer decides, during the Armory Due Diligence Period, to not proceed with Phase 2, Developer will forfeit the right to proceed with Phase 3.

Developer will have a second due diligence period (the “Hotel Due Diligence Period”) after the commencement of Phase 2 of the Project to complete its due diligence activities for the Hotel Property. Developer will have until June 1, 2022 to perform its due diligence activities and determine if the Hotel portion of the Project will proceed. During the Hotel Due Diligence Period, Developer will undertake to meet and satisfy all of the Hotel Sale Conditions and other requirements under this Agreement in connection with Phase 3 of the Project, including without limitation, (i) finalization of the Hotel and Parking Ramp construction plans, (ii) Developer’s submission, and City’s approval of any necessary, or reasonably requested, zoning or other land use regulation changes or exceptions in connection with Phase 3, and (iii) Developer’s obtaining from City tax increment financing for Phase 3.

B. Due Diligence Activities.

Further, due diligence activities may include, but are not limited to the following:

- (i) Developer's physical testing of the Property, including structures on the Property and environmental testing of the Property.
- (ii) Developer's completion of site analysis work, including but not limited to, engineering studies, environmental analysis, and 11.1 Historic Preservation Review.
- (iii) Developer's finalization of the Developer's Development Plan.
- (iv) Developer's submission, and City's approval of any necessary, or reasonably requested, zoning or other land use regulation changes or exceptions.
- (v) Obtaining from City tax increment financing under two separate applications, one for Phase 2 and one for Phase 3.
- (vi) Other necessary activities as mutually agreed by the parties.

Notwithstanding anything to the contrary contained herein, Developer may arrange and commence work to repair the Armory roof and undertake any and all necessary hazardous material abatement at the Armory during the Armory Due Diligence period. Prior to the commencement of the roof repair and Hazmat Abatement, Developer will provide City with a separate fixed price bid or not to exceed guaranteed maximum price for the cost of the repair of the Armory Building roof, which cost is to be reimbursed by City. The total cost of the Armory Building roof may be included in the TIF for Phase 2, and in that event, will be the first cost reimbursed by the taxes collected therefor. Developer will be responsible for contracting for and arranging such Hazmat Abatement, subject to City waiving dumping/disposal fees incurred by Developer in connection with the disposal of hazardous material at the City's landfill to the extent disposal at the City's landfill is allowed under applicable laws.

C. Access to Property.

For purposes of Developer's access to the Property during the Armory Due Diligence Period and the Hotel Due Diligence Period, City agrees Developer will be considered a tenant of City in connection with Developer's rights and obligations during the Armory Due Diligence Period and the Hotel Due Diligence Period. To that end, City will cooperate with Developer to allow Developer to seek "Tenant Improvement" financing in connection with any activities of Developer during the Armory Due Diligence Period and the Hotel Due Diligence Period, provided City incurs no obligation to make improvements during Developer's "tenancy," and the Property remains free and clear of all mortgages, mechanics' liens, judgements, security interests and other encumbrances of any kind.

D. Termination During Due Diligence Periods.

Should the results of Developer's activities described in this Section be not satisfactory to Developer, then, prior to the expiration of the Armory Due Diligence Period, Developer must notify City in writing of the failure to satisfy Developer's Armory Due Diligence requirements and Developer's election to terminate this Agreement, in which case this Agreement will become null and void, except for the provisions of Sections 3, 21, 22, 23, 28 and 32. If Developer has not given to City notice of termination by the end of the Armory Due Diligence Period, then Developer will be obligated to complete all Armory Sale Conditions and proceed to complete the Project.

Should the results of Developer's activities in connection with the Hotel Due Diligence Period be not satisfactory to Developer, then Developer must notify City in writing of the failure to satisfy Developer's Hotel Due Diligence requirements and Developer's election to terminate Phase 3 of the Project. Developer's termination of Phase 3 of the Project will render all terms and conditions of this Agreement in connection with Phase 3, null and void, except for the provisions of Sections 3, 21, 22, 23, 28 and 32. Developer's termination of Phase 3 of the Project will not impact Developer's or City's obligations under this Agreement in connection with Phase 2 of the Project.

4. SALE OF ARMORY PROPERTY AND ARMORY BUILDING.

A. City's Sale Obligations.

Upon Developer's successful completion of the Armory Sale Conditions, as defined in Section 4.C, City agrees to convey to Developer the Armory Property and the Armory Building. The conveyance will be made subject to the terms and conditions of this Agreement. City will utilize SDCL 9-27-36, SDCL 9-27-37, and SDCL 9-54-1 to facilitate the transfer of the Armory Property and Armory Building for economic development purposes. The Parties intend and agree the provisions of this Agreement will constitute covenants which will run with the Armory Property and Armory Building, and the burdens and benefits of this Agreement will bind and inure to all successors in interest to the Parties. Accordingly, the terms of this Agreement may be recorded, as an attachment to an affidavit or by other means acceptable to the Register of Deeds, in the Brookings County Office of the Register of Deeds, as covenants running with the Armory Property and Armory Building.

B. Consideration/Purchase Price for Armory Property and Armory Building.

Developer agrees to acquire, and City agrees to convey to Developer, the Armory Property and Armory Building for and in consideration of the terms and agreements of this Agreement. No cash consideration will be payable for the Armory Property and Armory Building.

C. Sale Conditions for Armory Property and Armory Building.

City will not be obligated to sell to Developer, and Developer will not be obligated to purchase from City, the Armory Property and Armory Building, unless during the Armory Due Diligence Period Developer has completed, and City has approved, in its sole discretion, all of the following requirements (the “Armory Sale Conditions”):

- (i) Developer has not given notice of termination of this Agreement during the Armory Due Diligence Period.
- (ii) Developer has provided documentation confirming Developer, or its Related Parties, has the equity and loan financing required to complete Phase 2.
- (iii) Developer has provided Developer’s Development Plan confirming use of the space within the Armory Building, the design and construction schedules therefore, and the proposed ownership, leasing and management arrangements for the Armory Building.
- (iv) Developer has provided to City the Armory Building construction documents, as defined by the American Institute of Architects or the Engineers Joint Contract Documents Committee and meeting the requirements of Section 12.A.
- (v) Developer has until the closing date on the sale of the Armory Building and the Armory Property to meet the requirements and fulfill Developer’s obligations under this Agreement and the Development Plan.
- (vi) Developer has provided one or more fixed price bids or guaranteed maximum prices for completion of Phase 2, exclusive of the cost of repairing the Armory Building roof.
- (vii) There are not pending any third party lawsuits or claims, or governmental investigations, actions or proceedings, against Developer and its Related Parties that would have a material adverse impact upon the Project or the Property.
- (viii) Developer has obtained for Phase 2 all permits, historical building approvals, tax increment financing, and other licenses, and approvals required in order to commence and complete construction for the renovation of the Armory Building.
- (ix) Developer has disclosed the identities and obligations of all Related Parties in connection with Phase 2.
- (x) Developer has obtained payment and performance bonds for the full cost of the bids or guaranteed maximum prices have been obtained for Phase 2.
- (xi) Developer has applied for, and City has awarded, tax increment financing for Phase 2.
- (xii) This Agreement will not be or have been subject to a pending or adverse referendum as described in Section 11.
- (xiii) Developer is not in default of its obligations under this Agreement.

5. SALE OF HOTEL PROPERTY.

A. City's Sale Obligations.

Upon Developer's successful completion of the Hotel Property Sale Conditions, as defined in Section 5.C, City agrees to convey to Developer the Hotel Property. The conveyance will be made subject to the terms and conditions of this Agreement. City will utilize SDCL 9-27-36, SDCL 9-27-37, and SDCL 9-54-1 to facilitate the transfer of the Hotel Property for economic development purposes. The Parties intend and agree the provisions of this Agreement will constitute covenants which will run with the Hotel Property, and the burdens and benefits of this Agreement will bind and inure to all successors in interest to the Parties. Accordingly, the terms of this Agreement may be recorded, as an attachment to an affidavit or by other means acceptable to the Register of Deeds, in the Brookings County Office of the Register of Deeds, as covenants running with the Hotel Property.

B. Consideration/Purchase Price for Hotel Property.

Developer agrees to acquire, and City agrees to convey to Developer, the Hotel Property for and in consideration of the terms and agreements of this Agreement. No cash consideration will be payable for the Hotel Property.

C. Sale Conditions for Hotel Property.

City will not be obligated to sell to Developer, and Developer will not be obligated to purchase from City, the Hotel Property, unless during the Hotel Due Diligence Period, Developer has completed, and City has approved, in its sole discretion, all of the following requirements (the "Hotel Sale Conditions"):

- (i) Developer has not given notice of termination of this Agreement during the Hotel Due Diligence Period.
- (ii) Developer has provided documentation confirming Developer, or its Related Parties, has the equity and loan financing required to complete Phase 3.
- (iii) Developer has provided documentation confirming Developer or the Hotel franchisee has the equity and loan financing required to complete Phase 3.
- (iv) Developer has provided Developer's Development Plan confirming use of the Hotel and Parking Ramp, the design and construction schedules therefore, and the proposed ownership, leasing and management arrangements for the Hotel and Parking Ramp.
- (v) Developer has provided the Hotel and Parking Ramp construction documents, as defined by the American Institute of Architects or the Engineers Joint Contract Documents Committee, and meeting the requirements of Section 12.A.
- (vi) Developer has, as of the closing date on the sale of the Hotel Property, met all of the requirements of and fulfilled Developer's obligations under this Agreement and the Development Plan.
- (vii) Developer's hotel franchise or other similar arrangement for construction and operation of the Hotel, as approved by City, remains in full force and effect.

- (viii) Developer has received City's approval for the establishment of a second business improvement district for Phase 3, separate from the general business improvement district for the maintenance of the Parking Ramp.
- (ix) Developer has provided one or more fixed price bids or guaranteed maximum price for completion of Phase 3.
- (x) There are not pending any third party lawsuits or claims, or governmental investigations, actions or proceedings, against Developer and its Related Parties that would have a material adverse impact upon the Project or the Property.
- (xi) Developer has obtained for Phase 3 all permits, historical building approvals, and other licenses, and approvals required in order to commence and complete construction for the Hotel Project.
- (xii) Developer has disclosed the identities and obligations of all Related Parties.
- (xiii) Developer has obtained payment and performance bonds for the full cost of the bids or guaranteed maximum prices have been obtained for Phase 3.
- (xiv) Developer is not in default of its obligations under this Agreement.
- (xv) Developer is not in default of its obligations under any engineering, architectural, construction or other contract for the renovation of the Armory Building for Phase 2.
- (xvi) Developer and its Related Parties are not in default of their equity and financing commitments for the renovation of the Armory Building for Phase 2.
- (xvii) This Agreement will not be or have been subject to a pending or adverse referendum as described in Section 11.
- (xviii) Developer has applied for, and City has awarded, tax increment financing for Phase 3.

6. SALE REQUIREMENTS.

A. City to Provide Marketable Title.

Developer's obligation to purchase the Property pursuant to this Agreement is contingent upon City providing to Developer marketable title to the Property by warranty deeds, which warranty deeds only contain easements, rights-of-way and restrictions of record acceptable to Developer.

7. CLOSING COSTS.

A. Responsibilities of Parties.

Developer and City agree to equally split the cost of title insurance search fees and premiums for owner's policies of title insurance, and all closing costs of the closing agent associated with the sale and transfer of the Property from City to Developer. Developer will pay all title insurance fees for endorsements requested by Developer and any lender policy of title insurance.

8. DEVELOPER OBLIGATIONS.

A. General Description of Developer's Obligations.

Developer understands and agrees to the following obligations:

- (i) Complete site development and environmental assessment of the Property.
- (ii) Confirm the applicable land use regulations and develop the Property consistent with all applicable regulations.
- (iii) Complete the analysis of necessary public and private infrastructure and street/utility improvements, and pay for the improvements required, all in accordance with this Agreement and Developer's proposal for the Property.
- (iv) Pay the usual and customary building permit fees.
- (v) Pay the usual and customary application and development fees of City.
- (vi) Pay all Phase 1, Phase 2, and Phase 3 Environmental Site Assessments of the Property desired by Developer or required by applicable laws.
- (vii) Submit two applications for the use of tax increment financing, one for each of Phase 2 and Phase 3, and adhere to applicable terms and conditions of the duly-approved tax increment development agreements to be negotiated with City.
- (viii) Procure goods and services for architectural services, engineering services and construction and renovations of the Armory Building, Hotel and Parking Ramp, and construct the Project in accordance with this Agreement and Developer's proposal for development of the Project.
- (ix) Cause, at Developer's cost, the plat to be prepared and filed for the separation of the Armory Property from the Hotel Property.

B. Improvements.

Developer will develop the Property in accordance with and subject to the terms and conditions of this Agreement, any amendments to this Agreement and pursuant to Developer's Development Plan as, from time-to-time, may be approved by City. Developer's failure to comply with any term or condition of, or fulfill any obligation of, Developer under this Agreement, any amendments to this Agreement or Developer's Development Plan as may have been approved pursuant to this Agreement, will constitute a default by Developer under this Agreement.

C. Developer's Obligations to Pay for Improvements.

Except for the waiver of landfill fees by City for the disposal of hazardous material at City's landfill site, and the cost of repairing the roof of the Armory Building, as approved by City pursuant to Section 9.A (vii) of this Agreement, Developer will be responsible, at its sole cost and expense, to pay for and make the improvements to the Property.

D. City's Applications.

City agrees it will accept for processing, review and action, all completed applications for zoning, special permits, development permits, tentative maps, subdivision maps, tax increment financing applications, liquor license applications, business improvement district proposals, and other submissions for this Project in accordance with its customary procedures and this Agreement; provided, however City will exercise any and all commercially reasonable efforts to ensure that Developer, or its assigns, is able to purchase and/or obtain a full restaurant liquor license and, as one may become available under the City's allocation or apportionment

procedures, an “on-sale” liquor license City will inform Developer, upon request, of the necessary submission requirements pertaining to permit applications, and will review Developer’s applications and schedule the applications for review or hearing by the appropriate authority. Notwithstanding the foregoing, City is not bound to approve any and all applications, permits, plans and other submissions, all of which must be completed to City’s satisfaction. If Developer is not able to obtain all approvals, permits and other consents required, in Developer’s sole opinion, Developer’s sole remedy will be to terminate this Agreement during the Armory Due Diligence Period or the Hotel Due Diligence Period, as applicable. After the Armory Due Diligence Period or the Hotel Due Diligence Period, as applicable, provided Developer has not terminated this Agreement in accordance with this Agreement, Developer will not be allowed to terminate this Agreement, and must amend its plans as required in order to obtain City’s approvals, permits and other consents.

E. Condition of Property.

Developer will be allowed to make inspections of the Property as part of Developer’s due diligence activities. DEVELOPER’S PURCHASE OF THE PROPERTY WILL BE ON AN “AS-IS WITH ALL FAULTS” BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND DEVELOPER WILL NOT RELY ON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM CITY AS TO ANY MATTERS CONCERNING THE CONDITION OF THE ARMORY BUILDING OR PROPERTY.

9. CITY OBLIGATIONS.

A. City understands and agrees to the following obligations:

- (i) Assist Developer with the documentation required by SDCL Ch. 11-9 and the City’s TIF Policy, including but expressly not limited to the TIF Project Plans for Phase 2 and Phase 3, consistent with this Development Agreement.
- (ii) Assist Developer with the filing of liquor license applications consistent with this Development Agreement.
- (iii) Assist Developer with the documentation required under SDCL Ch. 9-55 and Brookings City Ordinances in connection with the establishment of a business improvement district in connection with Phase 3 of the Project.
- (iv) Transfer to Developer the Armory Building and Armory Property, consistent with the terms and conditions this Agreement.
- (v) Upon the transfer of the Armory Building and Armory Property, City will provide to Developer access to the Hotel Property, without any additional payments or other consideration being provided by Developer, for purposes of construction staging and other uses related to Developer’s construction under Phase 2 of this Agreement. Developer will have the authority to fence off all or a portion of the Hotel Property for such purposes.
- (vi) City will provide to Developer access to the public parking area on the south side of 3rd Street, without any additional payments or other consideration, for purposes

- of construction staging and other uses related to Developer's construction under Phase 3 of the Project. Developer will have the authority to fence off all or a portion of the public parking area for such purposes.
- (vii) It is acknowledged and agreed by the Parties the roof of the existing Armory building experienced certain property damage in the summer of 2019. City will be responsible for paying the costs to restore the roof to watertight and "like new" condition. Restoration will occur during the Armory Due Diligence Period, or during Phase 2. Developer will be responsible for arranging and contracting for the work on the roof to be completed; provided, however, City will fund the costs to bring the roof back into the watertight and "like new" condition. The total cost of the Armory Building roof may be included in the TIF for Phase 2, and in the event, will be the first cost reimbursed by the taxes collected therefor. City will not be responsible for costs and expenses in excess of the costs approved by City during the Armory Due Diligence Period.
 - (viii) Developer will be responsible for paying for any and all hazardous material abatement and removal costs ("Hazmat Abatement") in connection with the Armory Building. To that end, Developer will be responsible for contracting for and arranging such Hazmat Abatement, subject to City waiving dumping/disposal fees incurred by Developer in connection with the disposal of hazardous material at the City's landfill to the extent disposal at the City's landfill is allowed under applicable laws.
 - (ix) Signing the plat which will separate the Armory Property from the Hotel Property.

10. TAX INCREMENT FINANCING ("TIF").

As an incentive to development of the Property, tax increment financing ("TIF") for this Project will be available under the following terms and conditions, and consistent with the City's Tax Increment Finance District Guidelines, dated January 13, 2009, and attached hereto as Exhibit A ("TIF Policy").

- a. Developer may apply for tax increment financing pursuant to City's TIF Policy governing the application and use of tax increment financing and must pay the applicable application fees. City agrees to expeditiously process said applications and approve mutually agreeable tax increment finance plans for the tax increment districts, provided applicant meets City's and state of South Dakota's tax increment financing requirements. The parties agree, a tax increment district will be applicable for Phase 2, and a separate tax increment district will be applicable for Phase 3.
- b. Developer must pay for and finance all development, construction, and Project costs identified in the Tax Increment Project Plans, as that term is defined in SDCL 11-9-1 and referenced in the TIF Policy, with reimbursement to Developer subject to receipt of future tax increment proceeds from the TIF districts. The Tax Increment Project Plan must describe the eligible costs to be reimbursed from tax increment proceeds and the aggregate maximum amount and duration for which tax increment proceeds may be reimbursed.

- c. As stipulated in the TIF Policy, properties in a certified tax increment district are not eligible for the Brookings County's discretionary property tax formula until the district is de-certified.
- d. The application for Phase 2 will be filed and approved during the Armory Due Diligence Period, with the commencement of the TIF period being timed so as to optimize the use of the TIF funding.
- e. The application for Phase 3 may be filed and approved during the Hotel Due Diligence Period with the commencement of the TIF period being timed so as to optimize the use of the TIF funding.
- f. The City's obligation to reimburse Developer for any costs identified in a Tax Increment Project Plan will be terminated in the event City approval of a tax increment district and tax increment financing is referred by the voters and the voters do not approve the tax increment district and tax increment financing.

11. REFERENDUM.

A. Impact of Successful Referendum.

The Parties acknowledge the lack of a successful referendum on the City Council's approval of this Agreement is a condition precedent to the performance of this Agreement by both parties. Briefly stated, the condition precedent concerns the right of the public to petition for referendum concerning this Agreement. A referendum is viewed by City as unlikely. City's obligation to sell to Developer the Property, along with this Agreement, will be terminated if the City Council's decision to sell the Property is referred by the voters and the voters do not approve this Agreement. "Referred" means a Petition to Refer, signed by the requisite residents, which Petition to Refer is filed and the voters of the City, at an election, vote to nullify the decision of City to sell to Developer the Property. In the event of a successful referral, City's obligation to sell Property pursuant to this Agreement will be null and void. This condition precedent will be met at the later of the expiration date of any referendum period if there is no referendum (20 days after the publication of the Resolution approve this Agreement), or the date following the election canvassing if there is a referendum election, and this Agreement is approved at the referendum election. However, a referendum decision by voters which does not approve this Agreement will permit City and Developer to terminate the Project at no cost or liability to either Party. A referendum is not likely, but all government real estate transactions are subject to the possibility of a referendum.

12. PLANS AND SPECIFICATIONS.

A. Form of Construction Documents.

Developer agrees to prepare, at Developer's expense, architect or engineer-stamped construction documents as defined by the American Institute of Architects or the Engineers Joint Contract Documents Committee for each of Phase 2 and Phase 3 as set forth in Sections 4.C (iv) and 5.C (v). Site plans will be prepared for the Armory Property and the Hotel Property containing such improvements, and will be drawn to scale addressing zoning, platting, and applicable subdivision regulations. Such construction documents will include, but not be limited to, lots

and block design, street layouts, easements and rights-of-way dedications, water systems, sanitary sewer systems, storm sewer systems, electrical systems and lines, natural gas systems and lines, and telecommunication systems, street lighting, curb and gutter, signage, and other infrastructure deemed necessary by City. The Parties agree the street system will be public streets.

13. UTILITIES CONSTRUCTION/RELOCATION.

A. Developer's Obligations for Utilities.

Developer will be responsible for costs associated with utility improvements and/or relocation of existing utilities consistent with plans and specifications to be approved by City as necessary for the development and construction of the Project. Developer agrees to solicit, encourage, and utilize all reasonable and prudent means to employ or contract with local contractors, vendors, and service providers for these purposes.

14. PROJECT IMPROVEMENTS.

A. Construction Documents/Financing.

Developer will be responsible for construction documents suitable for construction, and be responsible for overall financing of improvements for Phase 2 and Phase 3 improvements associated with an adaptive reuse/redevelopment of the Property.

B. Phase 2 Improvements.

Phase 2 improvements must be consistent with the restoration of the exterior shell and features of the existing Armory Building and associated interior renovations must be consistent with providing professional office, retail, convention/meeting space, restaurant/lounge, and/or back-of-house operations space associated with a hotel and/or convention space.

C. Phase 3 Improvements.

Phase 3 improvements must consist of improvements associated with construction of a multi-story Hotel and associated parking by way of a Parking Ramp to accommodate the needs of the Hotel, convention space and offices as well as additional parking spaces to be made available to the public.

15. SIGNAGE.

A. Developer Signage.

Developer will be allowed to install signage advertising the Project following execution of this Agreement with the design, number, and locations mutually agreed upon by both Parties. Any signage must follow applicable signage ordinances, and permits and fees will be Developer's responsibility.

16. RULES, REGULATIONS AND OFFICIAL POLICIES.

A. Applicability of Rules, etc.

For the term of this Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of land, the density and intensity of use, applicable to the development of the Property, including the zoning of the Property and the maximum height and size of proposed buildings (but not construction standards), will be those rules, regulations, ordinances and official policies in force on the effective date of this Agreement. Except as otherwise provided in this Agreement, to the extent any future changes in the zoning ordinance or any future rules, ordinances, regulations or policies adopted by City purport to be applicable to the Property, but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement will prevail, unless the Parties mutually agree to amend or modify this Agreement. To the extent any future changes in the zoning ordinances or any future rules, ordinances, regulations or policies adopted by City are applicable to the Project and are not inconsistent with the terms and conditions of this Agreement, such future changes in the zoning ordinances or such future rules, ordinances, regulations or policies will be applicable to this Project.

B. State and Federal Laws.

This Section will not preclude any requirements of Developer to comply with City rules, ordinances, regulations or policies which are required by state or federal laws or regulations. In the event state or federal laws or regulations enacted after the date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement, or require changes in plans or permits approved by City, this Agreement may be modified, extended or suspended as may be necessary to comply with such state or federal laws or regulations or the regulations of any other governmental jurisdiction. To the extent any actions of federal or state agencies have the effect of preventing, delaying or modifying development of the Project, City will not in any manner be liable for any such prevention, delay or modification of said development. Developer is required, at its cost and without cost to or obligation on the part of City, to comply with such development restrictions

C. Health/Safety/Physical Risk Codes, etc.

Nothing herein may be construed to limit the authority of City to adopt and apply codes, ordinances and regulations which have the legal effect of protecting persons or property from conditions which create a health, safety or physical risk.

D. Compliance with Construction Standards.

All construction documents and plans for the Project must comply with the rules, regulations and design guidelines in effect at the time the construction, improvements, and plans are approved. Laws, ordinances, resolutions, rules, regulations and official policies governing the design, improvement and construction standards and specifications applicable to public improvements to be constructed by Developer will be those in force and effect at the time the applicable permit

approval for the construction of such improvements is granted. If no permit is required for the public improvements, the date of permit approval will be the date the improvement plans are approved by City or the date construction for the public improvements is commenced, whichever occurs first.

E. Uniform Codes Applicable.

This Project will be constructed in accordance with the requirements of the International Building, Mechanical, Plumbing, Electrical, and Fire Codes, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project. All infrastructure improvements will be constructed in accordance with the provisions of the codes delineated herein in effect at the start of construction of such infrastructure.

F. Public Hearings.

This section may not be construed to limit the authority or obligation of City to hold necessary public hearings, to limit discretion of City or any of its officers or officials with regard to laws, ordinances, resolutions, rules, regulations, and official policies which require the exercise of discretion by City or any of its officers or officials, provided their respective actions may not conflict with the terms and conditions of this Agreement.

17. RESTAURANT LICENSES.

A. License Guidelines/Applications.

Both parties understand and agree some businesses seeking to locate in the Project may apply for various types of restaurant alcoholic beverage or malt beverage licenses for their respective business that may be available. The processing of these applications must follow established procedures pursuant to city and state regulations.

18. PERFORMANCE METRICS; REVIEWS BY CITY.

A. Specific Development Obligations.

Developer and City have agreed the development of the Property by Developer is subject to certain specific development obligations, described herein. These specific development obligations, together with the other terms and conditions of this Agreement, provide the incentive and consideration for City entering into this Agreement.

B. Development Timing.

Developer will be obligated to comply with the terms and conditions of this Agreement at those times specified in this Agreement. The parties acknowledge Developer cannot, at this time, predict with certainty when or the rate at which plans, specifications, and reviews will be developed and/or completed. As a result, City agrees to exercise reasonable discretion with respect to deadlines and other milestone with respect to Developer and the Project such that

City's actions will seek to minimize detriment to Developer and the Project. In addition, City will, if Developer meets the requirements set forth in Section 3.A, approve the extension of the Armory Due Diligence Period to include the Armory Supplemental Due Diligence Period. Similarly, with respect to Phase 3 and the Hotel Due Diligence Period, City will approve extensions of such deadlines to minimize detriment to Developer and the Project. It is acknowledged as of the date of this Agreement, the COVID-19 pandemic is having a material adverse effect on the hotel and hospitality industry and, as such, Developer's Hotel Due Diligence Period may need to be extended until such time as current economic environments for the hotel and hospitality industry become more favorable.

C. Quarterly Review.

Developer will provide to City, during each of the Phases, a quarterly report as to the status of its progress with respect to the Project, and the City Manager will, when such reports are provided, review the status of the Project and evaluate the extent of good faith substantial compliance with the terms and conditions of this Agreement and the Development Plan. Such periodic review will be limited in scope to compliance with the terms and conditions of this Agreement and the Development Agreement.

Developer must demonstrate good faith compliance with the terms and conditions of this Agreement and the Development Agreement, and must provide such information as may be reasonably requested by the City Manager, and take those actions necessary to restore compliance with this Agreement and the Development Agreement, as determined by the City Manager to reestablish compliance with this Agreement and the Development Agreement.

If, following such review, the City Manager is not satisfied that Developer has demonstrated good faith compliance with all the terms and conditions of this Agreement and the Development Agreement, or for any reason, the City Manager refers to the City Council the matter along with recommendations for possible action, Developer will be provided, in writing at least 10 business days in advance of the matter coming before the City Council, a summary of the reasons for such referral to the City Council. Developer will be afforded reasonable opportunity to rebut such reasons and will be provided a reasonable opportunity to appear before the City Council, should Developer so choose.

Failure of City to conduct a quarterly review will not constitute a waiver by City of its rights to otherwise enforce the provisions of this Agreement and the Development Agreement. Nor will Developer have or assert any defense to such enforcement by reason of any such failure to conduct a quarterly review.

19. WARRANTIES.

A. Warranties of City.

City, as the seller of the Property, hereby represents, warrants and covenants to Developer, as the buyer of the Property, the following:

- a. City is the fee-owner of the Property with full authority to sell and transfer to Developer the Property.
- b. There is currently no action or proceeding pending against City pertaining to the Property.
- c. To the best of City's knowledge, there are no unrecorded contracts, leases, easements, or other agreements, or claims of any third party, affecting the use, title, occupancy or development of the Property.
- d. Each and every undertaking and obligation of City under this Agreement will be performed by City in a timely manner.
- e. To the best of City's knowledge, City has made to Developer all required property disclosures required by law as to all wells, private sewer systems, and aboveground or underground storage tanks located on the Property.
- f. Immediately upon execution of this Agreement, City agrees to provide to Developer any and all environmental reports and analysis in its possession pertaining to the Property.
- g. City warrants there are no outstanding special assessments or taxes encumbering the Property.
- h. Upon the signing and delivery of this Agreement, this Agreement will be legally binding upon City and enforceable against City in accordance with all of its provisions.
- i. The transactions contemplated by this Agreement have been duly authorized through appropriate action of City and the City Council and, as a result of such actions, City, by and through the Mayor and Clerk, are authorized, directed, and empowered to sign this Agreement and perform all of City's obligations under this Agreement.

B. Warranties of Developer.

- a. Developer is duly incorporated, validly existing and in good standing pursuant to the laws of the jurisdiction of its incorporation, and is duly qualified to do business and is in good standing in the jurisdiction in which the Property is located.
- b. Developer is authorized and empowered to enter into this Agreement and perform all of its obligations under this Agreement.
- c. Upon the signing and delivery of this Agreement, this Agreement will be legally binding upon Developer and enforceable against Developer in accordance with all of its provisions.
- d. The person signing this Agreement on behalf of Developer has been duly authorized to sign and deliver this Agreement on behalf of Developer.
- e. Developer has not committed any act or permitted any action to be taken which would adversely affect its ability to fulfill its material obligations under this Agreement.
- f. The execution and delivery of this Agreement, and the performance of Developer's obligations under this Agreement, will not violate or breach, or conflict with, the terms, covenants or provisions of any agreement, contract, note, mortgage, indenture or other document of any kind whatsoever to which Developer is a party.

20. DEVELOPER'S INSURANCE.

A. Liability Insurance.

Developer, at its sole cost and expense, must keep and maintain in full force and effect a policy of commercial general liability insurance insuring all operations of Developer in or about the Property for bodily injury and property damage liability for limits of liability not less than: (a) \$1,000,000 each occurrence (combined single limit for bodily injury and property damage); (b) \$1,000,000 for personal injury liability; and (c) \$1,000,000 general aggregate. The policy must insure against any and all liability of Developer and City with respect to the Property. The policy must name City as an additional insured by endorsement.

B. Property Insurance on the Armory Building.

Developer, at its sole cost and expense, must keep and maintain in full force and effect a policy of property insurance on the insurable improvements comprising the Armory Building, once title has been transferred to Developer.

C. Builder's Risk Insurance.

Developer, at its sole cost and expense, must obtain, keep and maintain builder's risk insurance policies equal to the cost of the improvements to be made to the Armory Building and the cost of the construction of the Hotel.

D. Property Insurance on Personal Property.

Developer, at its sole cost and expense, must keep and maintain in full force and effect a policy of insurance covering all of the items comprising Developer's equipment and personal property. City has no responsibility for loss or damage to the same.

E. Worker's Compensation Employer's Liability Insurance.

Developer, at its sole cost and expense, must keep and maintain during the term of this Agreement, worker's compensation insurance as required under South Dakota law, and employer's liability insurance in an amount not less than \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit, covering all employees employed by Developer.

F. Business Auto Insurance.

Developer, at its sole cost and expense, must keep and maintain business auto liability insurance for the combined single limit of not less than \$1,000,000 for owned, non-owned and leased vehicles.

G. Certificate of Insurance.

Developer will cause to be delivered to City a certificate of insurance with regard to the policies required under this Section 20, and which provide, by endorsement, the insurance policies will not be canceled without at least 30 days' notice to City.

H. Developer's Failure to Maintain Insurance.

In the event Developer fails to keep in effect any of the insurance as required under this Section 20, and the failure continues for 15 days following receipt by Developer from City of notice of the failure, City may, at its sole option, obtain the insurance, and the reasonable premium or other reasonable expenses incurred until Developer provides evidence of insurance will be due immediately upon Developer's receipt of City's invoice.

I. Assignees.

Any assignment of Developer's responsibilities under this Agreement will require the assignee comply with these insurance requirements.

21. INDEMNIFICATION BY DEVELOPER.

A. Developer's Indemnification Obligations.

Developer will fully INDEMNIFY, DEFEND and HOLD HARMLESS City and its elected officials, employees, the Mayor, council members, representatives and agents (the "Indemnified Parties") from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and lawsuits, bodily injury or death of persons and property damage, resulting from or related to (i) Developer's negligence, willful misconduct or criminal conduct for activities undertaken pursuant to this Agreement and thereafter, including any such acts or omissions of Developer, Developer's Related Parties, and their respective members, managers, agents, officers, representatives, employees, consultants, sub-consultants, architects, engineers, contractors, subcontractors of any tier and suppliers of any tier while in the exercise or performance of their rights or duties under this Agreement and thereafter. The provisions of this indemnification obligation are solely for the benefit of the Indemnified Parties and not intended to create or grant any rights, contractual or otherwise, to any person or entity. Developer, as appropriate, will promptly advise City in writing of any claim or demand against the Indemnified Parties related to or arising out of Developer's activities under this Agreement and thereafter and will complete the investigation and defense of such claim or demand at Developer's cost to the extent required in this section. City will have the right, at its option and expense, to participate in such defense with attorneys of its choice, without relieving Developer of any of its obligations under this Section. Notwithstanding anything contained herein, Developer will be under no obligation to defend, indemnify, or hold harmless City from any claims, liabilities, causes of action, judgments, costs or expenses of any kind, if such claim, liability, causes of action, judgment, cost or expense arises from or relates to the negligent, willful misconduct or criminal conduct of the Indemnified Parties.

B. City's Indemnification Obligations.

City will fully INDEMNIFY, DEFEND, and HOLD HARMLESS Developer and its owners, employees and agents, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and lawsuits, bodily injury or death of persons and property damage, resulting from or related to City's negligence, willful misconduct or criminal conduct for activities undertaken pursuant to this Agreement and thereafter, including any such acts or omissions of City, City's elected officials, employees, the Mayor, council members, representatives and agents. City, as appropriate, will promptly advise Developer in writing of any claim or demand against Developer related to or arising out of City's activities under this Agreement and thereafter and will complete the investigation and defense of such claim or demand at City's cost to the extent required by this section. Notwithstanding anything contained herein, City will be under no obligation to defend, indemnify, or hold harmless Developer from any claims, liabilities, causes of action, judgments, costs or expenses of any kind, if such claim, liability, causes of action, judgment, cost or expense arises from or relates to the negligent, willful misconduct or criminal conduct of Developer.

22. DEFAULT; REMEDIES; TERMINATION.

A. General Provisions.

Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either Party to perform any term or provision of this Agreement will constitute a default. In the event of default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach will give the other Party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the Party alleged to be in default will not be considered in default for purposes of termination of this Agreement or the institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other Party to this Agreement may at its option:

1. Terminate this Agreement; and/or
2. Institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for specific performance of the terms of this Agreement;

B. Developer's Default; Enforcement.

In the event of a material default on the part of Developer, no building permit will be issued or on other approvals granted, for any structure to be reconstructed or constructed on the Property pursuant to this Agreement, unless such default is cured. Developer will cause to be placed in

any covenants, conditions and restrictions applicable to the Property, or in any ground lease or conveyance of the Property, the express provision the provisions of this Agreement must be performed by any such lessee or grantee.

C. Enforced Delay, Extension of Times of Performance.

If either Party is rendered unable wholly or in part by Force Majeure Event (as defined below) to carry out its obligations under this Agreement, such Party must notify the other Party of the existence and cause of the Force Majeure Event. The obligations of such Party under this Agreement that are affected by such Force Majeure Event, only so far as they are affected by such Force Majeure Event, will be suspended during the continuance of the Force Majeure Event and the affected Party must use its commercially reasonable efforts to remedy the cause of such Force Majeure Event in a reasonably timely manner; provided, however, the milestone dates set forth in Section 2 of this Agreement will not be extended due to any Force Majeure Event, unless mutually agreed upon in writing by the Parties. If a Force Majeure Event extends for a period of one hundred and twenty (120) days or more, then the other Party will have the right, in its sole discretion, to terminate this Agreement upon written notice to the other Party. It is understood and agreed the settlement of strikes or lockouts will be entirely within the discretion of the affected Party and the foregoing requirement that any Force Majeure Event must be remedied with all reasonable dispatch will not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable at the discretion of the affected Party.

For the purposes of this Agreement, the term “**Force Majeure Event**” means any event or circumstance that is outside the reasonable control of a Party, such acts of God, epidemics (subject to the provisions set forth below), landslides, mudslides, explosions, fires, storms, hurricanes, tornados, high-water washouts, lightning, earthquakes, severe or unusual weather conditions, floods or similar cataclysmic event, infectious cow diseases of a contagious nature, acts (or failure to act) of governmental authorities, acts of public enemy, wars, armed conflict, blockades, civil disturbance or insurrections, riots, acts or threats of terrorism, sabotage, lockouts, strikes or other labor issues/difficulties or industrial disturbances (suffered by a Party), governmental actions such as the enactment of statutes, laws or regulations frustrating the purpose of this Agreement or the Project, , pandemics, changes in law, failure to obtain or changes in authorizations or permits, interruptions in supply of any utilities, emergencies at the Project, and any other cause or causes, whether of the kind herein enumerated or otherwise, not within the reasonable control of such Party.

D. Third Party Litigation.

In the event litigation is initiated by any third party that challenges any of the approvals for the Project and an injunction or temporary restraining order is not issued, Developer may submit to City a written request to have the term of this Agreement suspended during the pendency of said litigation. The suspension will commence upon approval by City of the suspension of this Agreement. The suspension will terminate upon the earliest date on which either a final order is issued upholding the challenged approvals or the litigation is dismissed with prejudice by or against all plaintiffs. In the event a court enjoins either City or Developer from taking actions

with regard to the Project as a result of such litigation that would preclude either Party from enjoying the benefits provided by this Agreement, then the deadline for any approval provided for under this Agreement will be automatically suspended during the period of time such injunction or restraining order is in effect.

E. Attorney's Fees.

If a Party becomes in default of its obligations under this Agreement, the other Party will be entitled to recover its attorneys' fees incurred due to the default and enforcement of remedies hereunder and under applicable law.

23. DEFAULT-REVERSION.

A. Developer's Termination Costs.

In no event will City be responsible for paying Developer's Termination Costs, as defined in this Section 23.A. If the results of Developer's due diligence activities are not acceptable to Developer, in Developer's sole discretion, and Developer elects to not proceed with Phase 2 and/or Phase 3, and instead decides to terminate this Agreement during the Armory Due Diligence Period or with respect to Phase 3, the Hotel Due Diligence Period, then Developer's Termination Costs, defined below, will be solely Developer's cost with no contribution by City. "Termination Costs" include all of Developer's costs and expenses in completing its due diligence activities, and Developer's attorneys' fees in the negotiation of this Agreement, in completing due diligence activities and in terminating this Agreement for any reason other than City's default.

B. City's Reacquisition Rights.

If, after transfer of the Armory Property, or any portion thereof, by City to Developer, there is a material default or the Armory portion of the Project is not completed for any reason and such default or failure continues after a reasonable period for Developer to cure the default, City may, but is not obligated to, elect to acquire from Developer the Armory Property. If, after transfer of the Hotel Property, or any portion thereof, by City to Developer, there is a material default or the Hotel portion of the Project is not completed for any reason and such default or failure continues after a reasonable period for Developer to cure the default, City may, but is not obligated to, elect to acquire from Developer the Hotel Property. As applicable, City will have the right to reacquire from Developer the Armory Property or Hotel Property, or any portion thereof, without compensation to Developer. The reacquisition will be subject to the rights of any mortgage, security interest, mechanic's lien, tax lien or judgment lienholder. City's right to reacquire the Armory Property will expire upon the substantial completion of Phase 2. The City's right to reacquire the Hotel Property, will expire upon the issuance of an occupancy permit for the Hotel.

C. City's Reacquisition Costs.

In the event City elects to exercise its right to reacquire from Developer the Property, or any portion thereof, Developer will be required to pay the following expenses (the "Reacquisition Costs"):

- i. All costs required to remove mechanics' liens, tax liens and judgement liens, exclusive of any judgments of foreclosure upon a mortgage or security interest.
- ii. All costs required for City to reacquire the Property, or any portion thereof, including, but not limited to, closing costs, title search and premium fees, and filing fees for recording the deed and satisfactions of liens to the extent removed.
- iii. City's attorneys' fees incurred in pursuing and completing the reacquisition of the Property, or a portion thereof.

D. Instruments of Service; Indemnity.

As between Developer and City during the Armory Due Diligence Period, Developer is and will remain the sole and exclusive owner of all construction plans, studies, surveys, models, sketches, drawings, specifications and other similar materials (the "Instruments of Service") in connection with the Armory portion of the Project. City may not, for any reason, use, alter, copy, maintain, or otherwise modify the Instruments of Service. In the event City desires to purchase the Instruments of Service from Developer, Developer will be entitled to payment from City for the value of the Instruments of Service. In the event City re-acquires the Property, City will have a limited, irrevocable, and non-exclusive license to use the Instruments of Service solely and exclusively for the purposes of construction, using, maintaining, altering and adding to the Armory portion of the Project. Developer will in its agreement with the architect include this provision.

As between Developer and City during the Hotel Due Diligence Period, Developer is and will remain the sole and exclusive owner of all construction plans, studies, surveys, models, sketches, drawings, specifications and other similar materials (the "Instruments of Service") in connection with the Hotel portion of the Project. City may not, for any reason, use, alter, copy, maintain, or otherwise modify the Instruments of Service. In the event City desires to purchase the Instruments of Service from Developer, Developer will be entitled to payment from City for the value of the Instruments of Service. In the event City re-acquires the Property, City will have a limited, irrevocable, and non-exclusive license to use the Instruments of Service solely and exclusively for the purposes of construction, using, maintaining, altering and adding to the Hotel portion of the Project. Developer will in its agreement with the architect include this provision.

However, In the event City alters the Instruments of Service without the author's written authorization or uses the Instruments of Service for any other project without retaining the authors of the Instruments of Service, City releases Developer, any Related Party and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. City, to the extent permitted by law,

further agrees to defend, indemnify, and hold harmless Developer, any Related Party and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from City's alteration or use of the Instruments of Service.

24. EFFECTIVE DATE; TERM OF THIS AGREEMENT.

A. Impact of Termination.

The effective date of this Agreement will be the date of execution of this Agreement by City. The term of this Agreement will commence upon the effective date and will be in effect until certificates of occupancy are issued by City for the Armory Building, Hotel and Parking Ramp, unless the same is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties. Following the expiration of the term, this Agreement will be deemed terminated and of no further force and effect, except for the provisions of Sections 3, 21, 22, 23, 28 and 32.

25. EARLY TERMINATION.

A. Termination Rights.

This Agreement will become null and void upon either of the following occurrences:

- a. Mutual consent of both parties.
- b. Prior to the expiration of the Due Diligence Period Developer has given to City written notice Developer has terminated this Agreement.

26. GOOD FAITH; MUTUAL COOPERATION.

A. Instruments and Actions by City.

At any time, and from time-to-time before and after the execution of this Agreement, City will, at the request of Developer, and without further consideration, promptly execute, acknowledge and deliver such further instruments, and take such further actions as Developer may reasonably request in order for Developer to complete Developer's obligations under this Agreement. However, no such instruments or actions will impose upon City any burden or obligation which is in excess of any burden or obligation specifically imposed upon City pursuant to the terms of this Agreement.

B. Instruments and Actions by Developer.

At any time, and from time-to-time before and after the execution of this Agreement, Developer will, at the request of City, and without further consideration, promptly execute, acknowledge and deliver such further instruments, and take such further actions as City may reasonably request in order for City to complete City's obligations under this Agreement. However, no such instruments or actions will impose upon Developer any burden or obligation which is in excess of any burden or obligation specifically imposed upon Developer pursuant to the terms of this Agreement.

27. COVENANTS RUNNING WITH THE LAND.

A. Covenants Are Continuing.

All provisions of this Agreement will be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property; (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof.

28. NOTICES.

A. Notice Requirements.

All notices, requests, demands or other communications required or permitted under this Agreement must be in writing and delivered either: (i) personally; (ii) by certified or registered mail, return receipt requested, postage prepaid; (iii) by a recognized overnight courier service (such as Fed Ex); or (iv) by email transmission made during normal business hours with a copy to follow by registered or certified mail, return receipt requested, postage prepaid or by overnight courier service, addressed as follows:

City:	Paul Briseno City Manager City of Brookings 520 Third Street Brookings, SD 57006
-------	--

With a copy to:	Steve Britzman 521 6 th Street, #104 Brookings, SD 57006
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Developer: Angela Boersma
President
Linchpin Corporation
414 Main Avenue, Suite 3
Brookings, SD 57006

With a copy to: Tommy Johnson
Boyce Law Firm
300 S. Main Ave
Sioux Falls, SD 57104

29. ENTIRE AGREEMENT.

A. Merger of Terms.

This Agreement constitutes the entire Agreement between City and Developer. There are no other covenants, agreements, promises, terms, provisions, conditions, undertakings or understandings, either oral or written between the Parties concerning the Property, other than those set forth herein. No subsequent agreement, or any amendments thereto, will be binding upon City or Developer unless it is in writing and signed by both Parties.

30. AMENDMENTS.

A. Amendment Requirements.

This Agreement may be amended from time to time by mutual consent of the Parties. The Parties acknowledge refinement and further implementation of the Project may demonstrate that certain changes may be appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the Parties find clarifications, changes or minor adjustments are necessary or appropriate, they will effectuate such clarifications, changes or minor adjustment through a written amendment approved signed by Developer and City.

31. ASSIGNMENT.

A. Developer May Not Assign.

Other than is specifically contemplated herein, this Agreement may not be assigned by Developer to another entity or person without the prior written approval of City, which approval may not be unreasonably withheld, provided:

- (i) The assignee has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and
- (ii) The proposed assignee has adequate experience with commercial developments of comparable scope and complexity for the portion of the Project that is the subject of the assignment.
- (iii) The assignee assumes all of Developer's obligations under this Agreement, and Developer will remain liable for all obligations under this Agreement.

B. Assignment to Related Party.

Developer may assign this Agreement, or any part of this Agreement, to a Related Entity without City's consent. However, Developer will remain liable for all obligations under this Agreement, unless city, in its sole discretion, permits Developer to be released from any or all obligations under this Agreement.

32. LAW GOVERNING.

A. Law and Venue.

This Agreement will be governed by and construed in accordance with the laws of the state of South Dakota. Venue with respect to any litigation related to this Agreement will be in Circuit Court, Third Judicial Circuit, Brookings County, South Dakota.

33. BINDING EFFECT.

A. Persons Bound.

All provisions of this Agreement are hereby made binding upon personal representatives, heirs, successors, and assigns of the Parties.

IN WITNESS THERETO, the Parties have executed this Agreement as of the effective date.

{ Signature pages follow }

CITY:
CITY OF BROOKINGS, SOUTH DAKOTA

ATTEST:

By: _____
Keith Corbett, Mayor

Bonnie Foster, City Clerk

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF BROOKINGS)

On this _____ day of _____, 2020, before me, the undersigned officer, personally appeared Keith Corbett, Mayor of the City of Brookings, known to me to be the person(s) whose name(s) is/are subscribed to the above and foregoing instrument, and acknowledge to me that she/he executed the same for the purpose therein contained.

NOTARY PUBLIC

My Commission expires _____.

DEVELOPER:
LINCHPIN CORPORATION

By: _____
Angela Boersma
Its President

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF BROOKINGS)

On this _____ day of _____, 2020, before me, the undersigned officer, personally appeared Angela Boersma, President of Linchpin Corporation, known to me to be the person(s) whose name(s) is/are subscribed to the above and foregoing instrument, and acknowledge to me that she/he executed the same for the purpose therein contained.

NOTARY PUBLIC

My Commission expires _____.

EXHIBIT A
TIF Policy

EXHIBIT B
Design Plans