

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is entered into as of OCTOBER 11, 2019, by and between Makenda, LLC, a SOUTH DAKOTA limited liability company (the "Company"), and the City of Waterloo, Iowa (the "City").

RECITALS

- A. City considers economic development within the City a benefit to the community and is willing for the overall good and welfare of the community to provide financial incentives so as to encourage that goal, and the City further believes that the project is in the vital and best interests of the City and that the project and such incentives are in accordance with the public purposes and provisions of applicable State and local laws and requirements under which the project has been undertaken and is being assisted.
- B. Company is willing and able to finance and undertake acquisition and rehabilitation of an existing hotel property located in the Downtown Waterloo Urban Renewal and Redevelopment Plan Area.

AGREEMENT

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

1. **Development Property.** Company is the owner of, or is in the process of acquiring ownership of, a 10-story hotel and restaurant structure located on real property located at 205 W. 4th Street, Waterloo, described on Exhibit "A" attached hereto (the "Property"). The Company will undertake the Project (defined below) upon the Property.

2. **Improvements by Company.** Company shall upgrade and renovate the hotel lobby, rooms, restaurant and other facilities (all of the foregoing renovations and improvements are collectively referred to as the "Improvements") at a minimum estimated investment cost of \$9,500,000 (including Property purchase cost), or at

greater minimum amount required by the franchise to meet its property improvement requirements, a copy of which is attached hereto as Exhibit "B". Additional description of the Improvements is attached hereto as Exhibit "C". Company agrees that the Improvements shall be constructed in accordance with all applicable City, state, and federal building codes and shall comply with all applicable City ordinances. Company will use its best efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Improvements may be lawfully constructed. Concurrently with any application for a building permit, Company shall provide to City proof of firm financing commitments in a total amount sufficient to undertake the Project. The Property, the Improvements, and all development-related work to make the Property usable for Company's purposes as contemplated by this Agreement are collectively referred to as the "Project".

3. **Project Schedule.** Company shall commence Improvements within four (4) months after the date of this Agreement and shall substantially complete the Project within twelve (12) months thereafter. If Company has not begun construction of the Improvements before the end of the 4-month period, City in its sole discretion may terminate this Agreement and have no further obligation hereunder. If construction has not begun by the end said 4-month period, but the development of the Project is still imminent, the City Council may, but shall not be required to, grant an extension of time for the construction of the Improvements. If construction has commenced within the required period or any extended period and is stopped and/or delayed as a result of an act of God, war, civil disturbance, court order, labor dispute, fire, or other cause beyond the reasonable control of Company (each of the foregoing is an "Unavoidable Delay"), the time for completion of construction shall be tolled for a period of time equal to the period of Unavoidable Delay, and thereafter if construction is not completed within the allowed period of extension, City in its sole discretion may terminate this Agreement and have no further obligation hereunder. If City terminates this Agreement, also see Section 8.C.

4. **City Activities in Aid of Project.**

A. Rebates. City shall provide property tax rebates as further set forth in Section 6 below.

B. Economic Development Grant - General. Subject to the terms of this paragraph, City shall pay to Company a development grant in the amount of \$450,000.00 (the "ED Grant"). The ED Grant shall be payable upon Company's delivery of proof to City that Company has completed a closing for purchase of the Property. The ED Grant shall be subject to repayment as provided in Section 8.C if City terminates this Agreement as provided in Section 3.

C. Economic Development Grant – Hotel/Motel Tax. For a period of twenty (20) years, City will make an annual grant to Company in an amount

equal to the difference between the hotel-motel tax revenues actually generated by the hotel during the applicable fiscal year and the baseline tax of \$125,000.00. Grant payments will start in "Year One" as defined in Section 6. City will make payment of each grant to Company within sixty (60) days after the close of City's fiscal year, provided that Company has furnished to City copies of Company's quarterly or monthly sales tax returns, as applicable, as filed with the State of Iowa with respect to each filing period during said fiscal year, within ten (10) days after filing same, together with proof that such tax has been paid in full. This annual grant shall also be subject to Company's performance of the covenants set forth in Section 8. As to any year for which Company does not provide all returns by September 30 of the following fiscal year, or in which Company has not performed the covenants set forth in Section 8, City in its sole discretion may cancel the grant for the year of deficient reporting or performance, without liability for payment of any part of such canceled grant.

D. Parking. The parties agree to enter into a separate agreement for use, in the connected parking ramps, of up to 40 reserved spaces (with as many of those as are available on the second floor) and up to 110 non-reserved spaces by overnight patrons of the hotel. Company may choose to validate parking for authorized patrons, at rates to be determined by City policy. Rates for each parking space in the first year of use, starting with the opening date of the hotel, shall be \$2.50 per month, shall be \$5.00 per month in the second year and third year, and thereafter shall increase by the same percentage as general rates for other parking ramp users may be increased from time to time.

E. Convention Center. City agrees to invest in improvements to the Five Sullivan Brothers Convention Center (the "Center") at a level of \$1,400,000 to \$2,800,000 per fiscal year for the period from July 1, 2020 to June 30, 2022 and \$700,000 to \$1,400,000 per fiscal year for the period from July 1, 2022 to June 30, 2025. City will consult with Company to identify and prioritize desired improvements. City shall commence improvements within four (4) months after the date of this Agreement and will have improvements of \$2 million in cost either complete or in process by June 30, 2020.

F. Other Facility Improvements. City will make such improvements to the skywalks connecting the Property with the Center and the parking garage as the parties shall agree, including but not limited to roofing repair and door replacements. City shall also make such improvements to the parking garage as the parties shall agree, including but not limited to painting and cleaning. City will work with Company to coordinate facility improvements with Company's Improvements.

G. Reports. Until substantial completion of improvements to the Center, skywalk and parking garage, City shall make progress reports to Company, in such detail and at such times as may be reasonably requested by

Company, as to the actual progress of City with respect to construction of the Improvements.

H. Maintenance of Improvements. City will maintain, preserve and keep the Center, skywalks and parking ramp properties in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals and additions.

29. Problem Resolution. City will cooperate with Company in resolution of any traffic, parking, trash removal, public safety or other problems which may arise in connection with operation of the Center.

J. Bid Documents. City agrees to provide to Company's representative a copy of any bid documents that City issues for the City improvements referred to in paragraphs E and F above. City also agrees to provide to Company a copy of any bid documents that the City issues for wood products to be used for improvements to the Center.

5. **Minimum Assessment Agreement**. Company acknowledges and agrees that it will pay when due all taxes and assessments, general or special, and all other lawful charges whatsoever levied upon or assessed or placed against the Property. Company further agrees that, prior to the date set forth in Section 2 of the Minimum Assessment Agreement attached hereto as Exhibit "D" (the "MAA"), it will not seek or cause a reduction in the taxable valuation for the Property, which shall be fixed for assessment purposes, below the aggregate amount of \$9,500,000.00 ("Minimum Actual Value"), through:

- (29) willful destruction of the Property, Improvements, or any part of either;
- (ii) a request to the assessor of Black Hawk County; or
- (iii) any proceedings, whether administrative, legal, or equitable, with any administrative body or court within the City, Black Hawk County, the State of Iowa, or the federal government.

Company agrees to execute and deliver the MAA concurrently with its execution and delivery of this Agreement.

6. **Property Tax Rebates**. Provided that Company has completed the Improvements as set forth herein and has executed the Minimum Assessment Agreement as set forth in Section 5, and subject to annual appropriation by the city council, City agrees to rebate property tax (with the exceptions noted below) as follows:

85% rebate for each of Years One through Twenty, inclusive,

for any taxable value over the January 1, 2018 value of \$1,617,050. Rebates are payable in respect of a given year only to the extent that Company has actually paid general property taxes due and owing for such year. To receive rebates for a given year, Company must, within twelve (12) months after the tax payment due date, submit a completed rebate request to City on the form provided by or otherwise satisfactory to City, of Company's right to a rebate for that year will be forfeited in the City's discretion.

This rebate program is not applicable to any special assessment levy, debt service levy, or any other levy that is exempted from treatment as tax increment financing under the provisions of applicable law. The first year in which a rebate may be given ("Year One") shall be the first full year for which the assessment is based upon the completed value of the Improvements and not a prior year for which the assessment is based solely upon (x) the value of the land or (y) upon the value of the land and a partial value of the Improvements due to partial completion of the Improvements or a partial tax year.

7. **Cooperative Activities.** City agrees that Company may designate a representative to participate in a group that will assist City in selecting a new operations manager for the Center. Company will also participate in a joint review board that will be established to regularly and periodically assess communications between Center staff and hotel staff, communications between parking garage staff and hotel staff, cleanliness of shared public spaces (e.g., skywalks) and general maintenance of the improved Property, Center and other facilities, status of improvements to the Property, Center and other facilities, and other matters of mutual interest and benefit to the parties. It is contemplated that the review board will include representatives from City, Company, Waterloo Development Corp., Main Street Waterloo, Experience Waterloo (i.e., convention and visitors bureau), and a significant user of the Center.

8. **Additional Covenants of Company.** In addition to the other promises, covenants and agreements of Company as provided elsewhere in this Agreement, Company agrees as follows:

A. Destination Marketing Fee. Company agrees to enter into a written agreement with Experience Waterloo by which Company will bill its customers, in connection with each paid booking of a hotel room on the Property, a sum equal to the destination marketing fee paid by other hotel operators in the City of Waterloo, and will remit to Experience Waterloo such fees at it collects. Company is required to bill for the fee, but customers are not obligated to pay the fee. Company shall not direct or encourage customers to not pay the fee. The agreement shall be in effect for a term of five (5) years from the date Company's hotel is first open for business.

B. Replacement Reserve. The parties acknowledge that the hotel on the Property is a nearly 40-year-old facility that is likely to require significant periodic maintenance, renovation, and upgrade. Accordingly, Company agrees to maintain a segregated reserve account into which Company will make

quarterly deposits of an amount initially equal to two percent (2%) of the hotel's operating revenues for such calendar quarter. Company's first contribution to the account shall be after the second year that it operates the hotel, in respect of the first quarter of the third year of operation. The reserve amount shall be three percent (3%) for the fourth year of operation and four percent (4%) for the fifth year of operation and all years thereafter. For purposes of this section, "operating revenues" means the total amount received from third parties by Company or its contracted hotel manager, directly or indirectly, arising out of or connected with the hotel, including but not limited to transactions for cash, credit and credit card sales, less applicable sales taxes. Company may utilize funds from the reserve account to defray the cost of capital upgrades and improvements to the hotel, other than the initial Improvements described in Section 2. By having such a fund, the parties express no expectation that it will be the sole source of funds for such upgrades or improvement costs. As a condition to receipt of property tax rebates for a given year, Company shall deliver to City a report showing the balance in the reserve account as of the end of the most recent quarter.

C. Grant Repayment. If City terminates this Agreement as provided in Section 3, Company shall repay the ED Grant specified in paragraph 4.B in full to City within ninety (90) days after the date of termination. If not timely repaid, the ED Grant shall accrue interest at the prime rate plus one percent, capped at six percent (6%) per annum retroactive from the date of termination, until paid in full. The "prime rate" shall be such rate as reported in the *Wall Street Journal* for the date of termination. The personal guaranty provided by Company's principals shall apply only to the limited extent stated therein.

D. Hotel Operation. Company may operate the hotel through a separate company affiliated with Company by common ownership and/or control, but Company will be responsible to ensure that Company or its operating affiliate perform all of the terms of this Agreement that are Company's duty to perform.

E. Hotel Flag. During the term of this Agreement, Company must maintain the standard and corporate flag of Best Western Plus and to maintain good standing with Best Western requirements. Company will provide a complete copy of the annual Best Western Quality Assurance Evaluation (QAE) to City in order to receive property tax rebates outlined in item 6 of this Agreement. If Company fails to maintain such standards and as a result the hotel flag changes to a lesser quality product, the City at its sole option may terminate this Agreement and cancel any additional benefits that accrue to Company under this Agreement.

- F. Insurance. Company agrees during construction of the Improvements and thereafter until the MAA termination date to maintain, as applicable, builder's risk, property damage, and liability insurance coverages with respect to the Improvements in such amounts as are customarily carried by like organizations engaged in activities of comparable size and liability exposure, and shall provide evidence of such coverages to the City upon request.
- G. Progress Reports. Until substantial completion of the Improvements, Company shall make such reports to City, in such detail and at such times as may be reasonably requested by City, as to the actual progress of Company with respect to construction of the Improvements.
- H. Problem Resolution. Company will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Improvements.
- I. Minimum Actual Value. The Property will have a taxable value as set forth in the MAA, and Company agrees that the minimum actual value of the Property and completed Improvements as stated in the MAA will be a reasonable estimate of the actual value of the Property and Improvements for ad valorem property tax purposes. Company agrees that it will spend enough in construction of the Improvements that, when combined with the value of the Property and related site improvements, will equal or exceed the assessor's minimum actual value for the Property and Improvements as set forth in the MAA.
- J. Maintenance of Property. Company will maintain, preserve and keep the Property, including but not limited to the Improvements, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals and additions.
- K. Legal Compliance. Company will comply with all applicable land development laws and City and county ordinances, and all laws, rules and regulations relating to its businesses, other than laws, rules and regulations where the failure to comply with the same or the sanctions and penalties resulting therefrom, would not have a material adverse effect on the business, property, operations, or condition, financial or otherwise, of Company.
- L. Restricted Activities. During the period that any rebate is payable to Company under this Agreement, Company agrees that it will make no conveyance, lease or other transfer of the Property or any interest therein that

would cause the Property or any part thereof to be classified as exempt from taxation or subject to centralized assessment or taxation by the State of Iowa.

M. Property Taxes. Company shall pay, or cause to be paid, when due, all real property taxes and assessments payable with respect to any and all parts of the Property. Company agrees that (1) it will not seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute or regulation relating to the taxation of real property included within the Property that is determined by any tax official to be applicable to the Property or to Company, or raise the inapplicability or constitutionality of any such tax statute or regulation as a defense in any proceedings of any type or nature, including but not limited to delinquent tax proceedings, and (2) it will not seek any tax deferral, credit or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other state law, of the taxation of real property included within the Property.

9. **Indemnification and Releases.**

29. Company hereby releases City, its elected officials, officers, employees, and agents (collectively, the "City indemnified parties") from, covenants and agrees that the indemnified parties shall not be liable for, and agrees to indemnify, defend and hold harmless the City indemnified parties against, any loss or damage to property or any injury to or death of any person occurring at or about the Property or resulting from any defect in the Improvements. The City indemnified parties shall not be liable for any damage or injury to the persons or property of Company or its directors, officers, employees, contractors or agents, or any other person who may be about the Property or the Improvements, due to any act of negligence or willful misconduct of any person, other than any act of negligence or willful misconduct on the part of any such City indemnified party or its officers, employees or agents.

B. Except for any willful misconduct or any unlawful act of the City indemnified parties, Company agrees to protect and defend the City indemnified parties, now or forever, and further agrees to hold the City indemnified parties harmless, from any claim, demand, suit, action or other proceedings or any type or nature whatsoever by any person or entity whatsoever that arises or purportedly arises from (1) any violation of any covenant or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by Company against the City to enforce its rights under this Agreement), or (2) the acquisition and condition of the Property and the construction, installation, ownership, and operation of the Improvements, or (3) any hazardous substance or environmental contamination located in or on the Property, but only

to the extent such liability has not been previously transferred to and accepted by the City in writing.

29. To the extent permitted by applicable law, City hereby covenants and agrees that Company, its officers, employees and agents (the "Company indemnified parties") shall not be liable for, and agrees to indemnify, defend and hold harmless the Company indemnified parties against, any loss or damage to property or any injury to or death of any person occurring at or about the Center, a skywalk, or a parking ramp resulting from any defect in such facilities. The Company indemnified parties shall not be liable for any damage or injury to the persons or property of City or its elected officers, officers, employees, or agents, or any other person who may be about the Center, skywalks or parking ramp, due to any act of negligence or willful misconduct of any person, other than any act of negligence or willful misconduct on the part of any such Company indemnified party or its officers, employees or agents.

29. Except for any willful misconduct or any unlawful act of the Company indemnified parties, and to the extent permitted by applicable law, City agrees to protect and defend the Company indemnified parties, now or forever, and further agrees to hold the Company indemnified parties harmless, from any claim, demand, suit, action or other proceedings or any type or nature whatsoever by any person or entity whatsoever that arises or purportedly arises from (1) any violation of any covenant or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by City against Company to enforce its rights under this Agreement), or (2) the construction, installation, ownership, and operation of improvements to the Center, skywalks, and parking ramp.

E. The provisions of this Section shall survive the expiration or termination of this Agreement.

10. **Default.** The following shall be "Events of Default" under this Agreement, and the term "Event of Default" shall mean any one or more of the following events that continues beyond any applicable cure periods:

29. Failure by Company to cause the construction of the Improvements to be commenced and completed pursuant to the terms and conditions of this Agreement;

B. Transfer by Company of any interest (either directly or indirectly) in the Improvements, the Property, or this Agreement, without the prior written consent of City as provided in this Agreement;

29. Failure by Company to pay, before delinquency, all ad valorem property taxes levied on or against the Property;

29. Failure by any party hereto to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement or the MAA;

E. Company (1) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the federal bankruptcy law or any similar state law; (2) makes an assignment for the benefit of its creditors; (3) admits in writing its inability to pay its debts generally as they become due; (4) is adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of Company as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Company, or part thereof, shall be appointed in any proceedings brought against Company and shall not be discharged within ninety (90) days after such appointment, or if Company shall consent to or acquiesce in such appointment; or (5) defaults under any mortgage applicable to the Property.

F. Any representation or warranty made by Company in this Agreement, or made by Company in any written statement or certificate furnished by Company pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof.

11. Remedies.

29. Default by Company. Whenever any Event of Default in respect of Company occurs and is continuing, the City may suspend its performance under this Agreement until it receives assurances from Company, deemed adequate by City, that Company will cure its default and continue its performance under this Agreement. Before exercising such remedy, City shall give 30 days' written notice to Company of the Event of Default, and by the conclusion of such period the Event of Default shall not have been cured, or if the Event of Default cannot reasonably be cured within 30 days and Company shall not have provided assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible.

B. Default by City. Whenever any Event of Default in respect of Company occurs and is continuing, Company may take action against City to require it to specifically perform its obligations hereunder. Before exercising such remedy, Company shall give 30 days' written notice to City of the Event of Default, and by the conclusion of such period the Event of Default shall not have been cured, or if the Event of Default cannot reasonably be cured within 30 days and City shall not have provided assurances reasonably satisfactory to the Company that the Event of Default will be cured as soon as reasonably possible.

29. Right to Setoff. At any time that Company is delinquent by more than thirty (30) days in fulfilling any payment obligation to City, City shall be entitled to set off such amount from any sum that the City owes to Company. After exercising any right of setoff, City shall provide written notice of same to Company.

29. Remedies under this Agreement shall be cumulative and in addition to any other right or remedy given under this Agreement or existing at law or in equity or by statute. Waiver as to any particular default, or delay or omission in exercising any right or power accruing upon any default, shall not be construed as a waiver of any other or any subsequent default and shall not impair any such right or power.

13. **Obligations Contingent.** Each and every obligation of City under this Agreement is expressly made subject to and contingent upon City's completion of all procedures, hearings and approvals deemed necessary by City or its legal counsel for amendment of the urban renewal plan applicable to the Property and/or project area, all of which must be completed within 120 days from the date this Agreement is approved by the City council. Likewise, Company's obligations under this Agreement are subject to and contingent upon City's completion of all such procedures, hearings and approvals. City hereby agrees to timely undertake and complete all such procedures, hearings and approvals so that the benefits that City promises to Company hereunder as an inducement for Company to undertake and complete the Project as set forth in this Agreement will not be lost. If such completion does not occur, then any conveyance, benefit or incentive of any type provided by City hereunder within said 120-day period is subject to reverter of title, revocation, repayment or other appropriate action to restore such property, benefit or incentive to City, and Company agrees to cooperate diligently and in good faith with any reasonable request by City to effectuate the restoration of same.

14. **Representations and Warranties of City.** City hereby represents and warrants as follows:

A. City is not prohibited from consummating the transaction contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment.

B. Each person who executes and delivers this Agreement and all documents to be delivered hereunder is and shall be authorized to do so on behalf of City.

15. **Representations and Warranties of Company.** Company hereby represents and warrants as follows:

A. Company is duly organized, validly existing, and in good standing under the laws of the state of its organization and is duly qualified and in good standing under the laws of the State of Iowa.

B. Company has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under this Agreement.

C. This Agreement has been duly and validly authorized, executed and delivered by Company and, assuming due authorization, execution and delivery by the other parties hereto, is in full force and effect and is a valid and legally binding instrument of Company that is enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

D. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the articles of organization or bylaws of Company or of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Company is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

E. There are no actions, suits or proceedings pending or threatened against or affecting Company in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position, or results of operations of Company or which in any manner raises any questions affecting the validity of the Agreement or Company's ability to perform its obligations under this Agreement.

16. **Materiality of Company's Promises, Covenants, Representations, and Warranties.** Each and every promise, covenant, representation, and warranty set forth in this Agreement on the part of Company to be performed is a material term of

this Agreement, and each and every such promise, covenant, representation, and warranty constitutes a material inducement for City to enter this Agreement. Company acknowledges that without such promises, covenants, representations, and warranties, City would not have entered this Agreement and would not have offered the substantial Project incentives described herein. Upon breach of any promise or covenant, or in the event of the incorrectness or falsity of any representation or warranty, City shall deliver written notice of such breach to Company, and if Company fails to cure such breach within sixty (60) days thereafter, City may, at its sole option and in addition to any other right or remedy available to it, terminate this Agreement and declare it null and void.

17. **Performance by City.** Company acknowledges and agrees that all of the obligations of City under this Agreement shall be subject to, and performed by City in accordance with, all applicable statutory, common law or constitutional provisions and procedures consistent with City's lawful authority. All covenants, stipulations, promises, agreements and obligations of City contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of City and not of any governing body member, officer, employee or agent of City in the individual capacity of such person.

18. **No Third-Party Beneficiaries.** No rights or privileges of any party hereto shall inure to the benefit of any contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, subcontractor, material supplier, or other person or entity shall be deemed to be a third-party beneficiary of any of the provisions of this Agreement.

19. **Notices.** Any notice under this Agreement shall be in writing and shall be delivered in person, by overnight air courier service, by United States registered or certified mail, postage prepaid, (with an additional copy delivered by one of the foregoing means), and addressed:

(29) if to City, at 715 Mulberry Street, Waterloo, Iowa 50703, facsimile number 319-291-4571, Attention: Mayor, with copies to the City Attorney and the Community Planning and Development Director.

(b) if to Company, at 701 SE 12th Street MADISON, Attn: BRIAN KERN SOUTH DAKOTA PO 409 57042-0409

Delivery of notice shall be deemed to occur (i) on the date of delivery when delivered in person, (ii) one (1) business day following deposit for overnight delivery to an overnight air courier service which guarantees next day delivery, or (iii) three (3) business days following the date of deposit if mailed by United States registered or certified mail, postage prepaid.

20. **No Joint Venture.** Nothing in this Agreement shall, or shall be deemed or construed to, create or constitute any joint venture, partnership, agency, employment, or

any other relationship between the City and Company nor to create any liability for one party with respect to the liabilities or obligations of the other party or any other person.

21. **Amendment, Modification, and Waiver.** No amendment, modification, or waiver of any condition, provision, or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or by the duly authorized representative of same, and specifying with particularity the extent and nature of the amendment, modification, or waiver. Any waiver by any party of any default by another party shall not affect or impair any rights arising from any subsequent default.

22. **Severability; Reformation.** Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any portion of this Agreement shall be deemed invalid or unenforceable, whether in whole or in part, the offending provision or part thereof shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect. If, for any reason, a court finds that any portion of this Agreement is invalid or unenforceable as written, but that by limiting such provision or portion thereof it would become valid and enforceable, then such provision or portion thereof shall be deemed to be written, and shall be construed and enforced, as so limited.

23. **Captions.** All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted only as a matter of convenience and/or reference, and they shall in no way be construed as limiting, extending, or describing either the scope or intent of this Agreement or of any provisions hereof.

24. **Assignment.** Except as set forth in this paragraph, until after the fifth anniversary of the date hereof, Company may not sell, convey, give, or otherwise transfer title to the Property to any third party without the prior written consent of City, except to a successor by merger or consolidation, which consent shall not be unreasonably withheld if such third party has demonstrated experience of no less than five (5) years of profitable hotel operation and agrees to assume all obligations of Company hereunder. Notwithstanding the foregoing, and provided that Company promptly provides written notice to City, Company may, without further action on the part of City, (a) assign its rights under this Agreement, including but not limited to mortgaging the Property, to a private lender as security on a credit facility taken in connection with the Project, including any refinancing thereof, and (b) assign its rights under this Agreement to an affiliated entity that is wholly owned by Company or to an entity affiliated with Company by common ownership or control.

25. **Interpretation.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that the parties hereto and their respective attorneys have contributed substantially and materially to the preparation of each and every provision of this Agreement.

26. **Binding Effect.** This Agreement shall be binding and shall inure to the benefit of the parties and their respective successors, permitted assigns, and legal representatives.

27. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

28. **Entire Agreement.** This Agreement, together with the exhibits attached hereto, constitutes the entire agreement of the parties and supersedes all prior or contemporaneous negotiations, discussions, understandings, or agreements, whether oral or written, with respect to the subject matter hereof.

29. **Time of Essence.** Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Development Agreement by their duly authorized representatives as of the date first set forth above.

CITY OF WATERLOO, IOWA

By: _____
Quentin M. Hart, Mayor

MAKENDA, LLC
By: _____
Title: VICE PRESIDENT

Attest: _____
Kelley Felchle, City Clerk

PERSONAL GUARANTY. The undersigned members and/or managers of Company hereby agree for themselves and their heirs, personal representatives, and assigns, to unconditionally guarantee to City, its successors and assigns, the full and prompt performance by Company, its successors and assigns, of the grant repayment obligation set forth in paragraph 8.C of the foregoing Agreement and the duties of indemnity set forth therein, if any. Liability of guarantors hereunder is joint and several. This personal guaranty shall be released upon presentment of the final Certificate of Occupancy issued after completion of the Improvements.

EXHIBIT "A"

Legal Description of Property

THE NORTHWESTERLY 13 FEET OF LOT 2 AND ALL OF LOTS 3, 4 AND 5, BLOCK 8, ORIGINAL PLAT ON THE WEST SIDE OF THE CEDAR RIVER, CITY OF WATERLOO, BLACK HAWK COUNTY, IOWA, EXCEPTING THAT PART OF SAID LOT 2 DESCRIBED AS FOLLOWS:

COMMENCING FROM A POINT ON THE NORTHEASTERLY LINE OF SAID BLOCK 8 THAT IS 86.50 FEET NORTHWESTERLY FROM THE POINT OF INTERSECTION OF SAID NORTHEASTERLY LINE OF BLOCK 8 WITH THE NORTHWESTERLY LINE OF WEST 5TH STREET IN SAID CITY AND RUNNING FROM POINT OF BEGINNING NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF SAID BLOCK 8, 22.125 FEET; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE TO A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 2 WHICH IS 108.60 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF SAID WEST 5TH STREET; THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 2, A DISTANCE OF 22.10 FEET; THENCE NORTHEASTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING.

ALL THAT PART OF THE RIGHT-OF-WAY OF WEST 4TH STREET LYING ADJACENT TO LOT 5, BLOCK 8, ORIGINAL PLAT ON THE WEST SIDE OF THE CEDAR RIVER, CITY OF WATERLOO, BLACK HAWK COUNTY, IOWA LYING WITHIN THE FOLLOWING DESCRIBED BOUNDARY:

BEGINNING AT THE NORTH CORNER OF SAID LOT 5, THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF SAID LOT 5 TO THE WEST CORNER OF SAID LOT 5, THENCE NORTHWESTERLY ALONG AN EXTENSION OF THE SOUTHWESTERLY LINE OF SAID LOT 5, 34.13 FEET TO A POINT WHICH IS 40 FEET NORMALLY DISTANT SOUTHEASTERLY FROM THE CENTERLINE OF THE EXISTING WEST 4TH STREET PAVING; THENCE DEFLECTING TO THE RIGHT IN A NORTHEASTERLY DIRECTION AT AN ANGLE OF 75 DEGREES, 13 MINUTES, 30 SECONDS ALONG A LINE WHICH IS PARALLEL WITH THE CENTERLINE OF THE WEST 4TH STREET PAVING 47.54 FEET; THENCE NORTHWESTERLY NORMAL TO THE NORTHWESTERLY LINE OF SAID LOT 5, 11.11 FEET; THENCE NORTHEASTERLY PARALLEL WITH THE NORTHWESTERLY LINE OF SAID LOT 5, 18 FEET; THENCE SOUTHEASTERLY NORMAL TO THE NORTHWESTERLY LINE OF SAID LOT 5, 6.38 FEET TO A POINT WHICH IS 40 FEET NORMALLY DISTANT SOUTHEASTERLY FROM THE CENTERLINE OF THE WEST 4TH STREET PAVING; THENCE DEFLECTING TO THE LEFT IN A NORTHEASTERLY DIRECTION AT AN ANGLE OF 104 DEGREES, 43 MINUTES, 50 SECONDS ALONG A LINE WHICH IS PARALLEL WITH SAID WEST 4TH STREET CENTERLINE, 6.18 FEET; THENCE NORTHEASTERLY ALONG A CURVE, CONCAVE SOUTHEASTERLY, TANGENT TO THE LAST DESCRIBED LINE AND HAVING A RADIUS OF 876.73 FEET, 73.34 FEET (ARC LENGTH) TO A POINT ON THE NORTHWESTERLY EXTENSION OF THE NORTHEASTERLY LINE OF SAID LOT 5; THENCE SOUTHEASTERLY 68.17 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

Hotel Franchise Property Improvement Requirements

See attached.

EXHIBIT "C"

Additional Description of Improvements

See attached.

EXHIBIT "D"

MINIMUM ASSESSMENT AGREEMENT

This Minimum Assessment Agreement (the "Agreement") is entered into as of OCTOBER 11, 2019, by and among the CITY OF WATERLOO, IOWA ("City"), MAKENDA, LLC ("Company"), and the COUNTY ASSESSOR of the City of Waterloo, Iowa ("Assessor").

WITNESSETH:

WHEREAS, on or before the date hereof the City and Company have entered into a development agreement (the "Development Agreement") regarding certain real property (the "Property"), described in Exhibit "A" thereto, located in the City; and

WHEREAS, it is contemplated that pursuant to the Development Agreement, the Company will undertake the development of an area (the "Project") within the City and within the Downtown Waterloo Urban Renewal and Redevelopment Plan Area; and

WHEREAS, pursuant to Iowa Code § 403.6, as amended, the City and the Company desire to establish a minimum actual value for the land and the building(s) on the Property pursuant to this Agreement and applicable only to the Project, which shall be effective upon substantial completion of the Project and from then until this Agreement is terminated pursuant to the terms herein and which is intended to reflect the minimum actual value of the land and buildings as to the Project only; and

WHEREAS, the City and the Assessor have reviewed the preliminary plans and specifications for the improvements (the "Improvements") which the parties contemplate will be erected as a part of the Project.

NOW, THEREFORE, the parties hereto, in consideration of the promises, covenants, and agreements made by each other, do hereby agree as follows:

1. Upon substantial completion of construction of the Improvements by the Company, the minimum actual taxable value which shall be fixed for assessment purposes for the land and Improvements to be constructed thereon by the Company as a part of the Project shall not be less than \$9,500,000.00 (the "Minimum Actual Value") until termination of this Agreement. The parties hereto agree that construction of the Improvements will be substantially completed on or before December 31, 2020.

2. The Minimum Actual Value herein established shall be of no further force and effect, and this Minimum Assessment Agreement shall terminate, on December 31, 2060. Nothing herein shall be deemed to waive the Company's rights under Iowa Code § 403.6, as amended, to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event,

however, shall the Company seek or cause the reduction of the actual value assigned below the Minimum Actual Value established herein during the term of this Agreement. Nothing herein shall limit the discretion of the Assessor to assign at any time an actual value to the land and Improvements in excess of the Minimum Actual Value.

3. Company agrees that it will not seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute or regulation relating to the taxation of real property included within the Property that is determined by any tax official to be applicable to the Property or to Company, or raise the inapplicability or constitutionality of any such tax statute or regulation as a defense in any proceedings.

4. This Agreement shall be promptly recorded by the City with the Recorder of Black Hawk County, Iowa. The City shall pay all costs of recording.

5. Neither the preambles nor provisions of this Agreement are intended to, or shall be construed as, modifying the terms of the Development Agreement.

6. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties, including but not limited to future owners of the Project property.

IN WITNESS WHEREOF, the parties have executed this Minimum Assessment Agreement by their duly authorized representatives as of the date first set forth above.

CITY OF WATERLOO, IOWA

By: _____
Quentin M. Hart, Mayor

Attest: _____
Kelley Felchle, City Clerk

MAKENDA, LLC
By: _____
Title: VICE PRESIDENT

STATE OF IOWA)
COUNTY OF BLACK HAWK) ss.

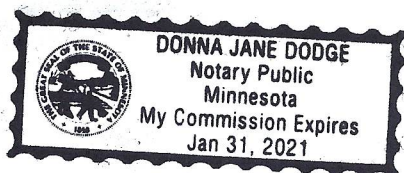
On this _____ day of _____, 2019, before me, a Notary Public in and for the State of Iowa, personally appeared Quentin M. Hart and Kelley Felchle, to me personally known, who being duly sworn, did say that they are the Mayor and City

Clerk, respectively, of the City of Waterloo, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said municipal corporation, and that said instrument was signed and sealed on behalf of said municipal corporation by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipal corporation by it and by them voluntarily executed.

Notary Public

STATE OF Minnesota)
COUNTY OF Seann) ss.

Acknowledged before me on October 11, 2019 by Rod Linquist
as Vice President of Makenda, LLC.



Donna J. Dodge
Notary Public

CERTIFICATION OF ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed for the development, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of the property subject to the development, upon completion of improvements to be made on it and in accordance with the Minimum Assessment Agreement, certifies that the actual value assigned to such land and building upon completion of the development shall not be less than Nine Million Five Hundred Thousand Dollars (\$9,500,000.00).

Assessor for Black Hawk County, Iowa

Date _____

STATE OF IOWA

)

) SS.

COUNTY OF BLACK HAWK

)

Subscribed and sworn to before me on _____, 2019, by T.J. Koenigsfeld, Assessor for Black Hawk County, Iowa.

Notary Public