

EXHIBIT A

DEVELOPMENT AGREEMENT

dated _____, 2014

BY AND AMONG

OMNI LOUISVILLE, LLC,

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT,

METRO DEVELOPMENT AUTHORITY, INC.,

AND

PARKING AUTHORITY OF RIVER CITY INC.

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 9th day of December, 2014 (the "Effective Date") by and among OMNI LOUISVILLE, LLC, a Delaware limited liability company, with its principal office located at 4001 Maple Avenue, Dallas, Texas 75219 ("Omni"); LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a Kentucky consolidated local government, acting by and through its Economic Development Department, 444 S. Fifth Street, Suite 600, Louisville, Kentucky 40202 ("Louisville Metro"); the METRO DEVELOPMENT AUTHORITY, INC., a Kentucky non-profit, non-stock corporation, with its principal office located at 444 S. Fifth Street, Louisville, Kentucky 40202 ("Authority"); and the PARKING AUTHORITY OF RIVER CITY INC., a Kentucky non-profit, non-stock corporation with its principal address located at 211 Muhammad Ali Boulevard, Louisville, Kentucky 40202 ("PARC") (Omni, Louisville Metro, Authority and PARC being hereinafter referred to individually as a "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, Center City Master Developer, Inc. ("Cordish"), Louisville Metro, the Authority and PARC entered into a certain development agreement, dated August 11, 2008, subsequently amended by the First Amendment to Development Agreement, dated February 9, 2009 and modified by an Amended and Restated Memorandum of Understanding, dated August 8, 2011 and the New Project LOI (hereinafter defined) (collectively, the "Cordish Agreement"); and

WHEREAS, the Cordish Agreement gives Cordish certain rights to construct and operate a mixed use development on the block bounded by Second and Third Streets, Muhammad Ali Boulevard and Liberty Street in Louisville ("Water Company Block") and other areas of the Central Business District of Louisville ("CBD") in accordance with the terms and conditions of the Agreement ("Project"); and

WHEREAS, the Louisville Metro Council (the "Metro Council") designated the Project area as a development area, pursuant to KRS 65.7041-65.70788 and KRS Subchapter 154.30 (the "Act"), known as the Central Downtown Revitalization District ("District") by Ordinance No. 179, Series 2007, enacted on September 13, 2007 ("Ordinance") and authorized Louisville Metro and the Authority to enter into a local participation agreement for the release of incremental local tax revenues generated by the Project; and

WHEREAS, Louisville Metro and the Authority entered into a certain Amended and Restated Local Participation Agreement, dated December 6, 2007 ("Local Participation Agreement"); and

WHEREAS, the Commonwealth of Kentucky (the "Commonwealth") designated the Project as a Signature Project, pursuant to the Act and entered into a certain grant agreement with the Authority, dated December 27, 2007 for the release of incremental state tax revenues generated by the Project ("Grant Agreement"); and

WHEREAS, the Project has not commenced through no fault of the parties and Cordish retains its development rights for the Project under the Agreement; and

WHEREAS, pursuant to a separate agreement (the "**Cordish Buyout Agreement**"), Omni has agreed to purchase Cordish's interest in the Cordish Agreement and Louisville Metro hereby consents and agrees with the assignment of rights from Cordish to Omni and enters into this Development Agreement with Omni as a demonstration of same; and

WHEREAS, Omni, Louisville Metro, the Authority and PARC have agreed to terminate the Cordish Agreement and enter into this Agreement; and

WHEREAS, Omni has presented a new project to Louisville Metro, which project will be a mixed-use condominium tower (the "**Building**") to be constructed on the Water Company Block, consisting of (i) residential apartments as described in ARTICLE II of this Agreement (the "**Residential Space**"), (ii) a hotel, as described in ARTICLE II of this Agreement (the "**Hotel**"), (iii) a retail component suitable for the operation of a grocery, as described in ARTICLE II of this Agreement (the "**Retail Space**"), (iv) a parking facility, as described in ARTICLE III and ARTICLE V of this Agreement (the "**Garage**"), and (v) a parcel of land consisting of a portion of the Water Company Block fronting Muhammad Ali Boulevard to be held for future development (the "**Future Development Parcel**") as described in ARTICLE IV of this Agreement (the Residential Space, the Hotel, the Retail Space, the Garage and the Future Development Parcel are hereinafter referred to collectively as the "**New Project**"); and

WHEREAS, the Garage will be paid for, owned and operated by PARC, as provided in ARTICLE III of this Agreement; and

WHEREAS, the Authority is a non-profit corporation established by Louisville Metro pursuant to KRS Chapter 58 to act as an agency and instrumentality of Louisville Metro and is the agency of release, pursuant to the Act; and

WHEREAS, Louisville Metro has determined that it is in the best interests of Louisville Metro that Omni and PARC develop and construct the New Project and that the development of the New Project shall be in furtherance of the public purposes of Louisville Metro in that the New Project, when completed, will enhance the economic vitality of the CBD, increase property values and employment, tourism and convention business and attract additional investment to the CBD; and

WHEREAS, because of the expense and risk involved in the development of the New Project, Omni is unwilling to make the required investments to construct the New Project without support from Louisville Metro, PARC and the Authority to induce Omni to make such investments; and

WHEREAS, because of the importance of the New Project to the economic vitality of the CBD, Louisville Metro, PARC and the Authority agree to provide support to Omni in accordance with the terms of this Agreement and to undertake the obligations set forth in this Agreement to induce Omni to undertake the New Project; and

NOW THEREFORE, in consideration of the premises and the mutual covenants and undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless the context or use clearly indicates another or different meaning or intent, for purpose of this Agreement, capitalized terms ("**Defined Terms**") shall have the meaning ascribed to such Defined Terms throughout this Agreement.

Section 1.02. Location of Defined Terms. The Schedule of Defined Terms sets forth the location of the Defined Terms in this Agreement.

ARTICLE II

COVENANTS AND UNDERTAKINGS OF OMNI

Section 2.01. Hotel, Residential Space and Retail Space Construction. Omni shall construct or cause to be constructed at Omni's sole cost and expense (except for the New Project Grant to be provided to Omni pursuant to Section 4.04 and except as otherwise set forth in this Agreement), in material accordance with the Schedule set forth in ARTICLE VII (subject to force majeure as provided in Section 13.05), the New Project (as further defined and described in Section 2.02) upon (i) the obtaining of the Municipal Approvals as defined in Section 8.01 of this Agreement, (ii) the satisfaction of the Conditions Precedent set forth in Section 8.02 of this Agreement, (iii) the acquisition by Omni of the Water Company Block pursuant to Section 4.02 of this Agreement, and (iv) the acquisition by Omni of all permits and approvals necessary to commence and complete construction and/or operate the New Project as contemplated by this Agreement, with the exception of permits that are normally and customarily obtained in the ordinary course following commencement and/or completion of construction, such as certificates of occupancy and/or any other permits which by their nature are unable to be issued other than during the course of construction, such as plumbing, electrical and sprinkler permits.

Section 2.02. New Project Description. The New Project shall, at a minimum, consist of the construction of the following described improvements as illustrated on the conceptual design drawings, attached hereto as Exhibit B:

A. Hotel. A hotel ("**Hotel**") containing approximately 17 floors and 550,000 square feet and similar to the plans attached hereto as Exhibit B, and possessing the following specifications, at a minimum (collectively, the "**Hotel Specifications**"):

1. 600 guest rooms, including suites;
2. 70,000 square feet of dedicated meeting space consisting of a grand ballroom, a junior ballroom, pre-function space and other meeting space;
3. two full-service restaurants, a lobby lounge, rooftop café;

4. spa and fitness center;
5. swimming pool;
6. "back-of-the-house" spaces necessary to support the Hotel, including, without limitation, kitchen, laundry and office space;
7. supporting facilities and amenities necessary for a full-service, first class, convention-oriented hotel;
8. a building designed and constructed pursuant to the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating System™ standard for a silver level certification; and
9. built to an American Automobile Association Four-Diamond Standard with a structure and improvements generally consistent with Omni's two most recent owned convention center hotels in Nashville, Tennessee and Fort Worth, Texas and Omni's Spending Commitment (hereinafter defined) for the Hotel.
10. First and Second floor lobbies and other adjacent spaces shall be open to the public and shall continuously show local art exhibits. Omni shall grant an assignable, non-exclusive easement within the first and second floor lobbies for the benefit of the public subject only to reasonable restrictions for safety, certain events and security.
11. 3,000 square feet of retail space suitable for leasing to retail tenants.

B. Residential Space. A minimum of 225 market-rate rental apartments ("**Apartments**") in a multi-story high quality market rate apartment complex, located on top of the Hotel. The residential component of the New Project shall have common areas, apartment fixtures and equipment and tenant amenities comparable to or better than quality residential rental apartment buildings constructed recently in similar sized urban downtown markets and shall be similar to the plans attached hereto as Exhibit B, as such appearance may be modified in accordance with the provisions of this Agreement.

C. Retail Space. In a portion of the ground floor of the Building, approximately 20,000 square feet of space (the "**Retail Space**") which shall be suitable for operation of a Grocery (hereinafter defined). As used in this Agreement, the term "**Grocery**" shall mean a high-quality, full-service urban grocery store selling prepared and unprepared food, other consumables, and grocery items. The Grocery must be reasonably acceptable to Louisville Metro in its reasonable discretion.

D. Public Infrastructure. In addition to the public spaces described in Section 2.02, A.10 of this Agreement, public infrastructure shall include, but not be limited to reconstruction of sidewalks and curbs in the public rights of way adjacent to the Building and installation of street lighting, benches, planters and other public amenities and the construction of additional public areas upon the Water Company Block (the "**Public Infrastructure**"). Louisville Metro agrees that Omni and the Users of the New Project shall have the right to cause the sidewalks and rights of way abutting the Retail Space to be improved with outdoor seating

areas, bicycle racks, landscaping enhancements, signs, awnings, and similar improvements for the benefit of the New Project, all at no cost other than the cost of installation and maintenance of the applicable improvements, subject to obtaining the usual and customary permits or licenses. Omni and the Users of the New Project shall have a right of ingress and egress over such sidewalks and rights of way for the purpose of vehicular access to the Garage and to any loading/unloading areas serving the New Project pursuant to usual and customary permits issued by Louisville Metro.

Section 2.03. Hotel, Residential Space and Retail Space Schedule and Construction.

A. Subject to Louisville Metro's, the Authority's and PARC's performance of their respective obligations under this Agreement, Omni shall construct or cause to be constructed the Hotel, the Residential Space and the Retail Space substantially in accordance with the schedule set forth in Section 7.02 of this Agreement (subject to force majeure as provided in Section 13.05 of this Agreement).

B. Subject to the terms and conditions hereinafter set forth, Omni shall cause the construction of the Hotel, the Residential Space and the Retail Space to be substantially in accordance with the New Project Plans. As used in this Agreement, the term "**New Project Preliminary Plans**" shall mean (i) the conceptual design drawings of the Hotel, the Residential Space and the Retail Space; (ii) the Hotel Specifications; (iii) a site plan, drawings and/or renderings showing the location, finishes, major architectural details and elements, window placement and design of the exterior of the Hotel, the Residential Space and the Retail Space; and (iv) the location and design of the Public Infrastructure. The New Project Preliminary Plans have been approved by Louisville Metro, acting by and through the City Representative, pursuant to Section 2.04 and are attached to this Agreement as Exhibit B. At any time, upon prior written notice from Omni to the City Representative, Omni may request Louisville Metro, acting by and through the City Representative, to approve any significant and material changes to the New Project Plans or any preliminary drafts of the New Project Plans and Specifications; Louisville Metro agrees to consider any such changes or preliminary drafts in good faith consistent with the terms and goals of this Agreement, and may not unreasonably withhold, delay or condition its consent to such changes or preliminary drafts. If the City Representative fails to respond to any request for approval within ten (10) business days following the date of such request (which ten [10] business day period is subject to a five [5] calendar day extension if requested by the City Representative in writing prior to the expiration of such ten [10] business day period), Louisville Metro shall be deemed to have approved such request. If Louisville Metro, acting by and through the City Representative, objects to any requested changes or preliminary drafts, Louisville Metro must provide, in writing, the basis for such objection within ten (10) business days following its receipt of the request. Should the City Representative not approve the requested changes to the New Project Plans or any preliminary drafts of the New Project Plans and Specifications, Omni may elect to terminate this Agreement or work with the City Representative to develop mutually acceptable changes to the New Project Plans and Specifications. If the City Representative approves (or has deemed to approve) the requested changes, each of the milestone dates for the performance of Omni's obligations contained in the Project Schedule set forth in ARTICLE VII of this Agreement shall be extended by the number of days necessary to obtain such approval (or deemed approval). In no event may Louisville Metro be permitted to require any alterations, additions or changes to the New Project Plans or

Omni's proposed changes thereto that would cause the cost of the New Project to exceed Omni's Spending Commitment (other than code or regulatory matters that are applicable to everyone).

C. Omni shall ensure that all construction on the New Project is of a high quality and workman-like manner consistent with Omni's Spending Commitment.

D. Louisville Metro, its agents and employees, shall be granted a right of entry upon the Water Company Block and into the New Project at reasonable times upon twenty-four (24) hours' notice during construction of the New Project to enable Louisville Metro to inspect construction of the New Project through the course of construction, although Louisville Metro shall have no obligation to do so. In exercising the foregoing right, Louisville Metro, its agents and employees shall not in any way interfere with the construction of the New Project and shall abide by reasonable safety precautions required by Omni's construction manager.

E. Omni shall pay or cause to be paid prevailing wages for all workers in connection with the initial construction of the New Project by Omni, as required by L.C.O. 37.75 and shall comply with all provisions of said Ordinance including but not limited to Section (B) *Fair Labor Standards* (attached). Omni shall also report the statistical data set forth in L.C.O. 37.75 to Louisville Metro on a monthly basis. Omni shall make good faith efforts to include at least 20% minority participation and 5% women-owned participation in the New Project (but not the User Improvements) pursuant to L.C.O. 37.75. In addition, Omni shall make good faith efforts to meet the goal of reserving up to 75% of the construction jobs available in connection with the initial construction of the New Project (but not the User Improvements) for participation by Kentucky and Indiana residents, including good faith efforts to meet the goal of reserving at least 60% of such total available construction jobs for residents of the Metro Louisville Standard Metropolitan Statistical Area. It is expressly acknowledged and agreed between the parties that any failure by Omni to meet the participation goals shall not be a default by Omni under this Agreement. As used in this paragraph, (i) "**User Improvements**" means any tenant improvements, buyer selections or other work done by or on behalf of a User to prepare such User's leased and/or licensed premises in the Residential Space or the Retail Space for such User's use or occupancy and (ii) "**User**" means any tenant, licensee or other occupant of the Residential Space or the Retail Space or any owner of a condominium unit (either residential or commercial) located in the Residential Space or the Retail Space. Omni shall not be in default of this Agreement if a User fails to comply with the above.

F. Notwithstanding any provision of this Agreement to the contrary, it is hereby agreed that Omni may convey any one or more portions of the Residential Space or the Retail Space to one or more limited liability companies wholly-owned and managed by Omni (each, a "**Omni Sub LLC**"), and that such Omni Sub LLC may undertake the construction and operating obligations of Omni with respect to the applicable portions of the Residential Space or the Retail Space.

Section 2.04. Design and Approval of the New Project.

A. Omni shall apply for all necessary approvals ("**DDRO Approval**") under the Downtown Review Overlay District ("**DDRO**") within ninety (90) days after the Effective Date

of this Agreement and, upon obtaining such DDRO Approval, shall proceed expeditiously to complete the construction plans and specifications (the "**New Project Plans and Specifications**") for the Hotel, the Residential Space and the Retail Space. The New Project Plans and Specifications shall be materially consistent with the approved New Project Plans and the DDRO Approval. Louisville Metro shall assist and support Omni with obtaining DDRO Approval for the New Project. Omni will meet periodically with the City Representative to discuss and receive comments with respect to each successive version of the New Project Plans and Specifications. The City Representative shall only have the right to approve each further version of the New Project Plans and Specifications to the extent the newer version of the New Project Plans and Specifications materially differs from the earlier approved New Project Plans and Specifications. If the City Representative does not notify Omni in writing of any concerns or objections that the City Representative has with regard to any information or documents that must be approved by the City Representative pursuant to this paragraph within ten (10) business days following receipt, which ten (10) business day period is subject to a five (5) calendar day extension if requested by the City Representative in writing prior to the expiration of such ten (10) business day period (the "**New Project Design Review Period**"), the City Representative shall be deemed to have approved any such information or documents. If the City Representative does notify Omni in writing of any concerns or objections that the City Representative has with regard to any such information or documents within the New Project Design Review Period, Omni and the City Representative will diligently work to resolve the City Representative's concerns and objections. If Omni and the City Representative are unable to resolve any such concerns within ten (10) business days following the end of the New Project Design Review Period (the "**New Project Design Resolution Deadline**"), the parties shall resolve the dispute through the process described in Section 10.07, in which case the Completion Dates (hereinafter defined) set forth in the Project Schedule in Section 7.02 shall be extended by the number of days that elapse between the New Project Design Resolution Deadline and the final resolution of the City Representative's concerns and objections. Omni agrees that it shall not make any material modification to the New Project Plans and Specifications approved by the City Representative unless it notifies the City Representative in writing and receives approval from the City Representative in accordance with the procedure set forth above.

B. Upon completion of the New Project Plans and Specifications as set out above, if not already received, Omni shall proceed in a commercially reasonable manner to apply for all permits and approvals required for construction of the New Project. Louisville Metro shall assist and support Omni in these efforts.

C. At the time Omni applies for the preliminary building permit for any construction work, Omni shall, for informational purposes only, notify the City Representative of the availability of, and make available during regular business hours to the City Representative, a set of the New Project Plans and Specifications for such construction work.

D. Prior to the Property Closing for the Water Company Block pursuant to Section 4.01 of this Agreement, Louisville Metro must obtain the Landmark Approval.

Section 2.05. Hotel Costs. Omni agrees to construct the New Project (excluding the Garage) in accordance with the terms and conditions of this Agreement for a Total Omni Construction Costs (hereinafter defined) that is estimated to be \$260 million, but which shall be

not less than \$255 million ("**Omni's Spending Commitment**"). As used in this Section 2.05, "**Total Omni Construction Costs**" shall mean the total project cost incurred by Omni and others in connection with acquiring, designing, constructing, furnishing, and opening the New Project, including, without limitation, hard costs, soft costs, development rights, legal and professional fees, furniture, fixtures and equipment (FF&E), Public Infrastructure, pre-opening operating supplies and expenses (OS&E), costs associated with carrying the project during construction (such as property taxes, but specifically excluding interest carry), and the pre-opening budget for the New Project (including salaries and wages for sales and operational staff prior to the opening of the New Project, marketing costs, relocation costs, hiring costs, office rent, office supplies and equipment) and tenant fit-out expenses; provided, however, Total Omni Construction Costs shall specifically exclude any development fee or percentage management fee payable to Omni or its affiliates and any costs to Omni of financing the New Project. Except for the Hotel Grant, pursuant to Section 4.05 Omni agrees to be solely responsible for obtaining financing (whether from an institutional lender or otherwise) adequate to complete the New Project.

Section 2.06. Hotel Management. During the Term (as defined in ARTICLE VIII of this Agreement), but subject to the terms and conditions set forth in Section 12.01 hereof, the Hotel shall be:

A. Managed and operated by Omni Hotels Management Corporation, or an affiliate thereof, which is knowledgeable and experienced in managing, operating and promoting first-class hotels, including, specifically, urban convention center hotels;

B. Marketed and promoted under the "Omni Hotels and Resorts" brand;

C. Operated at a level consistent with the current operating criteria necessary for a hotel property to receive the American Automobile Association's designation for Four-Diamond hotels, as further described in Exhibit E, attached hereto and also in accordance with the Omni brand standards (for so long as the Hotel is managed and operated by Omni Hotels Management Corporation) (the "**Minimum Hotel Operating Standards**"). Omni shall at no time be required to demonstrate receipt or maintenance of such Four-Diamond rating. The parties recognize that hotel operating practices may change during the term of this Agreement and the parties shall work in good faith to agree to changes to the Minimum Hotel Operating Standards if the market and business practices dictate such changes;

D. Continuously open to the public, daily, throughout the year, except for temporary partial closures required for renovations, maintenance or repairs.

Section 2.07. Guaranty of Completion. Omni Hotels Corporation has executed a Completion and Performance Guaranty (the "**OHC Guaranty**") in the form attached hereto as Exhibit I, whereby Omni Hotels Corporation has unconditionally, irrevocably and absolutely guaranteed completion of the New Project and the Garage in a manner consistent with the New Project Plans and the Garage Project Plans and the terms and conditions of this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, in the event the Municipal Approvals are not obtained on or before the Municipal Approval Deadline, or in the event Louisville Metro or Authority fails to pay the New Project Grant as and when required under this

Agreement, or PARC fails to purchase the Garage as required under this Agreement, the OHC Guaranty shall immediately terminate and be of no further force or effect.

Section 2.08. Codes. Notwithstanding any provision of this Agreement to contrary, the New Project shall comply, in all material respects, with all federal, state and local laws, codes, ordinances, statutes and regulations (as modified by any applicable variance or special exceptions).

Section 2.09. Employment Regulations; Affirmative Action. Omni shall not refuse to hire or employ, or bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of sex, race, creed, color, national origin, sexual orientation or disability. At all times during the construction of the New Project, Omni shall take reasonable steps to insure that its employees and the employees of its contractors and subcontractors are treated during employment, without regard to their sex, race, creed, color and national origin, sexual orientation or disability and that its contractors and subcontractors that are constructing the New Project do not refuse to hire or employ, or bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions, or privileges of employment because of sex, race, creed, color, national origin, sexual orientation or disability. This requirement shall apply to, but not be limited to, the following: employment, promotion, demotion and transfer; recruitment, advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training.

Section 2.10. Non-Discrimination. Upon completion of the New Project, Omni agrees to abide by all fair housing laws and will not discriminate on the basis of race, sex, color, creed, disability, sexual orientation or national origin, in the lease, rental, use or occupancy of the New Project.

Section 2.11. Insurance. Omni shall provide the insurance described on Exhibit F, attached hereto and made a part hereof.

Section 2.12. Indemnification. Except as may otherwise be provided herein and except for claims arising as a result of a default hereunder by Louisville Metro and/or the Authority, Omni agrees to indemnify Louisville Metro and the Authority against any third party claim or filing of any mechanic's or materialman's lien on any part of the New Project as a result of Omni's construction of the New Project and shall hold Louisville Metro and the Authority harmless from any and all such third party claims or liens, except to the extent any such third party claim or lien is caused by the negligent act or omission or intentional or willful misconduct of Louisville Metro, the Authority or any of their employees or agents acting within the scope of their employment or agency.

Section 2.13. Requirement for Tax Reporting. Omni acknowledges that the Local Participation Agreement and the Grant Agreement entered into by the Authority for the New Project, pursuant to the Act, require the Authority to require businesses and persons within the District to obtain separate tax ID numbers and report information concerning taxes paid. Louisville Metro has enacted Louisville Metro Codified Ordinance Section 110.04 (B) which mandates businesses to obtain separate tax ID numbers for reporting Louisville Metro's occupational license fees. Omni agrees to use commercially reasonable efforts to require all

applicable taxpayers within the New Project, including but not limited to tenants, businesses, employers, contractors and subcontractors (but not hotel guests), to obtain separate tax identification numbers for all State and City taxes paid or collected by them for activities occurring within the New Project and to report all required information concerning taxes paid or collected to the Authority on a timely basis, including:

1. A completed Tax Increment Financing Business Questionnaire for Omni and any lessees operating within the New Project throughout the life of the Tax Increment Financing ("TIF");

2. Completed, signed, and notarized information sharing agreements (KY Department of Revenue Form 51A.290) between each contractor or sub-contractor and each vendor from which materials are purchased, and which Kentucky sales or use tax is paid;

3. Periodic expenditure reports (KY Department of Revenue form 51A.292) for all materials purchases made throughout the New Project's construction and listing all Kentucky sales or use tax paid. Reports shall be submitted in a timely manner as agreed upon between the Authority and Omni such that the Authority can make timely rebate requests to the Kentucky Department of Revenue under the States' Signature Sales Tax Rebate Program;

4. A periodic capital expenditure report evidencing all capital expenditures made in relation to the New Project to date within sixty (60) days of the end of each calendar quarter. Such capital expenditure report shall continue to be submitted on a quarterly basis until the substantial completion of the New Project. Each quarterly capital expenditure report shall include copies of paid invoices or receipts related to the capital expenditures. Quarterly capital expenditure reports shall clearly identify each capital expenditure item and the specific facility to which the expenditure was related;

5. A periodic tax report, for its own operations as well as any lessee operating within the New Project (but not tenants or residents of the Apartments), no later than sixty (60) days after the end of each calendar year, evidencing the following taxes generated within the New Project and paid during the previous calendar year:

a. Total local occupational license fees withheld from or paid for employees working within the New Project and remitted to Louisville Metro during the previous calendar year;

b. Total state income taxes withheld from employees working within the New Project and remitted to the Kentucky Department of Revenue during the previous calendar year;

c. Total state sales taxes collected and remitted to the Department of Revenue during the previous calendar year on sales transacted within the New Project;

d. Total corporation and limited liability entity taxes remitted to the Kentucky Department of Revenue during the previous calendar year for all business units operating within the New Project;

e. Total transient room taxes collected and remitted to Louisville Metro, pursuant to KRS 91A.390 during the previous calendar year.

6. If the TIF Project is activated prior to completion of construction, each contractor and sub-contractor must also complete and sign a Tax Increment Financing Business Questionnaire, and also submit periodic payroll reports displaying state income taxes and local occupational license fees withheld from or paid employees for work performed related to the New Project through completion of New Project construction.

The provisions of this Section 2.13 shall not apply to the residents or occupants of the Apartments and any businesses operated by such residents or occupants from any of the Apartments.

Section 2.14. Purchase of Water Company Block. Omni agrees to purchase the Water Company Block from Louisville Metro at the Property Closing in accordance with the terms of Section 4.02 of this Agreement.

Section 2.15. Utilities, Taxes and Assessments. Following the Property Closing for the Water Company Block, Omni shall be responsible for the payment of any and all utility charges to the New Project, insurance premiums and any and all taxes, fees or assessments levied upon and applicable to the New Project by any governmental authority. Omni covenants to promptly pay all utility charges, insurance premiums and any taxes, fees or assessments levied upon the New Project.

Section 2.16. Operation or Leasing of Hotel Retail Space. Following opening of the Hotel to the public, Omni shall (i) operate or lease any vacant retail space in the Hotel, and (ii) if leased, use commercially reasonable efforts to include a continuous operating clause in each lease for any vacant retail space in the Hotel. Omni agrees to maintain any storefronts and any other windows of any such vacant retail space in the Hotel in an aesthetically attractive and pleasing manner at all times.

Section 2.17. Audit of Expenditures. In order to ensure that the construction of the New Project and the use of the New Project Grant complies fully with Louisville Metro and State reporting requirements, including but not limited to TIF reporting requirements, Louisville Metro shall select a City Auditor, at its sole expense, to review all financial records related to the construction of the New Project. Omni agrees to provide full and complete access to the City Auditor of all of Omni's records and accounts related to the New Project at all times during the construction of the New Project and a reasonable time after completion. The complete work product of the City Auditor shall be made available to Omni and may be used by Omni for other compliance purposes.

Section 2.18. Hotel Payroll Guaranty. Omni acknowledges that the State income taxes and City occupational license fees collected on the wages of the employees of the Hotel ("**Hotel Payroll Taxes**") is a significant component of the released tax revenues generated from the District to support the repayment of the City Bonds. Omni, therefore, agrees that, beginning in the fourth full fiscal year of operation of the Hotel, it shall guarantee to Louisville Metro that

the payroll for all persons employed at the Hotel ("**Hotel Payroll**") shall be no less than \$10.3 million dollars per annum ("**Guaranteed Payroll Amount**").

Section 2.19. Hotel Percentage Payment.

A. Omni agrees to pay to Louisville Metro a percentage payment equal to ten percent (10%) of the Hotel's **Net Operating Income** (as defined below) each year ("**Hotel Percentage Payment**") in excess of \$14,000,000.00 (the "**NOI Hurdle**"); provided, however, that the Hotel Percentage Payment shall be subject to a cap of \$1,250,000.00 per year and \$18,000,000.00 in the aggregate (the "**Hotel Percentage Payment Cap**"). Omni shall pay the Hotel Percentage Payment (subject to the Hotel Percentage Payment Cap) beginning in the fourth full fiscal year of the operation of the Hotel and ending upon the date the City Bonds are retired or thirty (30) years from the opening of the Hotel, whichever occurs earlier. After the first year that the Hotel Percentage Payment is payable, the NOI Hurdle shall increase each year by three percent (3%).

B. As used herein, the term "**Net Operating Income**" shall mean, with respect to the applicable period (on an accrual basis and consistent with Generally Accepted Accounting Principles), the gross annual income realized from operations of the Hotel after subtracting all necessary and ordinary operating expenses (both fixed and variable) for the applicable period, including, without limitation, utilities, administrative expenses, payroll, benefits, cleaning, operating supplies and equipment, landscaping, security, repairs and maintenance, lease payments, management fees, real estate and other taxes, assessments, insurance and a reserve for replacement of furniture, fixtures and equipment equal to 5% of the gross annual hotel revenue. In calculating Net Operating Income, there shall be no deduction for federal, state or local income taxes, debt service expense and depreciation and amortization expense.

Section 2.20. Operation and Maintenance of Residential Space and Retail Space.

A. Upon the completion of the New Project, Omni agrees to comply with the provisions of this Section 2.20. Omni recognizes and acknowledges that the manner in which the Residential Space and Retail Space is used and operated is critical to Louisville Metro by reason of the impact the Residential Space and Retail Space will have upon the CBD. In order to give Louisville Metro assurance as to the manner in which the Residential Space and Retail Space will be used and operated, Omni covenants and agrees that, at no cost to Louisville Metro, it shall:

1. Develop and manage the Residential Space and Retail Space in a first-class manner. Omni shall develop the Retail Space for the Grocery as a shell and shall use best efforts to lease the Retail Space to a Grocery Operator prior to the opening of the Hotel. Any lease of the Retail Space and any Grocery Operator selected by Omni shall be subject to the reasonable approval of Louisville Metro and Louisville Metro shall have the right to assist Omni in securing a Grocery Operator for the Retail Space. In the event Omni is unable to secure a lease for the Retail Space with a Grocery Operator acceptable to Louisville Metro within six (6) months after the Hotel Opening Date, Omni shall be free to lease Retail Space for any lawful use at market rates with the approval of Louisville Metro, which approval shall not be unreasonably withheld, conditioned or delayed;

2. Attempt to impose hours and days of operation on each tenant that operates a retail operation in the Retail Space;

3. Make reasonable efforts to market, or cause others to market the Retail Space by appropriate promotions and advertising of a first-class nature;

4. Keep the Residential Space and Retail Space, its exterior and all furniture, fixtures, HVAC systems, equipment and other personal property of Omni in good repair and condition (exclusive of any spaces leased, owned or occupied by a User);

5. Maintain the Residential Space and Retail Space (exclusive of any spaces leased, owned or occupied by a User) in a first-class, clean and sanitary condition;

6. Comply with all laws, ordinances, regulations and codes applicable to Omni's operations (as the same may be modified by any applicable variance or special exceptions and as opposed to the operation of any spaces leased, owned or occupied by a User);

7. Obtain and maintain, or cause others to obtain and maintain, all appropriate or required licenses and permits required for the operation of the Residential Space and Retail Space by Omni (as opposed to the operation of any Retail Space leased, owned or occupied by a User).

Section 2.21. Retail Space Standards. Omni shall use commercially reasonable efforts (without any requirement to reduce rent or make other concessions) to cause each retail tenant of the Retail Space to comply with the operational standards set forth in Section 2.20 and to meet the following additional standards:

A. To the extent that a tenant operates a retail operation in the Retail Space, endeavor to maintain and operate its business operations in a first-class manner at all times, including maintaining the condition of its respective premises, tenant improvements, and personal property in good condition and repair;

B. Maintain its premises, including without limitation, fixtures, kitchen and other equipment, and other personal property in good, clean, sanitary, and orderly condition and make all repairs and replacements thereof when necessary, prudent and in accordance with commercially reasonable standards;

C. Be open to the public every day except New Year's Day and Christmas;

D. Be open for business to the public at least from ten o'clock a.m. to eight o'clock p.m. prevailing Eastern Time;

E. Comply with all laws, ordinances, regulations and codes applicable to Omni's operations (as the same may be modified by any applicable variance or special exceptions and as opposed to the operation of any spaces leased, owned or occupied by a User); and

F. Obtain and maintain, or cause others to obtain and maintain, all appropriate or required licenses and permits required for the operation of such tenants' premises.

Section 2.22. Additional Representations and Covenants of Omni. Omni represents and covenants as follows:

A. Omni is a limited liability company duly formed and validly existing under the laws of the State of Delaware with the power and authority to enter into this Agreement.

B. Omni is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, and applicable regulations.

C. The execution of this Agreement and the construction of the New Project by Omni will not violate any applicable statute, law, ordinance, code, rule or regulation or any restriction or agreement binding upon or otherwise applicable to Omni.

D. Omni, in this Agreement, has not made any untrue statement of a material fact or failed to state a material fact.

E. To Omni's knowledge, there are no actions, suits or proceedings pending or threatened against Omni which would, if adversely determined, affect Omni's ability to enter into this Agreement or construct the New Project in accordance with this Agreement.

ARTICLE III

GARAGE

Section 3.01. Construction and Purchase of Garage.

A. Omni agrees to develop plans and construct or cause to be constructed on the Garage and upon completion of the Garage, convey the Garage Unit (hereinafter defined) of the Condominium (hereinafter defined) to PARC in accordance with the terms and conditions of this Article.

B. The Garage shall be incorporated into the Building and must consist of parking for no fewer than 820 vehicles and related driving ramps providing ingress and egress to the Garage from adjacent public rights of way, as shown on Exhibit B, attached hereto. The Garage shall be constructed so as to permit Hotel guests parking in the Garage to have covered pedestrian access to the Hotel Lobby, and Retail Space customers parking in the Garage to have pedestrian access to the Retail Space.

C. As part of the construction of the Garage, Omni shall install plumbing, wiring, lighting and other fixtures but shall not be required to provide or install equipment to be used by PARC to operate the Garage as a parking facility such as gates, revenue control equipment, booths and signage (except for emergency exit and other signage required by building codes).

Section 3.02. Garage Purchase Price. PARC agrees to purchase the Garage Unit from Omni as provided herein for a purchase price equal to the Garage design costs and the Garage construction costs, which collectively are currently estimated to be \$17,000,000 ("**Garage Purchase Price**"). Upon the completion of the Garage Final Construction Plans, Omni agrees to enter into a guaranteed maximum price contract in a form acceptable to PARC for construction

of the Garage with the same general contractor building the Hotel ("**Garage GC**") in an amount sufficient to construct the Garage pursuant to the Garage Project Plans ("**Garage Construction Costs**"). If the Garage Construction Costs and Garage design costs are estimated to exceed \$17,000,000, then PARC and Omni agree to make reasonable design changes to reduce the Garage Construction Costs (so long as the total number of parking spaces is not reduced below 820 and the Garage is sufficient to allow the Hotel to meet the Minimum Hotel Operating Standards) or agree to an increase in the Garage Purchase Price over the \$17,000,000 estimate. After the Garage Construction Costs are determined, it shall only be adjusted pursuant to a written change order or written agreement (a "**Change Order**") agreed to by PARC.

Section 3.03. Design of Garage.

A. Omni shall employ the same Architect that has been engaged on the Hotel design to design the Garage ("**Garage Architect**"). The Garage Architect, in consultation with a consulting engineer employed by PARC ("**PARC Engineer**"), shall develop preliminary plans and specifications ("**Garage Project Plans**") for the Garage as provided in Section 7.02 (the "**Garage Project Plans Deadline**"), which Garage Project Plans must be satisfactory to Omni and PARC. In order to be satisfactory, the Garage Project Plans shall provide for a Garage that:

1. meets the needs of PARC, including functionality, user comfort, construction costs, operating cost, long term costs, capital maintenance, and service life and durability;

2. meets the needs of the Hotel with respect to ingress and egress of hotel guests and visitors, both vehicular and pedestrian; and

3. meets the needs of the Residential Space and the Retail Space with respect to ingress and egress for User's and User's invitees;

B. If Omni and PARC are unable to agree upon the Garage Project Plans on or before the Garage Project Plans Deadline, the Parties shall resolve the dispute through the process described in Section 10.07, in which case the Completion Dates set forth in the Project Schedule for which Omni is listed as the Responsible Party shall be extended by the number of days that elapse between the Garage Project Plans Deadline and the final approval of the Garage Project Plans by Omni and PARC, whether pursuant to Section 10.07 or otherwise.

C. The Garage design shall consider initial costs, long term costs, use as a parking facility to serve downtown parkers (monthly permits and visitors) similar to other facilities owned and operated by PARC. The Garage Architect shall seek the input of PARC regarding the design, and achieve a balanced design using its experience to develop a design that is acceptable to PARC. PARC shall timely provide to the Garage Architect a detailed program of specifications and requirements for the Garage ("**PARC Requirements**") and it shall be the obligation of the Garage Architect to use commercially reasonable efforts to incorporate the PARC Requirements into the Garage Project Plans.

D. The Garage design shall provide for a vehicular entrance and exit that permits the Hotel to operate valet parking for guests and visitors of the Hotel which operates with reasonable efficiency without undue delay or impediment.

E. Prior to the completion of Garage Final Construction Plans, Omni shall notify PARC if it determines that there is a need for an additional elevator in the Garage serving the Hotel ("**Hotel Elevator**"). Omni shall be responsible for all additional costs to design, construct and equip the Hotel Elevator.

F. Upon the approval of the Garage Project Plans by Omni and PARC, the Garage Architect shall prepare the final construction drawings for the Garage ("**Garage Final Construction Plans**"), which shall be materially consistent with the Garage Project Plans and which shall be in sufficient detail to provide for construction of the Garage therefrom. The PARC Engineer shall review and approve the Garage Final Construction Plans within ten (10) business days following receipt; provided, however, such approval may not be unreasonably withheld, conditioned or delayed so long as the Garage Final Construction Plans do not materially differ from the Garage Project Plans. If PARC Engineer does not notify Omni in writing of any objections that PARC Engineer has with regard to the Garage Final Construction Plans within ten (10) business days following receipt, which ten (10) business day period is subject to a five (5) calendar day extension if requested by PARC Engineer in writing prior to the expiration of such ten (10) business day period (the "**Garage Final Construction Plans Deadline**"), PARC Engineer shall be deemed to have approved the Garage Final Construction Plans. If PARC Engineer does notify Omni in writing of any objections that PARC Engineer has with regard to the Garage Final Construction Plans prior to the Garage Final Construction Plans Deadline, Omni and PARC Engineer will diligently work to resolve such concerns or objections. If Omni and PARC Engineer are unable to resolve any such concerns prior to the Design Resolution Deadline, the parties shall resolve their dispute through the process described in Section 10.07, in which case the Completion Dates set forth on the Project Schedule for which Omni is the Responsible Party shall be extended by the number of days that elapse between the Garage Final Construction Plans Deadline and the final resolution of PARC Engineer's objections, whether pursuant to Section 10.07 or otherwise.

G. Prior to the Property Closing for the Water Company Block pursuant to Section 4.02 of this Agreement, Louisville Metro must obtain the Landmark Approval.

Section 3.04. Construction of Garage.

A. Subject to the terms and conditions hereinafter set forth, Omni shall enter into a contract with the Garage GC, as provided in Section 3.02, who shall construct the Garage in accordance with the Garage Final Construction Plans, subject only to such changes as Omni and PARC shall specifically approve by Change Order, and in all events in accordance with all applicable statutes, codes, laws, ordinances, rules and regulations ("**Garage Construction Contract**"). The Garage Construction Contract shall require the Garage GC to pay or cause to be paid prevailing wages for all workers in connection with the construction of the Garage, as required by L.C.O. 37.75 and to make commercially reasonable efforts to include the participation of at least 20% minority-owned businesses and 5% women-owned businesses in the construction of the Garage (including the procurement of materials). In addition, the Garage GC shall make good faith efforts to meet the goal of reserving up to 75% of the construction jobs available in connection with the construction of the Garage for participation by Kentucky and Indiana residents, including good faith efforts to meet the goal of reserving at least 60% of such total available construction jobs for residents of the Metro Louisville Standard Metropolitan

Statistical Area. It is expressly acknowledged and agreed between the parties that any failure by the Garage GC to meet the participation goals shall not be a default by Omni under this Agreement;

B. Omni shall obtain and maintain, or cause to be obtained and maintained, in full force and effect, insurance with respect to the construction of the Garage, as follows: (i) builder's all-risk and casualty insurance; (ii) comprehensive liability insurance for property damage and bodily injury; and (iii) workers' compensation insurance subject to statutory limits or better regarding any work or other activity in, or about the Garage such insurance shall be written by responsible insurance companies satisfactory to PARC authorized to do insurance business in the Commonwealth of Kentucky, with the following limits of liability: (a) builders all-risk and casualty insurance in the amount needed for 100% completed value coverage of the Garage, (b) comprehensive liability coverage with aggregate limits of not less than \$10,000,000, (c) no less than the statutorily required limits for workers' compensation, (d) professional liability insurance. The insurance maintained by Omni shall name PARC and PARC Engineer as additional insureds and shall be reasonably satisfactory to PARC. Omni shall furnish to PARC certificates for such insurance, and shall furnish PARC not less than ten (10) days before the expiration of any such insurance, a certificate evidencing the replacement or renewal thereof. Such certificates and insurance shall provide that such insurance shall not be changed or cancelled without at least thirty (30) days prior written notice to PARC;

C. The Garage GC, the PARC Engineer and a representative from Omni shall meet no less than weekly during construction of the Garage to review the progress of construction;

D. Omni shall comply in all respects with the terms and conditions of this Agreement and not commit or permit to exist any default thereunder.

E. Omni shall furnish reasonable and customary security for the Garage during construction;

F. Omni shall make available to PARC and the PARC Engineer copies of all technical reports, shop drawings, and other construction documents including, without limitation, RFI's, relevant correspondence, approved shop drawings, materials testing reports, special inspection reports, meeting minutes, files notes and schedules, used in the construction of the Garage, together with all warranties to be issued by manufacturers and suppliers of materials used in the construction of the Garage;

G. Omni shall complete all appropriate construction testing and inspections necessary to assure construction in accordance with the Garage Final Construction Plans;

H. Omni shall indemnify PARC against any third party claim or filing of any lien on any part of the Garage as a result of the construction of the Garage arising prior to the Garage Closing, and shall hold PARC harmless from any and all such third party claims or liens, except to the extent any such third party claim or lien is caused by the negligent act or omission or intentional or willful misconduct of PARC or any of its employees or agents, acting within the scope of their employment or agency.

Section 3.05. Payment of Garage Purchase Price. PARC agrees to make progress payments on account of the Garage Purchase Price directly to the Garage GC, except as otherwise provided in Subsection A of this Section, during the construction of the Garage as provided herein.

A. Within ten (10) days of PARC's receipt of an application for reimbursement therefor and after the PARC Bonds have been sold, PARC shall reimburse Omni for the reasonable Garage Design costs incurred by Omni to design and engineer the Garage pursuant to Section 3.03 of this Agreement ("**Garage Design Costs**");

B. Once construction of the Garage commences, PARC shall make monthly progress payments to the Garage GC on the basis of an application for payment ("**Application**"), as provided in this Section. Prior to submission of the first Application, the Garage GC shall submit to PARC a draft schedule of values and a proposed draw schedule for approval by PARC;

C. At least thirty (30) days before the date established for each progress payment (but not more often than once a month), the Garage GC shall submit to the PARC Engineer for review, with a copy to PARC, an Application filled out and signed by the Garage GC and approved by Omni covering the work completed as of the date of the Application and accompanied by such supporting documentation as is required by PARC and PARC Engineer and waivers of liens from all contractors, subcontractors and suppliers;

D. PARC Engineer shall, within ten (10) days after receipt of each Application, forward such Application to PARC for payment with either (i) an unconditional approval of such Application for payment or (ii) a partial approval for payment noting with reasonable specificity any objections PARC Engineer has to the Application, together with a copy of same to Omni and the Garage GC. In either event, PARC shall pay the amount approved by PARC Engineer, less retainage as provided in Section 3.05.G below, within five (5) days after receipt of the Application. In the event PARC Engineer has noted any objections to the payment of the Application, Omni and PARC Engineer shall promptly meet to resolve such issues within five (5) business days after Omni's receipt of such objections. If the parties determine that PARC Engineer's objections were valid, then an appropriate adjustment will be made by Omni and Garage GC to address the issues raised by PARC Engineer. If the parties are unable to resolve PARC Engineer's objections within such five (5) day period, the parties shall resolve the dispute through the process described in Section 10.07.

E. PARC Engineer's approval of any payment requested in an Application shall constitute a representation by PARC Engineer to PARC based on PARC Engineer's on-site observations of the executed work as an experienced and qualified design professional and on PARC Engineer's review of the Application and the accompanying data and schedules, that to the best of PARC Engineer's knowledge, information and belief.

- i. The work has progressed to the point indicated;
- ii. The quality of the work is in general accordance with the Garage Project Plans; and

- iii. The conditions precedent to the Garage GC being entitled to such payment appears to have been fulfilled insofar as it is PARC Engineer's responsibility to observe the work.

F. Reserved.

G. Subject to the provisions of this Section 3.05.G, PARC shall pay to the Garage GC such amount requested in the Application that the PARC Engineer has approved for payment pursuant to paragraph D of this Section less the retainage calculated as provided herein. PARC shall deduct as a retainage from each payment made to the Garage GC excluding the final payment, an amount equal to five percent (5%) of the total amount requested and approved in the Application. PARC shall maintain the retainage in an escrow account, pursuant to KRS 371.160. Payment shall not constitute final acceptance of the work;

H. Upon written notice from the Garage GC that the construction required for the Garage is complete, Omni and PARC Engineer will make a final review with PARC and will notify the Garage GC in writing of all particulars in which this inspection reveals that the construction is incomplete or defective ("**Punch List**"). The Garage GC shall immediately take such measures as are necessary to complete such construction or remedy such deficiencies;

I. The Garage GC shall complete all such corrections set forth in the Punch List to the satisfaction of Omni, PARC, and PARC Engineer and shall deliver, in accordance with this Agreement, executed warranties, as-built documents (drawings and specifications), operations manuals and training materials, maintenance manuals and other such documentation that is typically furnished to an owner upon completion. All documents shall be approved by Omni and the Garage GC and shall be submitted in electric format and as hard copies. Upon satisfactory compliance with the requirements of this paragraph, the Garage GC may make application for final payment following the procedure for progress payments established in paragraphs (C) through (G);

J. Once (i) the Garage GC has certified that construction of the Garage has been completed, (ii) a certificate of occupancy for the Garage has been obtained from the appropriate governmental departments, and (iii) the Garage Architect has provided to Omni and PARC an AIA Form G704 Certificate of Substantial Completion, PARC shall, within ten (10) days after receipt of the final Application, pay to the Garage GC the final payment. The final payment shall consist of the amount requested by the Garage GC in the final Application and in addition, an amount equal to 100% of the accumulated retainage. Upon (a) payment by PARC to the Garage GC of the final payment and (b) final resolution of any payment issues raised by PARC Engineer and reserved by PARC pursuant to this Section 3.05, Omni shall deliver title and possession of the Garage Unit to PARC free and clear of the possession of all persons or entities whether or not the contingencies to closing have been satisfied at such time.

Section 3.06. Requirement for Tax Reporting. Omni acknowledges that the Local Participation Agreement and the Grant Agreement entered into by the Authority for the New Project, pursuant to the Act, require the Authority to require businesses and persons within the District to obtain separate tax ID numbers and report information concerning taxes paid. Louisville Metro has enacted Louisville Metro Codified Ordinance Section 110.04 (B) which

mandates businesses to obtain separate tax ID numbers for reporting Louisville Metro's occupational license fees. Omni agrees to use commercially reasonable efforts to require all applicable taxpayers within the Garage, including but not limited to businesses, employers, contractors and subcontractors, to obtain separate tax identification numbers for all State and City taxes paid or collected by them for activities occurring within the Garage and to report all required information concerning taxes paid or collected to the Authority on a timely basis, including:

1. A completed Tax Increment Financing Business Questionnaire for Omni and any lessees operating within the Garage and Garage Unit, throughout the life of the Tax Increment Financing ("TIF");

2. Completed, signed, and notarized information sharing agreements (KY Department of Revenue Form 51A.290) between each contractor or sub-contractor and each vendor from which materials are purchased, and which Kentucky sales or use tax is paid;

3. Periodic expenditure reports (KY Department of Revenue form 51A.292) for all materials purchases made throughout the Garage's construction and listing all Kentucky sales or use tax paid. Reports shall be submitted in a timely manner as agreed upon between the Authority and Omni such that the Authority can make timely rebate requests to the Kentucky Department of Revenue under the states' Signature Sales Tax Rebate Program;

4. A periodic capital expenditure report evidencing all capital expenditures made in relation to the Garage to date within sixty (60) days of the end of each calendar quarter. Such capital expenditure report shall continue to be submitted on a quarterly basis until substantial completion of the Garage. Each quarterly capital expenditure report shall include copies of paid invoices or receipts related to the capital expenditures. Quarterly capital expenditure reports shall clearly identify each capital expenditure item and the specific facility to which the expenditure was related;

5. If the TIF Project is activated prior to completion of construction, each contractor and sub-contractor must also complete and sign a Tax Increment Financing Business Questionnaire, and also submit periodic payroll reports displaying state income taxes and local occupational license fees withheld from or paid employees for work performed related to the Garage through completion of the Garage construction.

ARTICLE IV

COVENANTS AND UNDERTAKINGS OF LOUISVILLE METRO

AND THE AUTHORITY

Section 4.01. New Project Support. Omni covenants to Louisville Metro and the Authority that it would not enter into this Agreement to construct the New Project and operate the New Project in accordance with this Agreement but for the commitment of Louisville Metro, the Authority and PARC to support the New Project as provided in this Agreement (the "**New Project Support**"). Louisville Metro and the Authority, therefore, in consideration of Omni's

obligation to construct the New Project and operate the New Project in accordance with this Agreement, agree to provide to Omni the New Project Support as provided in this ARTICLE IV.

Section 4.02. Conveyance of Water Company Block and the Condominium Units.

A. Upon the satisfaction of the Conditions Precedent set forth in ARTICLE VIII of this Agreement (other than the condition set forth in Section 8.02.A.9), Louisville Metro shall convey, by deed of special warranty, fee simple title to the Water Company Block to Omni, who will also serve as the Declarant under the Condominium Declaration (the "**Property Closing**"). The sales price for the Water Company Block shall be one dollar (\$1.00).

B. Prior to satisfaction of the Conditions Precedent set forth in ARTICLE VIII at its sole cost and expense, Louisville Metro shall have prepared and obtained all necessary approvals of a minor subdivision plat subdividing the Water Company Block into two (2) parcels. One parcel (the "**New Project Parcel**") will consist of the land necessary for the development of the New Project, and the other parcel, the Future Development Parcel, will consist of the remaining portion of the Water Company Block. The Future Development Parcel contains a building with an address of 211 West Muhammad Ali Boulevard, that is currently leased by Louisville Metro to PARC (the "**Future Development Parcel Building**"). At the Property Closing, Omni will enter into a year-to-year lease agreement, which shall be terminable upon six (6) months' written notice to PARC (the "**Future Development Parcel Lease**") at a rental rate of \$1.00 per year, triple net, pursuant to which PARC shall lease the Future Development Parcel Building and ten (10) parking spaces adjacent to the Future Development Parcel Building from Omni and shall agree to be responsible for all maintenance, repairs, replacements, costs and expenses related to Future Development Parcel Building. The Form of the Future Development Parcel Lease shall be reasonably acceptable to PARC and Omni. PARC shall have no right to assign the Future Development Parcel Lease or to sublease all or any portion of the Future Development Parcel Building.

C. At the Property Closing, Louisville Metro shall convey title to the Water Company Block to Omni as stated in subparagraph A of this Section by deed of special warranty fee and clear of all liens and encumbrances, except for (i) the permitted encumbrances described in Exhibit G, attached hereto (the "**Permitted Encumbrances**"); (ii) governmental laws and regulations affecting the parcels; and (iii) real estate taxes and assessments not yet due and payable. The Water Company Block shall be conveyed by Louisville Metro to Omni "as is", "where is", with no warranties of any kind, except for the special warranty of title contained in the deed and except as otherwise provided in this Agreement.

Section 4.03. Issuance of City Bonds.

A. Approximately ninety (90) days prior to the date Omni anticipates the satisfaction of the Conditions Precedent, Omni shall provide notice to Louisville Metro to prepare for the issuance of the City Bonds (hereinafter defined). In addition, approximately thirty (30) days prior to the date Omni anticipates the satisfaction of the Conditions Precedent, Omni shall provide a second notice to the City identifying the approximate date upon which the Conditions Precedent will be satisfied and instructing Louisville Metro to prepare to have the City Bonds

issued within thirty (30) days of the obtaining of all permits required to commence construction of the New Project.

B. Upon the satisfaction of the Conditions Precedent set forth in Section 8.02 of this Agreement (except for the Condition Precedent requiring the issuance of the City Bonds), Louisville Metro shall cause to be issued municipal bonds, notes or other debt instruments backed by the full faith and credit of Louisville Metro in an amount not to exceed **ONE HUNDRED TWENTY MILLION DOLLARS (\$120,000,000)** ("**City Bonds**"), sufficient to fund in its entirety the grant to be paid to Omni in accordance with Section 4.04 of this Agreement ("**New Project Grant**").

Section 4.04. Payment of the New Project Grant. Upon the sale of the City Bonds and the receipt from said sale by Louisville Metro of bond proceeds, Louisville Metro shall pay to Omni a sum equal to **ONE HUNDRED TWO MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$102,750,000.00)** to be used by Omni for the construction of the Hotel, the Residential Space and the Retail Space, in accordance with the terms and conditions of this Agreement. Omni shall deposit the grant funds in an account satisfactory to the City Auditor to permit him to monitor expenditures and insure compliance with Omni's obligations, pursuant to Section 2.17 of this Agreement. It is acknowledged by Louisville Metro that Omni may use grant funds for construction of the Hotel, the Residential Space and the Retail Space prior to using its own funds, provided that Omni has submitted evidence satisfactory to Louisville Metro that it has sufficient funds available to complete construction of the Hotel, the Residential Space and the Retail Space.

Section 4.05. TIF Agreements. Immediately upon the execution of this Agreement and the receipt by Louisville Metro from Omni of the Approved Public Infrastructure Costs and the Approved Signature Project Costs (as such terms are defined in KRS 154.30-010) for the New Project, the City Representative will enter into negotiations with the Commonwealth of Kentucky, Cabinet for Economic Development (the "**Cabinet**") and Kentucky Economic Development Finance Authority ("**KEDFA**") to amend the terms of the Grant Agreement so that it provides for the release of state tax revenues and projected Louisville Metro incremental revenues in an amount sufficient to pay the Approved Public Infrastructure Costs, associated financing costs and Approved Signature Project Costs of the New Project ("**Amended Grant Agreement**"). Omni agrees to fully cooperate with the City Representative in such negotiations. If required, Louisville Metro and the Authority agree to amend the Local Participation Agreement to conform to the terms of the Amended Grant Agreement.

Section 4.06. Sales Tax Refund Program. Pursuant to Section 3.4 of the Grant Agreement, the Project had been approved for participation in the sales tax refund program, pursuant to KRS 139.515, and the Authority agrees to obtain similar approval in the Amended Grant Agreement for the New Project. Such refunds shall be paid to Louisville Metro.

Section 4.07. Contribution to Soft Costs.

A. Louisville shall, within thirty (30) days of execution of this Agreement obtain a letter of credit in the amount of \$2,750,000 ("**LOC**") upon terms acceptable to Louisville Metro and Omni. In the event Omni incurs Soft Costs (hereinafter defined) and the Municipal

Approvals are not obtained, or are obtained but the New Project Grant is not made in accordance with this Agreement through no fault of Omni, Omni may draw upon the LOC for reimbursement of Soft Costs incurred to that date for the New Project in an amount not to exceed the amount of the LOC. For purposes of this Agreement, the term "Soft Costs" shall mean all soft costs incurred by or on behalf of Omni in connection with the New Project, including, without limitation, third party costs incurred in connection with the due diligence, development, documentation, design, engineering, planning and market studies of the New Project. Should Omni draw upon all or a portion of the LOC as provided in this paragraph and subsequently determine not to move forward with the New Project, Omni agrees to turn over all work product related to the design of the New Project. In such event, such work product shall be owned by Louisville Metro and be able to be utilized by Louisville Metro in its absolute discretion.

B. Louisville Metro's obligations under this Section 4.07 shall survive any termination of this Agreement.

Section 4.08. General Assistance.

A. Commencing on the Effective Date and continuing for the Term of this Agreement, Louisville Metro shall use all commercially reasonable efforts to assist Omni and, to the extent requested by Omni, or their respective tenants, in obtaining all permits and approvals, including liquor licenses that are sought by Omni in connection with the development, construction, operation and maintenance of their respective projects. In addition, Louisville Metro, to the extent necessary, shall:

- (i) Assist Omni in pursuing any necessary changes to or variances of the zoning ordinance, or other land use ordinances in order to accommodate the development of the New Project;
- (ii) Assist Omni in applying for any and all governmental approvals or permits that are necessary or desirable to carry out the development of the New Project.

B. Louisville Metro shall provide security and police protection to the New Project in the same manner and at the same level as Louisville Metro provides police protection to comparable facilities located in the CBD. Louisville Metro shall cause the New Project and the streets around the New Project to be patrolled by uniformed police on a regular basis. In addition, Louisville Metro agrees to assist Omni with scheduling periodic meetings with the commanders of the police district or districts in which the New Project is located to discuss security needs and concerns.

C. Louisville Metro shall cooperate with the efforts of Omni to market the New Project, and shall encourage convention, visitors and tourism entities that promote the CBD to market and promote the New Project. In the event that Louisville Metro markets, promotes or advertises any retail, housing or hospitality facility located in the CBD, Louisville Metro shall market, promote and advertise the New Project in a similar manner.

D. Upon completion of the New Project, Louisville Metro shall maintain all public rights-of-way adjacent to and/or abutting the New Project in the same manner as provided for other similar rights-of-way in the CBD.

Section 4.09. Compliance with TIF Agreements. Louisville Metro and the Authority agree to comply with all material requirements and obligations contained in the Act, applicable to the New Project and the District, the Ordinance, the Grant Agreement (as amended), the Local Participation Agreement, and this Agreement and not to permit any event of default to occur that is not cured in a reasonable time during the term of this Agreement or the terms of the respective agreements, as appropriate.

Section 4.10. Additional Representations and Covenants of Louisville Metro and the Authority. Louisville Metro and the Authority represent and covenant as follows:

A. Louisville Metro is a Kentucky consolidated local government possessing the requisite authority to enter into this Agreement and to grant the rights provided for herein.

B. The Authority is a Kentucky non-profit corporation in good standing possessing the requisite authority to enter into this Agreement.

C. Neither Louisville Metro nor the Authority, in this Agreement nor in any schedule, exhibit, document or certificate delivered in accordance with the terms hereof, has made any untrue statement of a material fact or failed to state a material fact.

D. That prior to the closing, the Water Company Block is not threatened or materially adversely affected in any way as a result of earthquake, disaster, labor dispute, any action by the United States or any other governmental authority, riot, civil disturbance, uprising, activity of armed forces or act of God or enemy.

E. There shall be no mortgages, debt, mechanic liens or other encumbrances on the Water Company Block, as of the Property Closing.

Section 4.11. Representative of Louisville Metro and City Auditor.

A. Louisville Metro agrees that the Director of the Economic Development Department, or his designee shall act as its agent (the "**City Representative**") to receive any and all submissions and to grant any and all approvals, consents and/or permissions required to be given by Louisville Metro (except for regulatory approvals), pursuant to this Agreement and/or with respect to the New Project.

B. As provided in and Section 2.17, Louisville Metro shall immediately, upon the execution of this Agreement, employ, at its sole expense, a City Auditor, who shall be an existing employee of Louisville Metro or an outside contractor who shall monitor, evaluate and review all expenditures by Omni in connection with the New Project.

Section 4.12. Access to Land; Pre-Property Closings; Access to Water Company Block. Beginning on the Effective Date and until the Property Closings, Louisville Metro shall

permit Omni, Garage Contractor and PARC to enter upon the Water Company Block in connection with matters relating to the New Project.

Section 4.13. New Project Protection. For a period of seventy-two months (the "**Protection Period**") from the date the Hotel opens for business to the public (the "**Hotel Opening Date**"), Louisville Metro and the Authority agree that neither they nor any affiliated entity will acquire, commence development of, issue debt for, provide other incentives in support of, or otherwise own another hotel in excess of 400 rooms and within one mile radius of the Hotel, unless the cumulative amount of subsidies and incentives provided to such project is less than \$10,000,000.00.

Section 4.14. Street Modifications.

A. Subject to the approval of the Commonwealth of Kentucky and the Metro Council, Louisville Metro agrees to cause all portions of Third Street shown on the New Project Plans as loading areas to be made available for use by Users of the New Project as temporary loading and unloading areas, and shall cause Third Street between Liberty Street and Muhammad Ali Boulevard to be converted to two-way traffic prior to the Completion Date for the Hotel.

B. Prior to the Completion Date for the Hotel, Louisville Metro shall cause a median cut to be constructed in the median on Second Street to enable vehicles travelling north on Second Street to turn left into the New Project at a location approved by Omni.

C. Louisville Metro shall permit Omni to make streetscape improvements to West Liberty Street, between Second Street and Fourth Street, pursuant to plans and specifications approved by Louisville Metro, acting through the City Representative, which approval shall not be unreasonably withheld or delayed.

Section 4.15. Reserved.

Section 4.16. Demolition and Environmental Remediation. Louisville Metro shall demolish all structures on the New Project Parcel including the asphalt parking surface and all foundations to such structures prior to the Property Closing. Louisville Metro shall demolish all structures on the Future Development Parcel including the asphalt parking surface and all foundations to such structures within a reasonable time following notification from Omni that Omni intends to proceed with the development of the Future Development Parcel. Furthermore, to the extent any environmental remediation is required on the New Project Parcel or the Future Development Parcel, Louisville Metro shall reimburse Omni for all such environmental remediation costs within thirty (30) days of presentment of an invoice for any such costs.

ARTICLE V

COVENANTS AND UNDERTAKINGS OF PARC

Section 5.01. Purchase of Garage. Provided Omni constructs or causes to be constructed the Garage in accordance with the provisions of ARTICLE III of the Agreement, PARC agrees to purchase the Garage Unit as provided in ARTICLE III and this ARTICLE V.

Section 5.02. Garage Closing. The closing of the sale and purchase of the Garage Unit shall occur within thirty (30) days of completion of construction of the Garage pursuant to Section 3.05 of this Agreement (the "**Garage Closing**"), and shall be established by a written notice from PARC to Omni delivered not less than one (1) week prior to the proposed Garage Closing. The Garage Closing shall be held at 444 S. Fifth Street, Suite 600, Louisville, Kentucky 40202, or at such other place as is mutually agreed to by PARC and Omni.

At the Garage Closing, subject to Section 3.05 (J), (i) upon full payment of the Garage Purchase Price by PARC, Omni shall convey title via special warranty deed to the Garage Unit to PARC free and clear of all liens and encumbrances except for the Permitted Encumbrances and the Condominium Declaration, and (ii) PARC and Omni shall execute and record the Garage Operating Agreement as provided in Section 5.04 of this Agreement.

Section 5.03. Issuance of PARC Bonds. PARC agrees to pay the Garage Purchase Price by issuing bonds or other debt instruments (the "**PARC Bonds**") in an amount sufficient to pay the Garage Purchase Price.

The PARC Bonds shall be sold by PARC upon the satisfaction of the Conditions Precedent set forth in Section 8.02 of this Agreement (except for the Conditions Precedent requiring the issuance of the City Bonds and the PARC Bonds).

Section 5.04. Garage Operation Obligations.

A. After the Garage Closing, PARC shall be solely responsible for operating the Garage and at no time shall Omni be required to manage or operate the Garage. PARC may retain a private company to provide management services or security for the Garage, though PARC shall at all times be responsible for the operation and maintenance of the Garage without further agreement.

B. PARC shall maintain the Garage at all times in a first class manner, in good repair and condition comparable to or better than its maintenance of other parking facilities owned and operated by PARC and further in a manner that allows for the operation of a hotel consistent with the Minimum Hotel Operating Standards all as set forth in the Garage Operating Agreement (defined below).

C. Simultaneously with the Garage Closing, PARC shall enter into an operating agreement with Omni and/or the Grocery Operator, as appropriate, concerning the use of the Garage by the parties in a form reasonably acceptable to Omni and PARC ("**Garage Operating Agreement**").

At minimum the Garage Operating Agreement shall provide:

1. A perpetual and exclusive easement (the "**Hotel Parking Easement**") for the benefit of the Hotel Unit ("**Hotel Unit**") of the Condominium (hereinafter defined), allowing guests, employees and visitors of the Hotel to utilize at all times no fewer than 450 spaces in the Garage for Hotel employee, guest and visitor self-parking at market rates comparable to other PARC owned and operated parking facilities that serve hotels ("**Hotel Spaces**"), which Hotel Parking Easement shall constitute a real property interest that cannot be separated from the Hotel

Unit without the written approval of Omni or any successor owner of the Hotel Unit in their sole and absolute discretion;

2. That the Hotel may also use the Hotel Spaces for valet parking operated by the Hotel. PARC shall not charge the Hotel an additional charge for reserved parking spaces needed for the valet operation, but shall charge the same flat per ticket price for valet or self-park.

3. That, in the event parking demand for an event at the Hotel exceeds the available parking in the Garage, PARC agrees to make available spaces in nearby parking facilities owned and operated by PARC to handle the overflow parking demand, provided the Hotel gives PARC adequate notice of upcoming events at the Hotel which it anticipates will create overflow parking demand.

4. PARC and Omni agree to regularly consult concerning the usage of the Hotel Spaces in order to ensure adequate parking for Hotel guests and visitors and to allow PARC to utilize such unused parking spaces for the general public for such time period that the Hotel does not require use of such parking spaces.

5. A perpetual and exclusive easement (the "**Residential Parking Easement**") for the benefit of the Residential Unit of the Condominium, allowing the Apartment tenants to utilize at all times 330 parking spaces in the Garage for Apartment tenant parking ("**Residential Spaces**"). Apartment tenants shall pay a reduced residential parking rate for Residential Parking comparable to the residential rate in other garages owned and operated by PARC. The Residential Spaces shall be nested within the Garage and PARC shall be able to use unused Residential Spaces for monthly daytime parkers;

6. A perpetual and exclusive easement for the benefit of the Retail Unit, providing 40 designated spaces in the Garage for customers of the tenants of the Retail Space ("**Retail Spaces**") (the Hotel Parking Easement, the Residential Parking Easement and the Retail Parking Easement and referred to in this Agreement as the "**Parking Easements**"). Customers of the tenants of the Retail Space shall park free with appropriate ticket validation by a Retail Space tenant, pursuant to the Parking Validation Program as provided in subparagraph 7;

7. That PARC shall establish a parking validation program which permits customers of the Grocery or the Retail Space tenants to park in the Retail Spaces for a period of up to two (2) hours free of charge provided the Grocery or Retail Space tenant validates the parking ticket in a manner approved by PARC, but at no cost to Omni, the Grocery Operator, or any Retail Space tenant ("**Parking Validation Program**").

8. That the Garage shall contain space for a cart carrel, to be provided at the sole expense of Omni or the Retail Space tenant, for use by the customers of the Grocery and/or any Retail Space tenant in a size and in a location reasonably agreed upon by PARC and Omni.

9. That PARC, Omni and Grocery Operator agree to meet on an annual basis to review the operation of the Garage and the terms of the Garage Operating Agreement to ensure that it is reasonably meeting the needs of all parties thereto.

10. A definition of the Garage operating standards required to allow the Hotel to be in compliance with the Minimum Hotel Operating Standards.

Section 5.05. Reserved.

Section 5.06. Reserved.

Section 5.07. Requirement for Tax Reporting. PARC acknowledges that the Local Participation Agreement and the Grant Agreement entered into by the Authority for the New Project, pursuant to the Act, require the Authority to require businesses and persons within the District to obtain separate tax ID numbers and report information concerning taxes paid. Louisville Metro has enacted Louisville Metro Codified Ordinance Section 110.04 (B) which mandates businesses to obtain separate tax ID numbers for reporting Louisville Metro's occupational license fees. PARC agrees to use commercially reasonable efforts to require all applicable taxpayers within the Garage, including but not limited to businesses, employers, contractors and subcontractors, to obtain separate tax identification numbers for all State and City taxes paid or collected by them for activities occurring within the Garage and to report all required information concerning taxes paid or collected to the Authority on a timely basis, including:

1. A completed Tax Increment Financing Business Questionnaire for PARC and any lessees operating within the Garage, throughout the life of the Tax Increment Financing ("**TIF**");

2. A periodic tax report, for its own operations as well as any lessee operating within the Garage, no later than sixty (60) days after the end of each calendar year, evidencing the following taxes generated within the Garage and paid during the previous calendar year:

a. Total local occupational license fees withheld from or paid for employees working within the Garage and remitted to Louisville Metro during the previous calendar year;

b. Total state income taxes withheld from employees working within the Garage and remitted to the Kentucky Department of Revenue during the previous calendar year;

c. Total state sales taxes collected and remitted to the Department of Revenue during the previous calendar year on sales transacted within the Garage;

d. Total corporation and limited liability entity taxes remitted to the Kentucky Department of Revenue during the previous calendar year for all business units operating within the Garage.

Section 5.08. Additional Representations and Covenants of PARC. PARC represents and covenants as follows:

A. PARC is a Kentucky non-profit, non-stock corporation duly formed and validly existing under the laws of the Commonwealth with the power and authority to enter into this Agreement;

B. PARC is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, and applicable regulations;

C. The execution of this Agreement and the construction of the Garage by PARC will not violate any applicable statute, law, ordinance, code, rule or regulation or any restriction or agreement binding upon or otherwise applicable to PARC;

D. PARC, in this Agreement, has not made any untrue statement of a material fact or failed to state a material fact;

E. To PARC's knowledge, there are no actions, suits or proceedings pending or threatened against PARC which would, if adversely determined, affect PARC's ability to enter into this Agreement or construct the Garage in accordance with this Agreement.

ARTICLE VI

CONDOMINIUM AND FUTURE OPERATION OF THE NEW PROJECT

Section 6.01. Formation of Condominium. The Parties desire to develop an ownership structure which will allow them to effectively govern the rights and obligations of Omni and PARC with respect to the ownership and operation of the integrated New Project. In that regard, in conjunction with the development of the New Project, Omni and PARC will form a two-tiered condominium regime (the "**Condominium**") to govern the rights and obligations of Omni and PARC with respect to the ownership and operation of the New Project and the Future Development Parcel. The first tier of the Condominium will have two units, with one unit being the Garage Unit and the other unit being the remainder of the New Project. The second tier of the Condominium will consist of the remainder of the New Project (other than the Garage Unit) and will have the following units: (i) one or more units consisting of the Residential Space (the "**Residential Unit**"), (ii) one or more units consisting of the Retail Space (the "**Retail Unit**"), (iii) the Hotel Unit and (iv) the "**Future Development Parcel Unit**", consisting of the Future Development Parcel. A summary of the structure and key elements of the Condominium is attached to this Agreement as Exhibit K and made a part hereof for all purposes.

Section 6.02. Documentation of Condominium. As soon as practical after the Effective Date, but in any event prior to the Garage Closing, Omni and PARC shall negotiate in good faith the terms of the condominium declarations and other documents necessary to implement the Condominium structure consistent with the terms set forth in Exhibit K and the purposes of this Agreement (collectively, the "**Condominium Documents**").

Section 6.03. Operating Agreement. In addition to the Condominium Documents, Omni and PARC shall negotiate in good faith and enter into a Project Operating Agreement (herein so called) to govern the issues concerning the operation of the New Project, the Garage and the Future Development Parcel, as an integrated project that are not covered in the

Condominium Documents. It is contemplated that this Project Operating Agreement may be short term in nature and will change from time to time.

ARTICLE VII

SCHEDULE AND COORDINATION

Section 7.01. Project Time. All parties acknowledge that time is of the essence and each covenants and agrees to use commercially reasonable, good faith efforts to adhere to the Project Schedule as set out in Section 7.02 ("**Project Schedule**"), subject to applicable notice and cure provisions and except for delays caused by force majeure as provided in Section 13.05 and except as otherwise expressly provided in this Agreement. Except as otherwise provided in this Agreement, no milestone date set forth in the Schedule shall be changed by a party unless such party shall have obtained prior written approval from all other parties to the Agreement, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 7.02. Project Schedule. Omni, Louisville Metro and PARC agree that each shall use commercially reasonable, good faith efforts to meet the following milestone dates relevant to its element of the New Project:

PROJECT SCHEDULE

| Responsible Party | Milestone | Date to be Completed (" Completion Date ") |
|--------------------------------------|---|--|
| Louisville Metro, Authority and PARC | Obtain Municipal Approvals | Within 90 days of the effective date of this Agreement |
| Omni | Submit Schematic New Project Plans to City Representative | Within 90 days of the effective date of this Agreement |
| Louisville Metro, PARC | Approve Schematic Plans | 15 days after receipt |
| Omni | Submit applications for all permits necessary to commence construction of New Project | Within 10 months following the date of the City Representative's approval of the Schematic New Project Plans |
| Louisville Metro | Issue all permits necessary to commence construction of the New Project and complete demolition of all structures on site | |
| Louisville Metro and PARC | Sale of City Bonds and PARC Bonds | Within 30 days of the obtaining of all permits necessary to commence construction. |

| Responsible Party | Milestone | Date to be Completed (" Completion Date ") |
|-------------------|--|--|
| Omni | Commence construction of New Project | Within 30 days of the obtaining of all permits necessary to commence construction. |
| Omni and PARC | Hotel open to public and Garage and Retail Space (exclusive of User Improvements) Substantially Complete | 27 months after Obtaining Permits |
| Omni | Residential Unit Substantially Complete | 6 months after Substantial Completion of Hotel |

As used herein, "**Substantial Completion**" means substantial completion of the construction of the applicable improvements, excluding punch list items, site work, such as landscaping and paving, and any User Improvements and any improvements that are to be constructed by or for a governmental authority.

Notwithstanding the Project Schedule, the Hotel shall be open to the Public no later than March 31, 2018 (the "**Opening Date**") and the Retail Space (exclusive of User Improvements) shall be substantially completed by the Opening Date, provided that the Property Closing occurs no later than December 31, 2015. In the event the Property Closing occurs later than December 31, 2015, then the Opening Date shall be extended by a period equal to the period from December 31, 2015, to the date of the Property Closing. Omni shall use reasonable efforts to cause the Retail Space to be open to the public within sixty (60) days of the date that the Hotel initially opens to the public.

Section 7.03. Construction Advisory Team. Because of the need to coordinate scheduling of the various elements of the New Project by the parties, Omni, PARC and Louisville Metro agree to establish an advisory team to coordinate the construction of the elements of the New Project ("**Construction Advisory Team**"). The Construction Advisory Team shall consist of at least one representative from Omni, PARC, and Louisville Metro, a representative of the GC, the Building general contractor and the PARC Engineer. The Construction Advisory Team shall be appointed immediately upon the execution of this Agreement and shall meet regularly throughout the design and construction phases of the New Project in order to facilitate construction of the New Project, coordinate construction of the various elements of the New Project, and assist in the resolution of any issues which may arise between the parties during the construction of the New Project.

ARTICLE VIII

MUNICIPAL APPROVALS; CONDITIONS PRECEDENT

Section 8.01. Municipal Approvals.

A. The obligations contained herein for Omni to construct the New Project shall be contingent upon Louisville Metro, the Authority and PARC obtaining the following approvals and/or eliminating the following conditions (collectively, the "**Municipal Approvals**"):

1. The Metro Council, by resolution duly enacted, shall have declared the Water Company Block surplus to the needs of Louisville Metro and authorized the conveyance of the respective parcels as provided in Section 4.02;

2. The Metro Council, by ordinance duly enacted shall have authorized the issuance of the City Bonds and the use of the bond proceeds to fund the New Project Grant as provided herein;

3. Any and all historical designations and/or legal impediments relating to historical structures other than the Future Development Parcel Building have been removed or expired ("**Landmark Approval**") so as to allow the demolition of all existing structures on the Water Company Block and the construction of the New Project to proceed in a manner agreed to by the parties to this Agreement. This paragraph includes the structures and improvements on the Water Company Block and their potential designation as local landmarks, pursuant to Louisville Metro Codified Ordinances, Chapter 32;

4. KEDFA shall have approved an Amended and Restated Project Grant Agreement which includes approval as a "Signature TIF" pursuant to KRS 154.30-050 et seq. and includes approved public infrastructure costs, approved signature project costs and approved financing costs which in combination with anticipated Louisville Metro incremental revenues are estimated to be sufficient to permit Louisville Metro to issue the City Bonds, all as provided in Section 4.05 of this Agreement;

5. There shall have been no significant adverse change to the municipal bond market which reduces the total amount of bond proceeds of the City Bonds or unreasonably increases the borrowing costs for Louisville Metro for the City Bonds;

6. The Board of Commissioners of PARC shall have approved the purchase of the Garage Unit and the issuance of the PARC Bonds; and

7. The Metro Council shall have approved the issuance of the PARC Bonds in an amount sufficient to construct the Garage.

B. The Municipal Approvals must be obtained by the date provided in Section 7.02 (the "**Municipal Approval Deadline**"), provided however that if any legislative or administrative approval has not been formally obtained by that date but is pending before the appropriate legislative or administrative body and the City Representative reasonably anticipates that final approval will be obtained in a reasonable time, Omni will extend the time for such

Municipal Approval until the expected date of final approval and in such event all other dates and deadlines in this Agreement dependent upon such Municipal Approval Deadline shall be extended on a day for day basis from the scheduled Municipal Approval Deadline until all Municipal Approvals have actually been obtained.

Section 8.02. Conditions Precedent. The obligation of the parties to undertake the New Project and to undertake their respective obligations set forth herein shall be contingent upon the satisfaction or waiver of the following conditions precedent:

A. **Omni's Conditions Precedent.** Omni shall be under no obligation to construct the New Project and the OHC Guaranty shall have no force or effect unless the following conditions (the "**Omni Conditions Precedent**") have been satisfied or waived by Omni in its sole discretion, in writing:

1. All of Louisville Metro's, PARC's and the Authority's representations and warranties shall remain true and correct and Louisville Metro, PARC and the Authority shall have duly performed all of their obligations to be performed by that time under the Agreement;

2. Ordinance No 179, Series 2007, enacted by the Metro Council on September 13, 2007 shall remain in full force and effect;

3. On or before the Property Closings, Louisville Metro shall have delivered the parcels constituting the Water Company Block to Omni in accordance with Section 4.02 of this Agreement;

4. The Local Participation Agreement shall be in full force and effect;

5. The Municipal Approvals shall have been obtained and shall remain in full force and effect;

6. The City Bonds shall have been issued so that the New Project Grant can be paid as provided in Section 4.04;

7. The PARC Bonds shall have been issued so that construction of the Garage can commence in accordance with the Schedule;

8. Louisville Metro, acting through the City Representative, and/or PARC, as the case may be, shall have approved (a) the New Project Plans and Specifications in accordance with Section 2.04, and (b) the Garage Final Construction Plans in accordance with Section 3.04;

9. Omni shall have obtained all permits required to commence construction of the New Project;

10. Omni shall have received such other documents in Louisville Metro's, PARC's or the Authority's possession or control as Omni may reasonably request for the purpose of (a) evidencing the accuracy of any of the representations and warranties of Louisville Metro, PARC and the Authority, or (b) evidencing the performance by Louisville Metro, PARC or the Authority of, or the compliance by Louisville Metro, PARC or the Authority with, any covenant

or obligation required to be performed or complied with by each prior to commencing construction of the New Project or evidencing the satisfaction of any condition precedent referred to in this Section;

11. Omni shall have received a phase I environmental report, prepared by an engineer reasonably satisfactory to Omni showing the environmental condition of the parcels constituting the Water Company Block to be free of hazardous substances and otherwise acceptable to Omni.

12. All approvals under the DDRO have been received and each of the New Project Plans and Specifications and the Garage Final Construction Plans have been approved by the City Representative or PARC, as the case may be, pursuant to Section 2.04 and Section 3.03 of this Agreement, respectively.

13. Louisville Metro shall have delivered to Omni legal opinions from the County Attorney and Bond Counsel, as applicable, in forms reasonably acceptable to Omni, regarding the authority of Louisville Metro to (i) enter into this Agreement and to grant the rights provided for herein, (ii) convey the Parcels constituting the Water Company Block, (iii) issue the City Bonds and (iv) pay the New Project Grant to Omni, and regarding the authority of PARC to (a) issue the PARC Bonds and (b) purchase the Garage Unit.

14. Louisville Metro shall have complied with its obligations under Section 4.16 of this Agreement.

In the event each of the Omni Conditions Precedent have not been satisfied on or before December 31, 2016, and notwithstanding whether the City Conditions Precedent have been satisfied, Omni may terminate this Agreement, in which event (i) the OHC Guaranty shall also terminate and be of no further force or effect and (ii) Louisville Metro shall convey the Water Company Block to Omni by Special Warranty Deed free and clear of any liens or encumbrances in consideration for Omni's buyout of Cordish pursuant to the Cordish Buyout Agreement.

B. Louisville Metro's, PARC's and the Authority's Conditions Precedent. Louisville Metro, PARC and the Authority shall be under no obligation to undertake their respective obligations under this Agreement (except for the obligation to convey the Water Company Block as set forth in the preceding paragraph) that relate to Omni and the New Project unless the following conditions (the "City Conditions Precedent") have been satisfied, or waived by Louisville Metro, PARC and the Authority, in writing:

1. All of Omni's representations and warranties shall remain true and correct and Omni has duly performed all of its obligations to be performed under this Agreement;

2. Ordinance No. 179, Series 2007, enacted by the Metro Council on September 13, 2007, shall remain in full force and effect;

3. The Municipal Approvals shall have been obtained;

4. Omni shall have furnished to Louisville Metro a budget for the construction of the New Project that is sufficient to construct the New Project in accordance with the terms of this Agreement;

5. Louisville Metro shall have received satisfactory evidence that Omni has obtained sufficient financing, either equity or debt, to fully pay for the cost of the New Project in excess of the New Project Grant;

6. Louisville Metro shall have approved the New Project Plans and Specifications in accordance with Section 2.04;

7. Omni Hotels Corporation shall have provided to Louisville Metro the OHC Guaranty;

8. PARC and the PARC Engineer shall have approved the Garage Plans, in accordance with Section 3.03;

9. Omni shall have entered into the Garage Construction Contract with the Garage GC for construction of the Garage in an amount satisfactory to PARC and which provides for the payment of prevailing wage rates, pursuant to L.M.C.O. 37.75 for all labor furnished on the Garage;

10. Omni shall have entered into a construction contract with the New Project General Contractor which provides for the payment of prevailing wage rates pursuant to L.C.O. 37.75 for all labor finished on the New Project; and

11. Louisville Metro shall have received such other documents as it may reasonably request for the purpose of (a) evidencing the accuracy of any representation or warranty of Omni, (b) evidencing the performance by Omni of, or the compliance by Omni with, any covenant or obligation required to be performed or complied with prior to commencement of construction of the New Project by Omni, or (c) evidencing the satisfaction of any Omni Condition Precedent referred to in this Paragraph B.

C. Within thirty (30) days of the satisfaction or waiver of Omni Conditions Precedent and the City Conditions Precedent set forth in subparagraphs A and B of this Section, respectively:

1. Louisville Metro shall convey the Water Company Block to Omni;

2. Louisville Metro shall pay the New Project Grant to Omni as provided in Section 4.04 of this Agreement; and

3. Omni shall commence or cause to be commenced construction of the New Project.

ARTICLE IX

TERM

Section 9.01. Term of Agreement. Except as otherwise provided in Section 10.02 of the Agreement, this Agreement has a term that commences on the Effective Date and, unless this Agreement is otherwise terminated, shall terminate on the date the City Bonds (including any refunding bonds) are fully paid off (the "**Term**"). This Agreement shall automatically terminate and be void and of no further force and effect in the event that (i) the Municipal Approvals are not obtained as required by Section 8.01 hereof, or (ii) the Conditions Precedent set forth in Section 8.02 have not occurred on or before December 31, 2016 (the "**Condition Precedent Deadline**"). Upon the termination of this Agreement as provided in the immediately preceding sentence, the OHC Guaranty shall immediately terminate and be of no further force or effect.

ARTICLE X

EVENTS OF DEFAULT

Section 10.01. Events of Default by Omni. Each of the following shall constitute an "**Event of Default by Omni**":

A. The failure of Omni to perform or to observe any covenant, obligation or requirement of this Agreement and the continuation of such failure for thirty (30) days after receipt of written notice from Louisville Metro and/or the Authority specifying the nature and extent of any such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of Omni to (i) commence to cure such default within such thirty (30) day period and (ii) diligently continue to pursue such efforts to cure completion;

B. The failure of Omni to commence construction of the New Project or the Garage by the date specified in the Project Schedule and the continuation of such failure for thirty (30) days after receipt of written notice from Louisville Metro and/or the Authority, or if such default cannot be reasonably cured within such thirty (30) day period, the failure of Omni to (i) commence to cure such default within such thirty (30) day period and (ii) diligently continue to pursue such efforts to completion.

C. The filing by Omni of a voluntary proceeding or the consent by Omni to an involuntary proceeding under the present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

D. The entering of an order for relief against Omni or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Omni in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days.

Section 10.02. Events of Default by Louisville Metro, PARC or the Authority.

Each of the following shall constitute an "**Event of Default by Louisville Metro, PARC or the Authority**".

A. The failure of Louisville Metro, PARC or the Authority to perform or to observe any covenant, obligation or requirement of this Agreement and the continuation of such failure for thirty (30) days after receipt of written notice from Omni specifying the nature and extent of any such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of Louisville Metro, PARC or the Authority to (i) commence to cure such default within such thirty (30) day period and/or (ii) diligently continue to pursue such efforts to cure completion;

B. The failure of Louisville Metro, PARC or the Authority to perform or to observe any non-monetary covenant, obligation or requirement contained in ARTICLE IV or V of this Agreement, and the continuation of such failure for thirty (30) days after receipt of written notice from Omni specifying the nature and extent of such default, or if such default cannot reasonably be cured within such thirty (30) day period the failure of Louisville Metro, PARC or the Authority (i) to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such efforts to cure to completion or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30) day period, in no event to exceed ninety (90) days after the written notice of such default.

C. The filing by Louisville Metro, PARC, or the Authority of a voluntary proceeding or the consent by Louisville Metro, PARC, or the Authority to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

D. The entering of an order for relief against Louisville Metro, PARC, and/or the Authority or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Louisville Metro, PARC, and/or the Authority in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

E. The failure of Louisville Metro, PARC, and/or the Authority to pay or advance or cause to be paid or advanced when due any sum of money owed by Louisville Metro, PARC, and/or the Authority to Omni under this Agreement or required to be paid or advanced by Louisville Metro, PARC, and/or the Authority under or in connection with any provision of this Agreement and the continuation of such failure for thirty (30) days after written notice from Omni specifying the nature and extent of any such default.

Section 10.03. Remedies of Louisville Metro. Should an Event of Default by Omni occur and not be cured within the applicable cure period, Louisville Metro may exercise any and all remedies available to it at law or in equity. All remedies shall be cumulative and not restrictive of other remedies. This Agreement shall terminate with respect to the defaulting party upon written notice to such party by Louisville Metro and/or the Authority.

Section 10.04. Remedies of Omni. Should an Event of Default by Louisville Metro, the Authority or PARC occur, and not be cured within the applicable cure period, then Omni may

terminate this Agreement upon written notice to Louisville Metro, the Authority or PARC and, in addition, may exercise any and all remedies available to them at law or in equity. Upon termination by Omni pursuant to this Section 10.04, the OHC Guaranty shall also terminate and be of no further force or effect. All remedies shall be cumulative and not restrictive of any remedies.

Section 10.05. Reserved.

Section 10.06. Damages. Notwithstanding any provision of this Agreement to the contrary, the parties hereby agree in any action hereunder against the other to seek recovery only of actual damages incurred, and each party waives any right to recover punitive and/or consequential damages as a result of any Event of Default by the other parties under this Agreement. Notwithstanding the preceding sentence, Louisville Metro shall be entitled to make a claim for consequential damages of up to \$2 million in the aggregate against Omni for an Event of Default by Omni.

Section 10.07. Design Approval Process. Because of the importance of maintaining the project schedule, if the Parties are in disagreement regarding any design or construction issues or approval rights related thereto (including payments conditioned upon approvals, such as in Section 3.05.G), the Parties, within fifteen (15) days after the first notice given under this Agreement regarding such dispute, shall submit such dispute to an independent design consultant in Louisville, Kentucky, with each party to bear their own costs and expenses and with each party to share the fees and expenses of the consultant equally. The duration of the consultant review shall be limited to one (1) business day. The Parties will cooperate in selecting an independent design consultant experienced in disputes of the subject and nature under dispute within sixty (60) days from the effective date of this Agreement. The consultant's decision shall be binding.

ARTICLE XI

MORTGAGEE RIGHTS

Section 11.01. Right to Mortgage. Notwithstanding any other provisions of this Agreement, Omni shall at all times have the right to encumber, pledge, grant, or convey its rights, title and interest in and to the New Project, or any portion or portions thereof, and/or to this Agreement by way of a mortgage, pledge, assignment or other security agreement (a "**Mortgage**") to secure the payment of any loan or loans obtained by Omni to finance or refinance any portion or portions of the New Project. The beneficiary of or mortgagee under any such Mortgage is hereby referred to herein as a "**Mortgagee**".

Section 11.02. Notice of Breaches to Mortgagees. In the event Louisville Metro and/or the Authority gives written notice to Omni of a breach of its obligations under this Agreement, Louisville Metro and/or the Authority shall forthwith furnish a copy of the notice to the Mortgagees that have been identified to Louisville Metro and/or the Authority by Omni. To facilitate the operation of this Section 11.02, Omni shall at all times keep Louisville Metro and the Authority provided with an up-to-date list of Mortgagees.

Section 11.03. Mortgagee May Cure Breach of Omni.

A. In the event that Omni receives notice from Louisville Metro and the Authority of a breach by Omni of any of its obligations under this Agreement and such breach is not cured by Omni pursuant to the provisions of this Agreement, Louisville Metro and the Authority shall, in addition to the notice provided in Section 11.03 hereof, give notice of the failure to cure on the part of Omni to the applicable Mortgagees at the expiration of the period within which Omni may cure as set forth in this Agreement. Any one of the Mortgagees may proceed to cure any such failure and such Mortgagee, if it elects to cure such default, shall give Louisville Metro and the Authority written notice of its intention so to cure within thirty (30) days after the receipt of the additional notice herein set forth. In the event that any Mortgagee elects to proceed to cure any such default, such Mortgagee shall do so within the applicable cure period contained in this Agreement; provided, however, that the commencement of the cure period for the Mortgagee shall commence on the date the Mortgagee notifies Louisville Metro and the Authority of the Mortgagee's election to cure such default and each applicable cure period shall be deemed doubled in length for Mortgagee.

B. In the event any Mortgagee elects to exercise its rights of foreclosure under a Mortgage (or appoint a receiver or accept a deed and/or assignment-in-lieu of foreclosure), after foreclosure of Omni's interest in and to the New Project or any portion thereof (or after the appointment of a receiver or the obtaining of Omni's interest in and to the New Project or any portion thereof via deed and/or assignment-in-lieu of foreclosure), such Mortgagee may at its option:

1. elect to assume the position of Omni hereunder in which case, in the event Louisville Metro and the Authority have terminated this Agreement or suspended the distribution of any funds that Louisville Metro and/or the Authority are obligated to provide to the bond trustee and/or Omni pursuant to this Agreement, Louisville Metro and the Authority agree that this Agreement shall be deemed reinstated and Louisville Metro and the Authority shall commence the distribution of such funds in accordance with the provisions of this Agreement and, in which case, such Mortgagee shall cure any default by Omni hereunder that the Mortgagee had received notice of in accordance with the provisions of Section 11.03 hereof within the timeframes contained in this Agreement and shall cause the New Project to be substantially completed in accordance with the provisions of this Agreement; or

2. elect not to reinstate the provisions of this Agreement. The Mortgagee shall have the right so to elect 1. above of this Section 11.03.B only if it shall exercise such right within six (6) months after the receipt of the additional notice herein set forth. For purposes of this Section 11.03 the term "Mortgagee" shall include not only the "Mortgagee", as that term is defined in Section 11.01 hereof, but shall also include any person or entity that obtains Omni's interest in and to any one or more of the Units as a result of a Mortgagee's exercise of its foreclosure rights or the transfer of Omni's interest in and to any one or more of the Units at the direction of the Mortgagee by Omni to a person or entity by deed and/or assignment-in-lieu of foreclosure.

Section 11.04. Rights and Duties of Mortgagee. In no event shall any Mortgagee be obliged to perform or observe any of the covenants, terms or conditions of this Agreement on the

part of Omni to be performed or observed, or be in any way obligated to complete the improvements to be constructed in accordance with this Agreement, nor shall it guarantee the completion of improvements as hereinbefore required of Omni, whether as a result of (a) its having become a Mortgagee, (b) the exercise of any of its rights under the instrument or instruments whereby it became a Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (c) the performance of any of the covenants, terms or conditions on the part of Omni to be performed or observed under this Agreement, or (d) otherwise, unless such Mortgagee shall either make the election set forth in Section 11.03.B.1 of this Agreement or shall specifically elect under this Section 11.04 to assume the obligations of Omni by written notice to Louisville Metro and the Authority whereupon such Mortgagee, upon making any such election as aforesaid, shall then and thereafter for all purposes of this Agreement be deemed to have assumed all of the obligations of Omni hereunder.

Section 11.05. Mortgagee's Rights Agreements. Louisville Metro and the Authority covenant and agree with Omni that Louisville Metro, acting by and through the City Representative, and the Authority, shall, at the request of Omni made from time to time and at any time, enter into a lender's rights agreement with any Mortgagee (or potential Mortgagee) identified by Omni, which lender's rights agreement shall be consistent with the terms and provisions contained in this ARTICLE XI of this Agreement that apply to Mortgagees and Mortgages. Within thirty (30) days of Omni's request for a lender's rights agreement pursuant to the provisions of this Section 11.05, time being of the essence, Louisville Metro, acting through the City Representative, and the Authority, shall execute and deliver to Omni such a lender's rights agreement benefiting the identified Mortgagee (or potential Mortgagee) and such Mortgagee's Mortgage (or potential Mortgagee's potential Mortgage), which executed lender's rights agreement shall be in a form and substance that are reasonably acceptable to such Mortgagee (or potential Mortgagee) and that is consistent with, and at the option of such Mortgagee (or potential Mortgagee) incorporates, the terms and provisions of this ARTICLE XI that apply to Mortgagees and Mortgages (such as the Mortgagee notice provisions and the Mortgagee cure rights provisions of this ARTICLE XI).

ARTICLE XII

TRANSFERS

Section 12.01. Hotel.

A. Restrictions on Hotel Transfer and Permitted Transfers relating to the Hotel. Prior to the Hotel Opening Date and for six (6) years thereafter (the "**Omni Lockout Period**"), Omni may not sell, assign, transfer or otherwise convey the Hotel or its interest therein (a "**Hotel Transfer**") except for a Transfer (a "**Permitted Hotel Transfer**") to a corporation, limited liability company, partnership or other entity that controls Omni, that is more than fifty percent (50%) owned by TRT Holdings, Inc. ("**TRT**"), that is controlled by TRT Holdings, Inc. or that is under common control with TRT Holdings, Inc. (an "**Omni Affiliate**"). Commencing upon the expiration of the Lockout Period and continuing until the ninth (9th) anniversary of the Hotel Opening Date, Omni may complete a Hotel Transfer to any third party, so long as the Hotel continues to be branded as an "Omni Hotel" and continues to be managed by Omni Hotels Management Corporation or another Omni Affiliate. From and after the ninth (9th) anniversary

of the Hotel Opening Date (the "**Restriction Termination Date**"), Omni may complete a Hotel Transfer to any third party without restriction. Notwithstanding anything to the contrary set forth herein, nothing in this Section 12.01 shall prohibit a Hotel Transfer to an Omni Affiliate, nor any sale by Omni or TRT of substantially all of the assets of Omni or TRT, nor any change in control of Omni Hotels Corporation or TRT). Furthermore, the restrictions in this Section 12.01 shall not apply to a bona fide institutional lender in the event such lender takes possession of the Hotel by foreclosure or deed-in-lieu of foreclosure and Louisville Metro shall cooperate in providing any reasonable documentation of the above to any such lender.

B. Restrictions on Residential Space Transfers and Retail Space Transfers; Permitted Transfers. Prior to the substantial completion of the New Project (exclusive of User Improvements) and for six (6) years thereafter (the "**Residential/Retail Lockout Period**"), Omni may not sell, assign, transfer or otherwise convey the Residential Space, the Retail Space or its interest therein (each, a "**Residential/Retail Transfer**") except (i) as permitted under Section 2.03.F of this Agreement, (ii) for leases in the ordinary course of business, (iii) for sales of individual Apartments to third-parties following conversion of the Apartments into individual condominium units, (iv) for transfers of interests in the Residential Space or in the Omni Sub LLC that owns such interest to a third party to enable Omni or an Omni Sub LLC to obtain government insured/guaranteed financing for the construction of the Apartments, or (v) for a transfer to a corporation, limited liability company, partnership or other entity (each, an "**Omni Affiliate**") that controls, is controlled by, or is under common control with, Omni (each of the transfers described in items (i) through (v) being a "**Permitted Residential/Retail Transfer**"). Notwithstanding anything to the contrary set forth herein, nothing in this Section 12.01 shall prohibit a transfer of the Residential Space, the Retail Space or interests therein to an Omni Affiliate, nor any sale by Omni of substantially all of the assets of Omni, nor any change in control of Omni. Furthermore, nothing in this Section 12.01 shall apply to a bona fide institutional lender in the event such lender takes possession of the New Project by foreclosure or deed-in-lieu of foreclosure, and Louisville Metro shall cooperate in providing any reasonable documentation of the above to any such lender.

Section 12.02. Approval of Louisville Metro.

A. Notwithstanding the restrictions set forth in Section 12.01.A, if any time Omni desires to make a Hotel Transfer that is not a Permitted Hotel Transfer prior to the end of the Restriction Termination Date, provided that Omni is not in default of any of its material obligations under this Agreement after the expiration of any applicable notice and cure period, Omni may only make a Hotel Transfer upon receipt in advance of the written consent of Louisville Metro, acting by and through the City Representative, which consent shall not be unreasonably withheld or delayed, but may be conditioned on (i) the prior approval of the assignee or successor and a finding by Louisville Metro that the proposed assignee or successor will operate and market the Hotel under a "first tier flag" brand name reasonably acceptable to Louisville Metro acting by and through the City Representative (Westin, Sheraton, Marriott, Hilton, Renaissance, Hyatt or another national full-service hotel similar to Omni), and is financially capable of operating the Hotel in accordance with the Minimum Hotel Operating Standards, and (ii) prior execution by the proposed assignee or successor of a written agreement with Louisville Metro acting by and through the City Representative, under which the proposed assignee or successor agrees to assume all covenants and obligations of Omni.

B. Notwithstanding the restrictions set forth in Section 12.01.B, if any time Omni desires to make a Residential/Retail Transfer that is not a Permitted Residential/Retail Transfer prior to the end of the Residential/Retail Lockout Period, provided that Omni is not in default of any of its material obligations under this Agreement after the expiration of any applicable notice and cure period, Omni may only make a Residential/Retail Transfer upon receipt in advance of the written consent of Louisville Metro, acting by and through the City Representative, which consent shall not be unreasonably withheld or delayed, but may be conditioned on (i) the prior approval of the assignee or successor and a finding by Louisville Metro, acting by and through the City Representative, that the proposed assignee or successor is financially capable of operating the applicable portion of the New Project in accordance with this Agreement, and (ii) prior execution by the proposed assignee or successor of a written agreement with Louisville Metro, acting by and through the City Representative, under which the proposed assignee or successor agrees to assume all covenants and obligations of Omni with respect to the applicable portion of the New Project.

Section 12.03. Collateral Assignment Not Prohibited. Notwithstanding the foregoing, in the event that Omni elects to finance any portion of the costs of the New Project with an institutional lender, Omni shall have the right to collaterally assign its interest in this Agreement and other definitive agreements to its lender. Any such collateral assignment and the foreclosure thereon by such lender or a transfer in lieu of foreclosure shall be a Permitted Hotel Transfer or a Permitted Residential/Retail Transfer, as applicable.

ARTICLE XIII

MISCELLANEOUS

Section 13.01. Governing Law. This Agreement, the construction thereof and the rights and obligations of the parties hereunder, shall be governed in all respects by the laws of the Commonwealth of Kentucky.

Section 13.02. Severability. Each and every provision hereof, including Articles, Sections, and Subsections shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability or illegality of any such provision shall not affect the enforceability of any other provision hereof.

Section 13.03. Section Headings and Captions. The section headings and captions in this Agreement are for convenience of reference only and shall not affect the construction of the terms and provisions hereof.

Section 13.04. Time of the Essence; Mutual Extension; Diligent Performance. Time shall be of the essence with respect to the duties and obligations imposed on the parties hereto. Where any time for performance or otherwise is set forth herein, such time may be extended by mutual agreement of Louisville Metro, PARC, the Authority and Omni. With respect to any duty or obligation imposed on a party to this Agreement, unless a time is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent manner and to complete the performance of such

duty or obligation as soon as reasonably practicable after commencement of performance thereof.

Section 13.05. Force Majeure. In the event that Louisville Metro, the Authority, PARC, or Omni shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of any act of God, governmental action or inaction, unusually severe weather conditions, earthquakes, floods, strikes, lock-outs, labor troubles, shortage of materials, failure of power, riots, insurrection, terrorism, war, litigation or other reason, condition or event not within the reasonable control of such party in performing the acts required under the terms of this Agreement, such as the failure or default of one or more other Parties to this Agreement of its obligations hereunder, or any other cause beyond the control of Omni, then performance of such shall be extended for a period equivalent to the period of such delay.

Section 13.06. Notices. Whenever a notice is required or permitted to be given to a Party hereunder, such notice shall be in writing and shall be deemed to have been made when hand delivered or two (2) business days after being deposited in the United States mail or UPS Overnight addressed to the Parties, or to such other address as the receiving Party shall have notified the sender, as follows:

If to Louisville Metro: Economic Development Department
444 S. Fifth Street, Ste. 600
Louisville, KY 40202
Attn: E. Jeffrey Mosley

If to the Authority: Metro Development Authority, Inc.
444 S. Fifth Street, Ste. 600
Louisville, KY 40202
Attn: Mary Ellen Wiederwohl

If to PARC: Parking Authority of River City, Inc.
411 West Muhammad Ali Boulevard
Louisville, KY 40202
Attn: Executive Director

If to Omni: Omni Louisville, LLC
4001 Maple Avenue, Suite 400
Dallas, TX 75219
Attn: Mike Garcia

With a copy to: Omni Louisville, LLC
4001 Maple Avenue, Suite 600
Dallas, Texas 75219
Attn: Michael G. Smith

And a copy to:

Winstead PC
500 Winstead Building
2728 North Harwood
Dallas, TX 75201
Attn: T. Andrew Dow

Section 13.07. Entirety of Agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement of the Parties with respect to the matters set forth herein, and all prior agreements and understandings, among Louisville Metro, the Authority, PARC and Omni are merged herein. The Exhibits to this Agreement constitute a material part hereof and are incorporated by reference herein. This Agreement may not be modified, amended or revoked, except in writing, executed by an authorized representative of Omni, PARC, the Authority and Louisville Metro.

Section 13.08. Brokers and Finders; Fees and Expenses. Louisville Metro, the Authority, PARC and Omni each represent and warrant to the others that it has engaged no broker or finder in connection with the negotiation of this Agreement, and each Party indemnifies and holds to the extent permitted by law the others harmless against any claims for fees for such services by any person or firm claiming under or through such Party. Each party hereto shall bear its own respective expenses and costs for legal, accounting and administrative services in connection with the negotiation of this Agreement and consummation of the transactions contemplated hereby, except as mutually agreed to by the Parties. Each Party hereto indemnifies and holds the others harmless, to the extent permitted by law, against any claims for fees for such services any person or firm claiming under or through such Party.

Section 13.09. Successors and Permitted Assigns for the Parties Hereto. This Agreement shall be binding on and shall inure to the benefit of the Parties named herein and their respective successors and assigns.

Section 13.10. Estoppels. Each of the Parties hereto agrees to provide to the others, or to such third parties as may be reasonably requested by the others, written estoppels from time to time certifying, among other matters, the continued viability of this Agreement, the absence of any defaults hereunder (or, if defaults exist, specifying in detail the nature of such defaults), the status of the obligations of the Parties each to the other, and such other matters as may reasonably be requested by the Party requesting such estoppel certificate(s).

Section 13.11. No Third Party Beneficiaries; No Partnership or Joint Venture Created. Each of the Parties hereto agrees that nothing contained in this Agreement shall be deemed or construed by any of them, or by any third party, as creating any relationship of third party beneficiary, principal and agent, general partnership or joint venture or any other association or relationship among Omni, PARC, the Authority and Louisville Metro. The terms and provisions of this Agreement are solely for the benefit of each of the parties hereto, their successors and permitted assigns, and shall not benefit in any manner any person not a Party to this Agreement.

Section 13.12. No Abrogation of Legal Requirements. Nothing contained herein shall be construed to permit any Party to violate any applicable law, regulation or code.

Section 13.13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

Section 13.14. Binding Effect. Each of the Parties hereto covenants and warrants that (i) it is duly authorized to transact business in the Commonwealth of Kentucky, (ii) the person executing this Agreement on behalf of a Party is duly authorized by such Party to sign and execute this Agreement on its behalf, (iii) this Agreement is a valid and binding obligation on the Party and enforceable in accordance with its terms, and (iv) it is the intention of each of the Parties to this Agreement that it shall be binding and legally enforceable in accordance with its terms.

Section 13.15. Provisions Not Merged with Deeds and Other Agreements. This Agreement shall not terminate upon the Property Closings or the Garage Closing, and the provisions of this Agreement shall not be deemed to be merged into any deeds or other agreements executed and delivered at the Property Closings or the Garage Closing.

Section 13.16. Right to Representation. Each Party to this Agreement has had the opportunity to have counsel of its choice review this Agreement and such Party's obligations hereunder on its behalf prior to such Party's execution and delivery of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having or being deemed to have drafted, structured or dictated such provision. All Parties have freely negotiated this Agreement.

Section 13.17. Further Assurances. Each Party hereto will, whenever and as often as they shall be requested so to do by another Party hereto, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further assignments, confirmations, instruments of further assurance, approvals, consents and any and all such further instruments and documents as may be necessary, expedient or proper in the reasonable opinion of such Party's counsel used in this transaction in order to complete any and all transfers, admissions and assignments provided for therein.

Section 13.18. Confidentiality. Louisville Metro, PARC and the Authority acknowledge and agree that any information provided by Omni concerning the cost of developing the New Project, the terms of any financing of the New Project, and information furnished pursuant to Section 2.13, Section 2.17, and Section 3.06 constitute "**confidential financial information**" and may contain "**trade secrets**" and "**confidential information**". Accordingly, Louisville Metro, PARC and the Authority, to the fullest extent permitted by applicable law, shall deny public inspection of such information. The parties acknowledge that Louisville Metro, PARC and the Authority are public agencies and therefore subject to the open records law as set forth in KRS 61.870 through 61.884. Louisville Metro, PARC and the Authority agree to deny the right to inspect the above described documents as exempt from inspection pursuant to KRS 61.878 unless ordered to disclose such documents by an opinion of the Kentucky Attorney General or a court of competent jurisdiction. Omni agrees to use commercially reasonable efforts to identify all documents furnished to Louisville Metro, PARC or the Authority which it considers to be confidential or proprietary as "**CONFIDENTIAL AND PROPRIETARY INFORMATION**".

Section 13.19. Representatives Not Individually Liable. No member, official, representative, or employee of Louisville Metro, PARC, and/or the Authority (including but not limited to the City Representative) shall be personally liable to Omni or any successor in interest in the event of any default or breach by Louisville Metro, PARC, and/or the Authority for any amount which may become due to Omni or successor or on any obligations under the terms of this Agreement. No partner, member, representative, or employee of Omni or any of their respective employees, representatives, managers or members shall be personally liable to Louisville Metro and/or the Authority in the event any default or breach by Omni for any amount which may become due to Louisville Metro and/or the Authority or on any obligations under the terms of this Agreement.

Section 13.20. Payment or Performance on Saturday, Sunday, or Holiday. Whenever the provisions of this Agreement call for any payment or the performance of any act on or by a date that is a Saturday, Sunday, or legal holiday of the Commonwealth, including the expiration date of any cure periods provided herein, then such payment or such performance shall be required on or by the immediately succeeding day that is not a Saturday, Sunday, or legal holiday of the Commonwealth.

Section 13.21. Incorporation Into Agreement and Recitals. The recitals set forth above are true and correct and are incorporated herein by reference and made a part of this Agreement.

Section 13.22. Conflict of Terms. It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render a provision valid and enforceable, then the provision shall have the meaning which renders it valid and enforceable.

Section 13.23. No Waiver. No failure on the part of a Party to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other Party to enforce the same in the event of any subsequent default.

Section 13.24. No Representations or Warranties Not Expressly Made. Each Party hereby acknowledges that no representations or warranties have been made by any other party to this Agreement except as expressly set forth in this Agreement. Each party has had an ample opportunity to consult with advisors and consultants of its choosing, and has made an independent determination to undertake its obligations as set forth in this Agreement.

Section 13.25. Effectiveness. Notwithstanding anything herein to the contrary, this Agreement shall not become effective unless and until the time that the assignment of the Cordish Agreement as contemplated in the Cordish Buyout Agreement becomes effective.

INTENTIONALLY LEFT BLANK

IN TESTIMONY WHEREOF, witness the signatures of the authorized representatives of the parties hereto as of the day and year first written above.

"OMNI"

OMNI LOUISVILLE, LLC

By: [Signature]
Title: President

Approved as to Form and Legality

Michael J. O'Connell
Jefferson County Attorney

By: [Signature]
Assistant County Attorney

Date: 12-5-2014

"LOUISVILLE METRO"

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT

By: [Signature]
Greg Fischer
Mayor

"PARC"

PARKING AUTHORITY OF
RIVER CITY, INC.

By: [Signature]
Title: CHAIRMAN

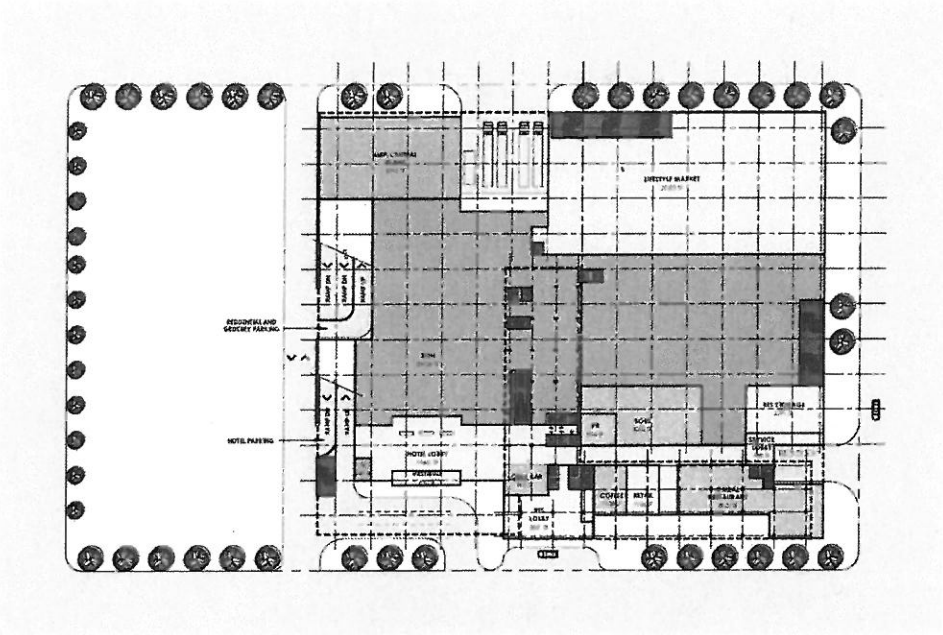
"THE AUTHORITY"

METRO DEVELOPMENT AUTHORITY,
INC.

By: [Signature]
Title: President

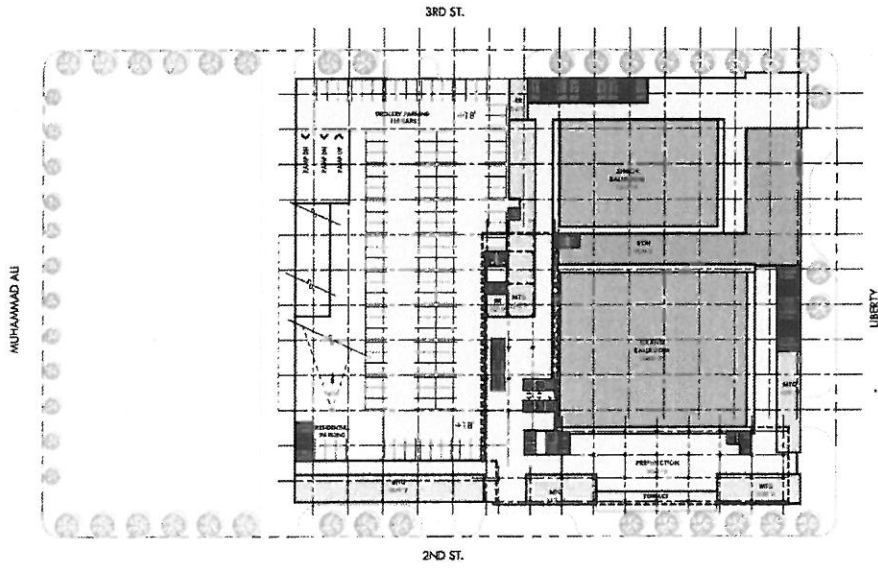
EXHIBIT A
RESERVED

EXHIBIT B
PROJECT PLANS
[Follows this page]



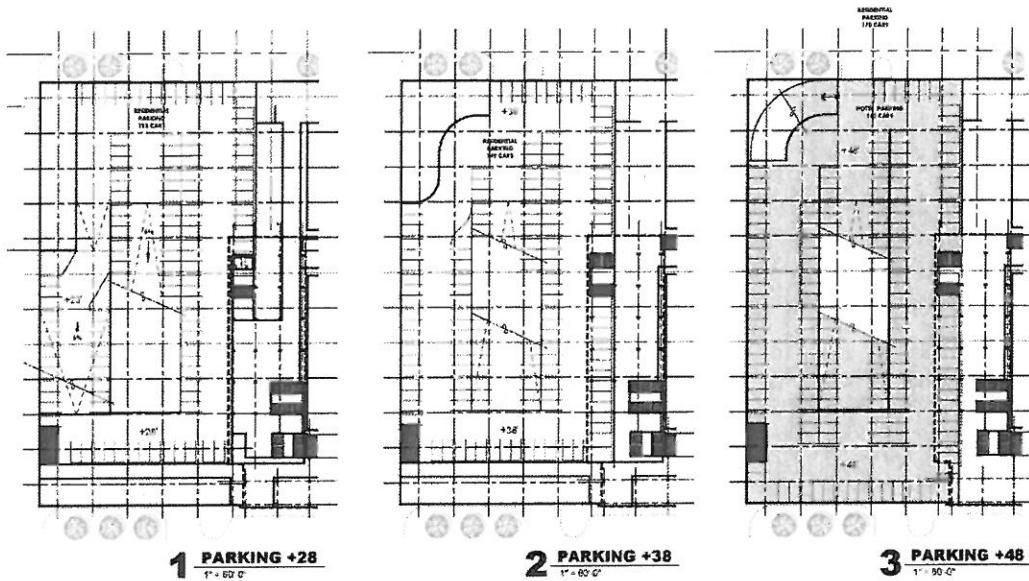
HKS | 11.10.2014 | OMNI LOUISVILLE, KENTUCKY

LEVEL 1
GROUND FLOOR PLAN
1 1 1 1



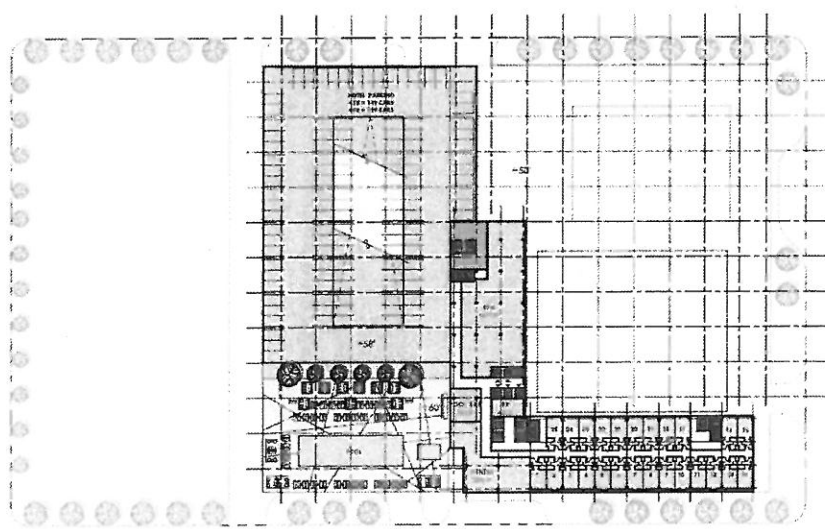
HKS | 11.10.2014 | OMNI LOUISVILLE, KENTUCKY

+20 LEVEL 2
BALLROOM LEVEL
1 1 1 1



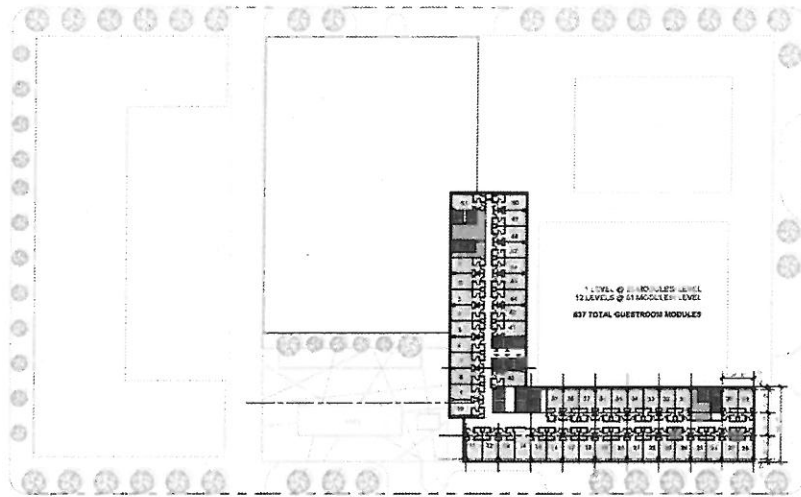
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PARKING +28/+38/+48
 1 1 1



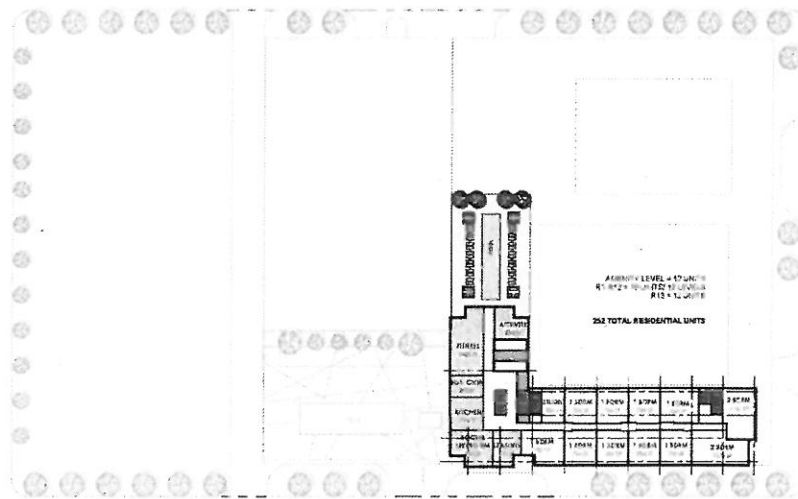
HKS | 11.10.2014 | OWNI LOUISVILLE, KENTUCKY

LEVEL 4
 +50 SPA / POOL DECK
 1 1 1



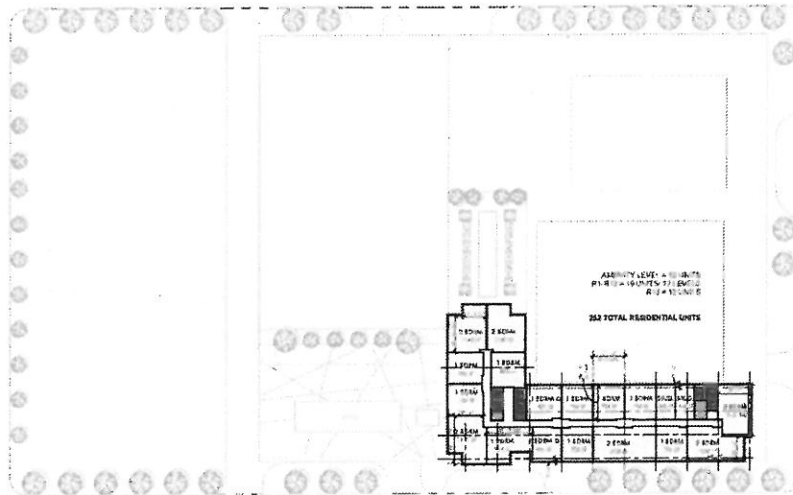
HKS | 11.10.2014 | OWNI LOUISVILLE, KENTUCKY

LEVEL 5-16
TOWER
1 1 1 1 1



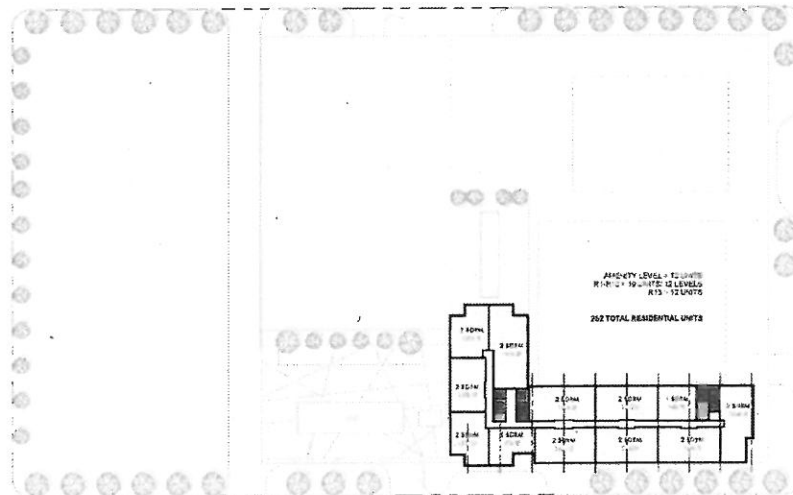
HKS | 11.10.2014 | OWNI LOUISVILLE, KENTUCKY

UPPER POOL DECK LEVEL
1 1 1 1 1



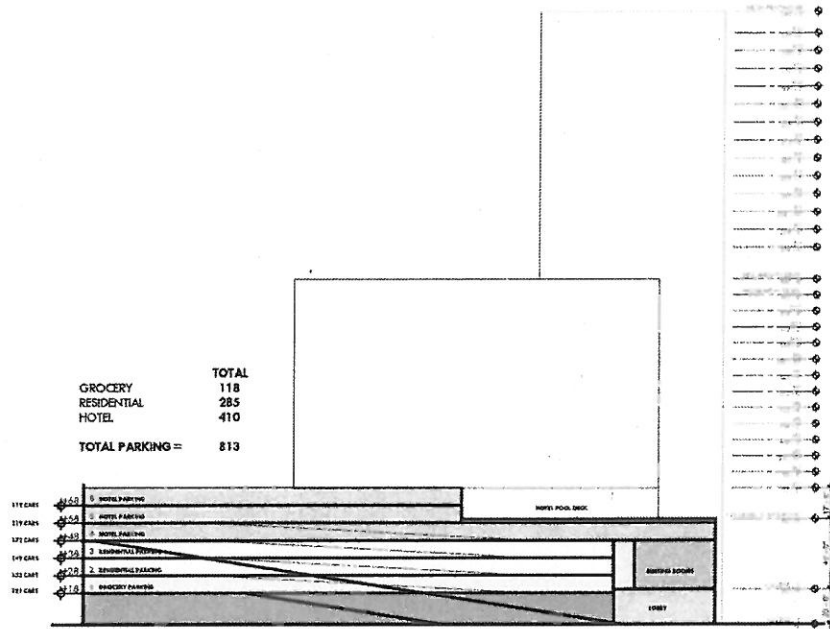
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LEVEL R1
 TYPICAL RESIDENTIAL LEVEL
 1 1 1 1 1



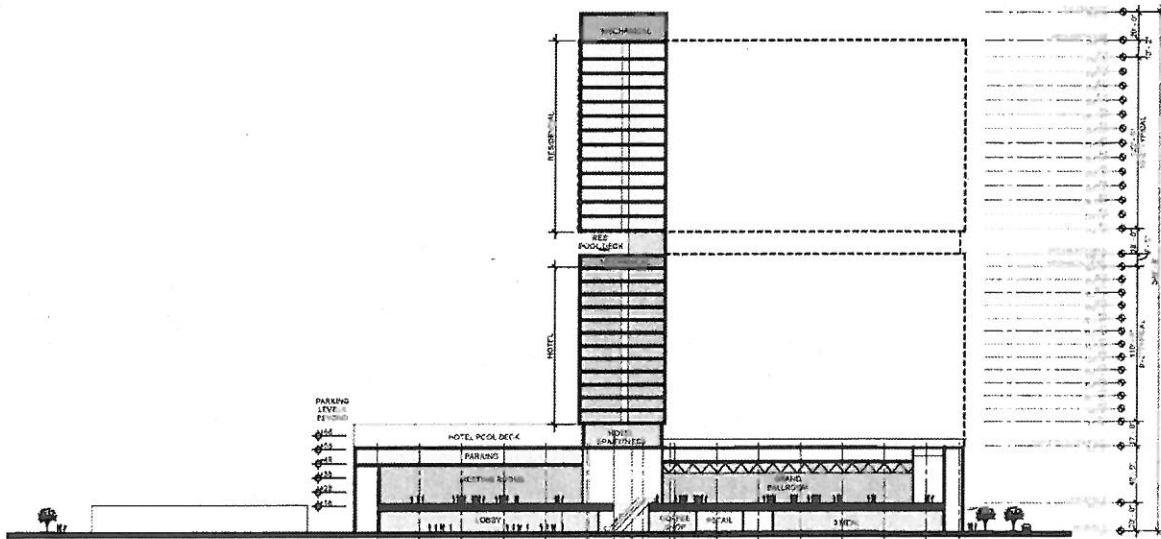
HKS | 11.10.2014 | OMNI LOUISVILLE, KENTUCKY

LEVEL R13
 RESIDENTIAL PENTHOUSE LEVEL
 1 1 1 1 1



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PARKING SECTION
1 1 1 1 1



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BUILDING SECTION
1 1 1 1 1