

1 DEVELOPER'S AGREEMENT

2
3 AGREEMENT made this 17th day July, 2014, by and between the TOWN OF NEW
4 PALTZ, a municipal corporation of the State of New York, with principal offices located at
5 Route 32, New Paltz, New York, 12561 ("Town"), and NEW PALTZ HOSPITALITY LLC, a
6 New York limited liability company qualified to do business in New York State, having an
7 address at 1307 Ulster Avenue, Kingston, New York 12401 ("Developer").
8

9 WITNESSETH

10
11 WHEREAS, Developer is the owner of certain parcel of land located at 4 South
12 Putt Corners Road, New Paltz, NY, being identified as SBL: 86.012-4-9.2 on the Tax Map
13 of the Town of New Paltz;

14
15 WHEREAS, Developer has applied for site plan and other approvals necessary to
16 demolish the existing building, reconstruct a building and parking areas and other necessary and
17 on-site and off-site improvements; and
18

19 WHEREAS, the Town of New Paltz Planning Board issued a negative SEQRA
20 declaration and site plan approval based on review of the site plan and various representations
21 made by Developer with respect to development of the property; and
22

23 WHEREAS, By resolution filed in the Office of the Town Clerk on June 14, 2014 the
24 Town of New Paltz Planning Board has approved a \$30,000 restoration bond for the demolition
25 of the building and the restoration of the site; and
26

27 WHEREAS, Developer has agreed to provide a Performance Bond(s) to secure: a) the
28 demolition work to be performed pursuant to this agreement (the "Demolition Work"); and b)
29 various essential offsite improvements necessary for the safe implementation of the proposed
30 plan and protection of the public health and welfare (the "Essential Site Improvements,"
31 including, but not limited to, installation of sewer pump upgrade station improvements on
32 adjoining property; installation of a water main between South Putt Corners Road and the Town
33 of New Paltz water storage tank on Apple Drive; installation of sidewalk, water valve pavement
34 widening curbing, and crosswalk paving and associated improvements along the Town Road
35 known as Terwilliger Lane, onsite installation of underground storm water control structures; and
36 onsite installation and maintenance of erosion and sediment control measures; and
37

38 WHEREAS, the Developer has agreed to reimburse the Town's cost of monitoring the
39 installation of the Essential Site Improvements; and
40

41 NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of
42 which is hereby acknowledged, Developer and Town agree as follows:
43

44 DEMOLITION WORK

45
46 1. Demolition activities. Prior to the issuance of a building permit for the construction of
47 the Essential Site Improvements as provided for in this agreement, the Developer shall obtain a
48 demolition permit for and shall commence and complete the required demolition work to be
49 performed in conformance with the final site plan; the terms and conditions of the Record of
50 Decision adopted by the Planning Board, dated October 25, 2010; all applicable codes, rules and
51 regulations; and this Agreement, which does not limit or waive any term or condition of the site

52 plan approval.

53
54 2. Schedule for completion of demolition. Developer, its successors or assigns, shall complete
55 the demolition work to be performed in a prompt and timely manner, according to a schedule of demolition
56 activities to be submitted to the Town of New Paltz Building Department prior to the commencement of
57 demolition work and updated thereafter, as necessary.

58
59 3. Notification of Commencement of Work. At least five (5) business days prior to the commencement
60 of any demolition activities on site, the Developer shall give written notice to the Town's consulting engineer,
61 Building Inspector, and Code Enforcement Officer of its intent to start demolition. The notice shall specify the
62 name, address, telephone number and other contact information for the contractor, the contractor's on-site
63 representative, who shall be available on a 24/7 basis, and the proposed date of start of demolition activities.

64
65 4. Demolition work. Prior to and throughout the performance of the demolition work, Developer and
66 representatives of its contractor(s) shall comply with any and all special conditions reasonably required by the
67 Building Inspector, Code Enforcement Officer and the Town's consulting engineer including but not limited to all
68 procedures for implementing erosion control, signage, fencing and traffic control during demolition and other
69 mitigation measures necessary to properly complete the demolition and related work to be performed.

70
71 5. Erosion and Sediment Control Measures to Be Installed by Developer. The Developer shall install
72 and maintain all Erosion and Sediment Control measures in accordance with the approved erosion and sediment
73 control or stormwater management plan, set forth in the SWPPP prepared by Medenbach and Eggers, and the
74 requirements of Town Code Chapter 140. Field changes to the SWPPP may only be made pursuant to written
75 approval by the Town engineer.

76
77 6. Traffic Control Services Agreement. Throughout the performance of the demolition work to be
78 performed, Developer shall enter into such Traffic Control Services Agreement(s) with the Town of New Paltz
79 and its police department as may be reasonably required throughout the performance of the demolition work to
80 provide for such police services as may be necessary to control traffic during periods when demolition activities
81 or traffic may affect the normal flow of traffic on public streets. In no event shall the Developer be entitled to
82 utilize or to rely upon or to make claim for any police services of the Town as and for a private security concern
83 for the protection of the Developer, its agents, servants, employees, equipment or materials.

84
85 7. Performance and Restoration Bond. Prior to the issuance of any building permit for the demolition
86 work to be performed under this agreement, the Developer has delivered to the Town solely as security for such
87 demolition work the amount of THIRTY THOUSAND and No/100 DOLLARS (\$30,000.00) in the
88 form of good funds deposited to the Town's Master Escrow Account with M & T Bank subject to the
89 continuing provision that in the event that the Town declares the Developer to be in default of the
90 demolition work to be performed under this Agreement, the Town shall be entitled to draw from such
91 deposit such amounts as the Town Board in its sole discretion determines are necessary to cover the costs
92 of the demolition work remaining to be performed and such additional work as may be reasonably
93 required to restore the site to safe, stable and usable condition, regardless of whether there exists any
94 other default in the performance of this Agreement.

95
96 8. Default in Performance and Use of Security. If, having commenced the demolition work to
97 be performed pursuant to this agreement Developer abandons or discontinues such work for more than
98 15 days and does not leave the site in a safe, stable and usable condition, and/or fails to remedy or
99 commence and diligently proceed to remedy an Order to Remedy issued by the Building Department
100 with respect to such demolition work (collectively an "Event of Default") then the Town may perform,
101 or cause to be performed, as it deems appropriate, such work is necessary to protect public health and
102 safety, including, but not limited to, stabilization of the existing structure during demolition, repair,

103 replacement or maintenance of erosion control or sediment controls, or other required work (the
104 "Restoration Work"), and may apply all of or any part of such security to reimburse the Town for costs
105 incurred thereby. The amount of reimbursement deemed necessary to cover the cost of work needed to
106 secure the health and safety of the public shall be determined solely by the Town Board of the Town, but
107 shall be limited to the actual cost of such work, together with the actual cost of inspections and
108 administrative overhead attributable thereto.

109
110 9. Release of Bond. Upon satisfactory completion of the demolition work to be performed
111 pursuant to this agreement as evidenced by a determination to that effect by the Building Inspector and
112 the Code Enforcement Officer, the amounts on deposit shall be released by the Town to the Developer,
113 less such sums as may have been expended thereunder for professional and engineering fees incurred
114 by Town relating to such demolition work.

115
116 10. Reduction of Bond. The security may be reduced in proportion to the demolition work that
117 has been completed, upon certification by the Town's inspectors of the work completed and upon
118 recommendation by the Town's consulting engineer of the amounts that would be necessary to
119 complete the remaining items of work secured by the bond, and adoption of a resolution by the Town
120 Board reducing the amount of bond required to be maintained shall not be required .

121
122 11. Temporary License. Developer grants a temporary license to the Town to enter upon the lands shown
123 on the approved site plan, such license to be effective only on the occurrence of an Event of Default in the performance
124 of the demolition work to be performed pursuant to this agreement.

125
126 12. Purpose of License. Said license is granted to the Town, its employees, agents and contractors solely for
127 the purpose of demolition, repair, maintenance, replacement, and such other activities as may be reasonably required to
128 complete or stabilize, as the Town deems appropriate, the demolition work not completed by Developer in
129 accordance with the terms of this Agreement.

130
131 13. Termination of License. This license may not be revoked or terminated without the consent of the Town
132 until the completion of the demolition work or, if there is an Event of Default, the completion of the restoration work.

133 134 CONSTRUCTION ACTIVITIES

135
136 1. Essential Site Improvements. The Developer shall construct and complete the
137 Essential Site Improvements in conformance with the final site plan; the terms and conditions of
138 the Record of Decision adopted by the Planning Board, dated October 25, 2010; all applicable
139 codes, rules and regulations; and this Agreement, which does not limit or waive any term or
140 condition of the site plan approval. Developer shall secure all required governmental permits and
141 approvals related to any particular phase of the work prior to commencing that phase of the
142 work. Developer shall be solely responsible for the proper functioning of all site improvements.

143
144 2. Schedule for Completion. Developer, its successors or assigns, shall complete construction of all site
145 plan work, including the Essential Site Improvements, in a prompt and timely manner, according to a schedule of
146 construction activities to be submitted to the Town of New Paltz Building Department prior to the
147 commencement of any work that requires a building permit and updated not less than monthly thereafter.

148 3. Notification of Commencement of Work. At least ten (10) business days prior to the commencement
149 of any construction activities on site, the Developer shall send written notice to the Town's consulting engineer,
150 Building Inspector, and Code Enforcement Officer of its intent to start construction. The notice shall specify the
151 name, address, telephone number and other contact information for the contractor, the contractor's on-site

152 representative, who shall be available on a 24/7 basis, and the proposed date of start of construction

153 4. Construction Meeting. Developer and appropriate representatives of its contractor(s) shall meet with
154 the Building Inspector, Code Enforcement Officer and the Town's consulting engineer at least five (5) business
155 days prior to the start of construction to review the site plan, proposed construction schedule and activities, and the
156 procedures for implementing erosion control, signage and a traffic management plan to direct traffic during
157 construction, and other mitigation measures necessary to start site construction. The Town will endeavor to have the
158 Highway Department, the Police Department and all other involved agencies participate in that meeting. Prior to
159 commencing site work, Developer shall file a construction schedule for site work (the "General Construction
160 Schedule") with the Building Department and update that schedule at least monthly to reflect completed and current
161 activities.

162 5. Construction Schedules and Notice of Certain Construction Activities.

163 a. Developer agrees to provide prompt notice on the status of certain site activities of particular
164 concern to the Town and to complete those activities in a timely and responsible manner.

165 b. The site activities of concern include those construction activities involving demolition, removal of
166 pavement, and off-site transportation of demolition debris (collectively, the "Demolition Activities"), and those
167 activities involving reconstruction of areas and off-site construction of traffic improvements, installation and
168 maintenance of stormwater and erosion controls, stormwater facilities and wetland disturbance mitigation
169 (collectively, the "Construction Activities")."

170 c. Developer shall provide the Building Department with a construction schedule for the work
171 constituting the Essential Site Improvements ("Construction Schedule for Essential Site Improvements"), and
172 update that schedule at least monthly to reflect completed and current activities.

173 d. Developer shall provide written notice to the Building Department least 48 hours prior to commencing
174 such work. The Building Department will coordinate distribution of the notice and construction schedule to the
175 Police Department, the Highway Department, the Water and Sewer Department and other appropriate Town
176 agencies.

177 e. The Developer shall also provide the current -Construction Schedule of Improvements which may
178 affect ingress or egress to Terwilliger Road or South Putt Corners Road as the case may be to the Building
179 Department for advice as deemed appropriate in their discretion to the Ulster County DPW, other owners that
180 utilize as their means of ingress and egress those portions of the municipal highways upon which work will be
181 performed and the Transportation Office of the New Paltz Central School District to notify them of the events in
182 the current schedule for Demolition and Construction activities which could interfere with such ingress and
183 egress.
184

185 6. Erosion and Sediment Control Measures to Be Installed by Developer. The Developer shall install
186 and maintain all Erosion and Sediment Control measures in accordance with the approved erosion and sediment
187 control or stormwater management plan, set forth in the SWPPP prepared by Medenbach and Eggers, and the
188 requirements of Town Code Chapter 140. Field changes to the SWPPP may only be made pursuant to written
189 approval by the Town engineer.
190

191 7. Landscaping to be Installed by Developer. Prior to the issuance of a Certificate of Occupancy, the
192 Developer shall install and maintain all landscaping in accordance with the approved landscaping plan and the
193 requirements of the Town Code and, in the event that the landscaping cannot be completed owing to weather
194 conditions, the Developer will deposit with the Town a deposit of security in an amount sufficient to insure the
195 installation of all landscaping during the next planting/growing season.
196

197 8. Developer Completion of Private Improvements. The Developer acknowledges and agrees that all site
198 improvements must be constructed in accordance with the approved site plan before a certificate of occupancy may
199 be issued, unless the Town agrees to accept a bond for any work remaining incomplete work, and the Building
200 Inspector determines that the Developer has made acceptable arrangements for the work to be completed in
201 accordance with the approved site plan.

202
203 (a) In particular, the Developer agrees as a condition for the issuance of a Certificate of Occupancy that
204 its engineer or other design professional responsible for the work certify to the Building Department that the
205 subpavement drainage structure to be installed as shown on the approved Site Plan was inspected on behalf of the
206 Developer and determined to have been constructed and installed in accordance with the approved plans for
207 construction and installation and that the Town shall be provided prior to completion of such construction and
208 installation with the opportunity to finally inspect the subpavement drainage structure prior to the application of any
209 permanent cover material which would interfere with or otherwise impair such final inspection.

210
211 9. Traffic Control Services Agreement. ~~Prior~~ Developer shall enter into a such Traffic Control Services
212 Agreement(s) with the Town of New Paltz and its police department, as may be reasonably required throughout the
213 performance of the work to provide for such police services as may be necessary to control traffic during periods
214 when construction activities or traffic may affect the normal flow of traffic on public streets. In no event shall the
215 Developer be entitled to utilize or to rely upon or to make claim for any police services of the Town as and for a
216 private security concern for the protection of the Developer, its agents, servants, employees, equipment or materials.

217
218 10. Cherry Hill Water Tank and Water Line.
219 (a) The parties acknowledge that the terms and conditions of the Record of Decision adopted
220 by the Planning Board, dated October 25, 2010 provides at paragraph 18 (e) that prior to the
221 issuance of a building permit, the applicant shall provide proof that it has secured permission
222 from the Town Board to install approximately 980 LF of 12" DIP water main to complete the
223 proposed link between the Town's Cherry Hill Water Tank and the 10" water main on South Putt
224 Corners Road in accordance with plans prepared for the Town of New Paltz by Mercurio-Norton-
225 Tarolli dated September 1997 and previously approved by the Ulster County Department of
226 Health, and that it will convey same, with any applicable warranties, to the Town, which shall be
227 responsible for operation of the waterline. The paragraph further provides that all work will be
228 coordinated with the Town of New Paltz and conducted in accordance with all requirements of
229 the town's water and sewer department and the Ulster County Department of Health. As a
230 condition for the issuance of a certificate of occupancy, as built plans shall be filed with the Town
231 of New Paltz Building Department.

232
233 (b) Having so acknowledged the above and agreed to such work, the parties further agree
234 that in complete satisfaction of such provisions of the aforesaid decision, the Developer, shall
235 within 60 days of the closing of its construction loan and commencement of construction of the
236 foundation pay over to the Town of New Paltz, in good certified or bank check, subject to
237 collection, the sum of \$100,000.00 which said amount has been determined by the Town's
238 engineer to be adequate consideration for the Town to undertake and to complete the water
239 improvements provided for above if the Developer has not done so by the time it would otherwise
240 be entitled to its certificate of occupancy and in the event the Developer has not done so the
241 Town agrees to accept such funds and to undertake any and all other, further and different actions
242 as are necessary, in its sole and absolute discretion, with respect to such water line without any
243 continuing obligations on the part of the Developer.

244
245 11. Performance and Restoration Bond.
246
247 a. Prior to the issuance of any building permit for the Essential Site Improvements as defined

248 above and the installation and maintenance of erosion and sediment control measures pursuant to this Agreement,
249 Developer agrees to deliver to the Town a bond as security for the stabilization or completion of work on the
250 Essential Site Improvements, to the extent the Town determines such work is necessary to protect public health
251 and safety, in accordance with the provisions of paragraph 11 hereof.
252

253 b. The bond shall be delivered in the initial amount of ONE HUNDRED NINETY-
254 FOUR THOUSAND FIVE HUNDRED and No/100 DOLLARS (\$194,500.00) which does not
255 include the security for the Cherry hill water line to be paid at a later date as set forth in 10 (b)) and shall
256 be in the form of good funds deposited to the Town's Master Escrow Account with M & T
257 Bank or an irrevocable letter(s) of credit issued by a bank reasonably acceptable to the Town,
258 located and authorized to do business in the State of New York, containing, in its pertinent part, a
259 statement by the issuer that in the event that the Town declares the Developer to be in default
260 under this Agreement or the terms and conditions of its site plan approval, the Town shall be
261 entitled to draw on the letter of credit such amounts as the Town Board in its sole discretion
262 determines are necessary to cover the costs of the Restoration Work remaining to be performed in
263 order to restore the site to safe, stable and usable condition, regardless of whether there exists any
264 other default in the performance of this Agreement. Any balance of such draws remaining on
265 hand after the Town Board has adopted a resolution declaring the Essential Site Improvements
266 complete shall be returned to the Developer, except if the security additionally secures an
267 applicable maintenance obligation, then the balance shall be returned upon authorized release- of
268 the maintenance security in accordance with the terms of this Agreement.

269 c. The bond or other security shall be otherwise acceptable to the Attorney for the Town
270 as to form and manner of execution.

271 12. Default in Performance and Use of Security. If, having commenced work on the Essential
272 Site Improvements (as that term is defined in paragraph 5 hereof) or the installation and maintenance of
273 the Erosion and Sediment Control Measures, Developer abandons (work shall be deemed abandoned
274 when (1) the Developer fails to perform such work on the basis set forth in the Construction Schedule
275 for Essential Site Improvements required by Paragraph 5 and fails to provide a revised Construction
276 Schedule acceptable to the Town's consulting engineer; (2) discontinues such work for more than 15
277 days and does not leave the site in a safe, stable and usable condition, and/or (3) fails to remedy or
278 commence and diligently proceed to remedy an Order to Remedy issued by the Building Department
279 with respect to the Essential Site Improvements) (collectively an "Event of Default") then the Town
280 may perform, or cause to be performed, as it deems appropriate, such work is necessary to protect
281 public health and safety, including, but not limited to, repair, replacement or maintenance of erosion
282 control or sediment controls, (the "Restoration Work"), and may apply all of or any part of such
283 security to reimburse the Town for costs incurred thereby. The amount of reimbursement deemed
284 necessary to cover the cost of work needed to secure the health and safety of the public shall be
285 determined solely by the Town Board of the Town, but shall be limited to the actual cost of such work,
286 together with the actual cost of administrative overhead attributable thereto.

287 13. Release of Bond. Upon satisfactory completion of the Essential Site Improvements, as
288 evidenced by a letter issued by the Developer's site engineer stating that all of the work secured by the
289 bond has been completed, which certification shall be confirmed by the Town's consulting engineer,
290 following consultation with the Building Department, the performance bond shall be released by the
291 Town Clerk to the Developer, less such sums as may have been expended thereunder.

292 14. Reduction of Bond. The bond or other security shall be reduced in proportion to the work
293 that has completed, upon certification by the Town's inspectors of the work completed,

294 recommendation by the Town's consulting engineer of the amount of bond that would be necessary to
295 complete the remaining items of work secured by the bond, and adoption of a resolution by the Town
296 Board reducing the amount of bond required to be maintained shall not be required .

297 15. License. Developer grants a temporary license to the Town to enter upon the lands shown on the
298 approved site plan, such license to be effective only on the occurrence of an Event of Default. Said license is granted to
299 the Town, its employees, agents and contractors solely for the purpose of installation, construction, relocation, operation,
300 repair, maintenance, replacement, and such other activities as may be reasonably required to complete or stabilize, as
301 the Town deems appropriate, Essential Site Improvements not completed by Developer in accordance with the terms
302 of this Agreement.

303
304 16. Termination of License. This license may not be revoked or terminated without the consent of the Town
305 until the completion of the Essential Site Improvements or, if there is an Event of Default, the completion of the
306 Restoration Work.

307
308 17. Insurance for Entry Pursuant to License. To insure the parties against potential liability, the
309 Town agrees that prior to undertaking any action or entering into any contract, whether jointly or
310 individually, to exercise rights created by the license established in the case of an Event of Default
311 pursuant to this Agreement, the Town, or any party undertaking actions on its behalf, shall obtain and
312 maintain a public liability insurance policy, in an amount not less than \$2,000,000.00 covering Owner's
313 property subject to this Agreement, the cost of which shall be payable from the bond.

314
315 18. Insurance Coverage. The policy shall name the Town, Developer, their grantees, assigns,
316 licensees, or successors in interest as additional insureds on such policy during the time when rights
317 under this Agreement are being utilized by such party and provide that it will not be canceled or
318 allowed to lapse for non-renewal until ten (10) days prior notice of same is given to the additional
319 insured parties.

320
321 Commercial General Liability Insurance. Developer shall take out and maintain during the
322 life of this Agreement such bodily injury liability and property damage liability insurance as shall
323 protect it and the Town, its agents, servants and employees (here collectively referred to as the
324 "Town") from claims for damages for bodily injury including accidental death, as well as from
325 claims for property damage that may arise from operations under this Agreement, whether such
326 operations be by Developer, by any independent contractor, subcontractor or by anyone directly or
327 indirectly employed by any of them.

328
329 a. It shall be the responsibility of Developer to maintain such insurance in amounts
330 sufficient to fully protect itself and the Town, but in no instance shall amounts be less than the
331 minimum acceptable levels of coverage set forth below:

- 332
333 • Bodily Injury Liability Insurance in an amount not less than ONE MILLION
334 (\$1,000,000.00) DOLLARS for each occurrence, and in an amount not less than
335 TWO MILLION and 00/100 (\$2,00,000.00) DOLLARS general aggregate.
336
337 • Property Damage Liability Insurance in an amount not less than ONE MILLION
338 AND 00/100 (\$1,000,000.00) DOLLARS for each occurrence and in an amount of
339 not less than ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS general
340 aggregate.
341

- 342 Other Conditions of Commercial General Liability Insurance:
343 a. Coverage shall be written on Commercial General Liability form.
344 b. Coverage shall include:
345 1. Contractual Liability
346 2. Independent Contractors
347 3. Products and Completed Operations
348 c. "Additional Insured" status shall be granted to "Town of New Paltz," P.O. Box 550,
349 New Paltz, NY 12561, shown on the Commercial General Liability policy, further
350 stating that this insurance shall be primary and non-contributory with any other valid
351 and collectable insurance.
352

353 19. Maintaining Signs, Notices and Barricades during Construction and other Obligations of
354 Developer. Until issuance of a full certificate of occupancy, Developer agrees to repair and maintain, or
355 cause to be maintained, all construction signs, required barricades and other notices on the site. Developer shall
356 also observe and maintain all required traffic management and safety signage and facilities, required drainage
357 and erosion controls, and provide appropriate site management to assure that all activity is carried out in a safe
358 and efficient manner.
359

360 20. Changes from Final Plans. In the event it becomes necessary to make any material change from the
361 final site plan in order to secure the proper function of any items specified, or otherwise, no such change shall be made
362 or attempted until after the Developer obtains approval in writing from the Town's consulting engineer, the Building
363 Inspector or the Code Enforcement Officer. Those Town officials shall have sole discretion to determine what
364 constitutes a material change to the final site plan and whether such modification must be approved by the Planning
365 Board. The burden of applying for and obtaining such approval and of obtaining all other associated approvals,
366 permits and consents shall rest solely upon the Developer.
367

368 21. Notice to Town's Consulting Engineer of Changes. No water, sewer or stormwater
369 utility or service or any part of, or appurtenance thereof, including manholes, catch basins, valve
370 boxes, curb boxes, hydrants and drains shown on the approved site plan shall be materially raised,
371 lowered or otherwise changed, altered or moved except after the Developer has given notice to the
372 Town engineer of such changes, alterations and moves, at least 48 hours before the work is scheduled
373 to be performed, and except upon attendance and supervision by a person or official designated by the
374 Town for the inspection of the performance of such work. The Developer agrees that in the
375 performance of the work under such amendment will comply with all additional orders made or
376 issued by the Town's consulting engineer.

377 22. Monitoring of Site Plan and Essential Site Improvements. The Developer agrees that the
378 Site and the Essential Site Improvements may be monitored during construction for conformance with
379 the terms and conditions of the approved site plan, and all other applicable specifications, codes, rules
380 and regulations, by the Town's consulting engineer, by a landscape consultant, the Building
381 Department (to such extent as it engages in activities outside the normal scope of its site inspections),
382 or the services of other employees or, contractors that the Town determines necessary to ensure
383 compliance with the terms and conditions of site plan approval. The Developer shall reimburse the
384 Town for the reasonable costs of such monitoring activities in accordance with paragraph 23 below.

385 23. Monitoring and Observation at Developer's Expense. The Developer agrees that it shall
386 reimburse the Town's costs of monitoring by the Town's consulting engineer of the Developer's
387 compliance with the approved site plan and construction of the Essential Site Improvements in
388 accordance with this Agreement, including Erosion and Sediment Control measures, traffic
389 improvements, stormwater facilities, and the project landscaping and shall pay necessary and

390 reasonable fees covering the costs of such observation and monitoring by the Town's consulting
391 engineer and other Town personnel, all in accordance with the schedule of hourly rates for such
392 personnel annexed hereto as Exhibit "B" and made a part hereof.. The Town's consulting engineer has
393 estimated that such monetary costs are not expected to exceed the amount set forth in the following
394 paragraph. Developer acknowledges that finished or unfinished work not in accordance with the
395 approved site plan and the requirements of the Town Code may be cause to deny a certificate of
396 occupancy or impose conditions or limitations on same, and further acknowledges that observation
397 and monitoring by the Town does not warrant that work is in accordance with such plan and
398 regulations or waive any failure of compliance.

399 24. Escrow Fee for Observation and Monitoring. The Developer agrees to deposit in escrow
400 with the Town the initial sum of Five Thousand and No/100 Dollars (\$5,000.00) to be drawn upon by
401 the Town to pay for the costs of observation and monitoring of compliance with the approved site
402 plan, Demolition Work, Essential Site Improvements, landscaping and related tasks performed in
403 connection with the work, to be restored by the Developer periodically within five business (5) days of
404 the town's written request. Said request shall be accompanied by a balance statement and copies of the
405 Town vouchers and itemized billing statements setting forth the date performed, the identity of the
406 individual performing the task, the actual time spent on the task, the rate charged by the timekeeper, the
407 cost of the service, and a reasonable description of the task. The Developer shall have the right to
408 request an explanation of any charge which is not reasonably described or which appears to require
409 excessive time. Such funds shall be replenished when balance in the escrow account falls below
410 \$2,000.00. Unused funds and accrued interest shall be refunded to the Developer upon issuance of a
411 final certificate of occupancy for the proposed hotel.

412 25. Interpretation and Administration. In the interpretation and administration of the provisions of
413 this Agreement, reasonable construction standards as determined by the Town's consulting engineer shall apply.
414 Indemnification. Developer agrees to fully indemnify, save and hold harmless the Town and all of
415 its officers, agents, and employees from and against any and all liabilities of any type whatsoever,
416 including but not limited to any and all damages, expenses, causes of action, lawsuits, claims,
417 penalties, fines, assessments or judgments relating to, arising out of, or occurring in connection
418 with the demolition activities, construction activities, development, maintenance and/or use of the
419 Developer's site, unless such damages are sustained solely as a result of a negligent act or
420 omission on the part of the Town, its respective officers, agents, servants and/or employees.

421
422 a. Without limiting the generality of the above indemnification and hold harmless provision,
423 said provision includes, but is not limited to the following:

- 424
425 1. Liability for loss or damage to property or bodily injury to or death of any
426 and all persons that may be occasioned, directly or indirectly, by any cause
427 whatsoever pertaining to the use of the site, arising by reason of or in
428 connection with the occupation or the use thereof or the presence of any
429 person or property on, in or about the site;
- 430
431 2. All liabilities or claims arising as a result of (i) the Developer's obligations
432 under this Agreement or the enforcement of or defense of validity of any
433 provision of this Agreement, (ii) any zoning, planning and subdivision laws
434 and regulations, and any landmark, historic or wetlands designation, any
435 property boundary lines, and lot line provisions, (iii) any building code
436 requirements or violations, (iv) any occupancies or use of the subject
437 property, whether authorized or not by the Town, by any other third party or
438 entity that is not party to this Agreement, (v) any and all notes or notices of

439 violations of law or municipal ordinances, orders or requirements noted in
440 or issued by any governmental department having authority as to lands,
441 housing, buildings, fire, health and labor conditions affecting the premises at
442 the date hereof; and the Town shall not be responsible for or be required to
443 cure or correct same should they exist, or (vi) any environmental issues
444 related to the site;
445
446 3. All causes of action and reasonable attorneys' fees and other expenses
447 incurred in connection with any suits or actions which may arise as a result
448 of any of the foregoing; provided that any such claims, causes of action,
449 judgments, liabilities, damages, losses, costs or expenses of the Town are
450 not occasioned by the intentional wrongdoing of the Town or any of its
451 members, officers, agents or employees. The foregoing indemnities shall
452 apply notwithstanding the fault or negligence in part of the Town or any of
453 its officers, members, agents or employees and notwithstanding the breach
454 of any statutory obligation or any rule of comparative or apportioned
455 liability.
456
457 4. In the event of any claim against the Town or any of its members, officers,
458 agents or employees by any employee, agent, officer, agent, or contractor of
459 the Developer, or anyone directly or indirectly employed by any of them or
460 anyone for whose acts any of them may be liable, the obligations of the
461 Developer hereunder shall not be limited in any way by any limitation on
462 the amount or type of damages, compensation or benefits payable by or for
463 the Developer or such contractor under workers' compensation laws,
464 disability benefits laws or other employee benefit laws.
465
466 26. [Intentionally omitted]
467
468 27. No Municipal Representations. The covenants, undertakings, agreements, and other obligations
469 mentioned in this Agreement shall not be construed as representations by the Town, the Town Board, or by any
470 Town officer, board, or employee to have or to assume any contractual or other liability to or with any persons,
471 firms, or corporations on behalf of the Developer, nor shall this Agreement be construed to work any liability on the
472 Town of New Paltz or the Board to third persons.
473
474 28. No Municipal Liability. Nothing herein contained shall be construed to render the Town or any of its
475 officers, board, or employees liable for any charges, costs, or debts for material, labor, or other expenses incurred in
476 the making of the improvements. No provision in this Article, or elsewhere in this Agreement, shall be construed to
477 impose any duty or liability of maintenance, inspection, or repair on the part of the Town in respect of any private
478 facilities or improvements, whether hereunder or otherwise. On the contrary, the Restoration Bond shall protect and
479 reimburse the Town if it elects, in its sole discretion, to repair or maintain any such facilities or improvements.
480
481 29. Assignment and Assumption. Developer shall have the right to sell, assign or transfer this Agreement
482 to any person, firm or corporation acquiring Developer's interest in the Site. Developer shall provide the Town at
483 least ten (10) days written notice in advance of such action. However, any such assignment shall not relieve
484 Developer of its obligations under this Agreement unless notice is given to the Town, such purchaser, assignee or
485 transferee expressly assumes the obligations and other terms and conditions of this Agreement in form acceptable to
486 the Attorney for the Town and the Town accepts such purchaser, assignee or transferees as having sufficient
487 capacity to perform the obligations of Developer under this Agreement. Notice of assignment and acceptance shall
488 be promptly given in writing, and the Town's acceptance shall not be unreasonably withheld.
489

490 30. Authority – New Paltz Hospitality, LLC: By signing this Agreement, the undersigned
491 representative of New Paltz Hospitality, LLC does represent and warrant that he/she is duly authorized to enter
492 into this Agreement on behalf of such Company, that the Company is an entity that has the legal right, power, and
493 authority to execute, delivers, and perform each of its respective obligations under this Agreement and each
494 agreement, document, or instrument contemplated hereby, and that the Company does hereby assume the
495 obligations and responsibilities set forth herein.
496

497 31. Notices. All notices provided for herein shall be deemed to have been duly given if sent by registered
498 or certified mail, return receipt requested, or by nationally recognized delivery (other than post office service, e.g.
499 FedEx) to the following persons and addresses:
500

501 Notice to the Town of New Paltz sent to: Town Clerk, Town of New Paltz
502 P.O. Box 550
503 New Paltz, NY 12561
504

505 With a copy sent to: DI STASI MORIELLO & MURPHY LAW PLLC
506 ATTN: Joseph M. Moriello, Esq.
507 P.O. Box 915
508 Highland, NY 12528
509

510 Notice to the Developer sent to: New Paltz Hospitality LLC
511 Attn. Jayesh Modhwadiya
512 1307 Ulster Avenue,
513 Kingston, New York 12401
514

515 With a copy sent to: GRAFF LAW, LLC
516 ATTN: Wayne L. Graff, Esq.
517 P.O. Box 4148
518 Kingston, NY 12402
519

520 32. Authority - Town of New Paltz: The Supervisor of the Town of New Paltz has been duly authorized
521 to sign this Agreement by the Town Board of the Town of New Paltz at a meeting duly called, held and conducted
522 on the 17th day of July, 2014.
523

524 33. Notices. Every notice, demand, consent, request, approval or other document or instrument ("Notice")
525 required or permitted to be served upon any of the parties hereto shall be in writing and shall be deemed to have been
526 duly served, if personally delivered or if mailed on the date of mailing (it being agreed, however, that the time period
527 in which a response must be given to any such notice shall commence to run on the date on which the addressee
528 thereof has received or has refused to receive the same), Mailing shall be by registered or certified United States
529 Mail, postage prepaid, return receipt requested, addressed to the respective parties at the addresses stated below:
530

531 34. Modifications. This agreement may only be modified by a writing executed by the parties.
532

533 35. Headings. The headings of the sections hereof are inserted for convenience only and are not intended
534 to define or limit the provisions or intent of this Agreement.
535

536 36. Multiple Counterparts. This Agreement and its amendments may be executed in multiple counterparts,
537 with each counterpart to be deemed an original, but all multiple copies.

538 37. Severability The invalidity or unenforceability of any provision(s) of this Agreement
539 will not affect the validity or enforceability of any other provision(s).

540 38. Third Person Claims. Nothing contained in this Agreement shall be construed
541 to give any person or legal entity, not a party to this Agreement, any claim against the Town or any
542 of its agents or agencies, with respect to the matter or installation of improvements, or for any
543 damages arising therefrom or herefrom.

544 39. Orders to Stop Work. Developer agrees that any time it fails to comply with any of the
545 terms of this Agreement or any part of the requirements herein mentioned, the Town may forthwith
546 stop all further work on the Essential Site Improvements until the work has been corrected or
547 otherwise made to comply with the terms of this Agreement. If the violation is not corrected within
548 forty-eight (48) hours, or such other time as is reasonably practicable, then the completion of said
549 work may be undertaken by the Town at the expense of the Developer and the Developer' surety.

550 40. Rights To Legal Action. Nothing contained in this Agreement shall be
551 construed as preventing any party from seeking redress in any Court of law or equity.

552 41. Counsel Fees. Should it become necessary for the Town or the Town Board to institute
553 any action to enforce the terms of this Agreement or of any ordinance or of any conditions of any
554 approval heretofore or hereafter granted to the Developer in connection herewith, the Town shall be
555 entitled to recover its reasonable counsel fees and costs of such action from Developer, and Developer
556 agrees to pay same.

557 42. Effective Date and Termination Date. This Agreement shall become effective as of the
558 date on which this Agreement is signed by all of the parties, and shall terminate upon the issuance
559 of a certificate of occupancy.

560 43. No Waiver. No waiver by the Town of any default by the Developer in the performance
561 of its obligations under this Agreement or under the terms and conditions of approval shall operate as
562 a waiver of any other default or the same default on a future occasion. Failure to insist on strict
563 performance of any term or provision of this Agreement shall not constitute a waiver of rights or a
564 release of claims with respect to any additional or subsequent non-performance.

565 44. Law Governing Agreement. This Agreement is in addition to and not in limitation of
566 any other rights and remedies the Town may have by virtue of any other instrument, by law or
567 otherwise. This Agreement shall be governed by, construed, and enforced in accordance with the laws
568 of the State of New York.

569 45. Venue. In the event any action is brought in the State of New York that concerns this
570 Agreement, the place of venue shall be Ulster County.

571 46. Partial Agreement. This Agreement does not constitute the entire agreement between
572 the parties hereto, but is intended to incorporate and reflect representations of the Developer made
573 in connection with applications for land use approvals from the Planning Board and the Town of
574 New Paltz. In the event any provision of this Agreement is found to conflict with the record of any
575 such approval, or any applicable law or regulation governing the actions of Developer, this
576 document shall be interpreted to give full effect to the express language and stated intent of the
577 approval authority, or such law or regulation, and not to supersede such prior agreements,
578 understandings and arrangements, oral or written, between the parties hereto with respect to the
579 subject matter hereof.

580 47. Binding Effect. Unless and until it is terminated in writing, this Agreement shall be
581 binding upon the present and future owners of the aforesaid properties, their heirs, distributees,
582 successors, and assigns, those holding any interest therein, and those acquiring any subsequent

583 possessory rights therein, and shall run with the land.

584 48. Recording. This Agreement may be recorded by either party in the Office of the
585 County Clerk.

586 IN WITNESS WHEREOF the parties have executed this agreement the day and year first
587 above written.

588 NEW PALTZ HOSPITALITY, LLC

589 By: JAYESH MODHWADIYA
590 Jayesh Modhwadiya, Managing Member
591
592

593 TOWN OF NEW PALTZ

594 By: _____

595 Susan Zimet, Supervisor

596 STATE OF NEW YORK)
597) SS.:
598)
599 COUNTY OF ULSTER)
600

601 On this 17th day of July, in the year 2014, before me, the undersigned, a Notary Public in
602 and for said state, personally appeared SUSAN ZIMET personally known to me or proved to me on
603 the basis of satisfactory evidence to be the individual whose name is subscribed to the within
604 Instrument and acknowledge to me that she executed the same in her capacity, and that by her their
605 signature on the instrument, the individual, or the person upon behalf of which the individual(s)
606 acted, executed the instrument.

607

608

609

610

Notary Public

611 STATE OF NEW YORK)
612) SS.:
613 COUNTY OF ULSTER)
614

615 On this 17th day of July, in the year 2014, before me, the undersigned, a Notary Public in
616 and for said state, personally appeared Jayesh Modhwadiya personally known to me or proved to
617 me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within
618 Instrument and acknowledge to me that he executed the same in his capacity, and that by his
619 signature on the instrument, the individual, or the person upon behalf of which the individual acted,
620 executed the instrument.

621

622

623

624

Notary Public
WAYNE L. GRAFF
Notary Public, State of New York
No. 01GR4745980
Qualified in Dutchess County
Commission Expires Nov. 30, 2017