AMENDED AND RESTATED

REDEVELOPMENT AGREEMENT

BY AND AMONG

THE CITY OF PEORIA

AND

EM PROPERTIES, LTD.

AND

PERE MARQUETTE HOTEL, LLC

AND

PERE MARQUETTE TIF, INC.

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AMENDED AND RESTATED
REDEVELOPMENT AGREEMENT BY AND AMONG
THE CITY OF PEORIA AND EM PROPERTIES, LTD. AND
PERE MARQUETTE HOTEL, LLC AND PERE MARQUETTE TIF, INC.

This **AMENDED AND RESTATED REDEVELOPMENT AGREEMENT** ("Agreement") by and among THE CITY OF PEORIA, ILLINOIS, a municipal corporation (the "City"), and EM PROPERTIES, LTD., an Illinois corporation ("EM"), PERE MARQUETTE HOTEL, LLC, an Illinois limited liability company ("Hotel Owner") and PERE MARQUETTE TIF, INC., an Illinois corporation ("TIF Member"), is entered into this ___ of October, 2011 (the "Effective Date"). Hotel Owner and TIF Member are collectively referred to as the "Redeveloper".

RECITALS

WHEREAS, the City has adopted a program for the redevelopment of a redevelopment project area known as the Hospitality Improvement Zone Redevelopment Project Area (the "Redevelopment Project Area" or the "TIF District") in the City, pursuant to 65 ILCS 5/11-74.4-1, *et seq*. of the Illinois Compiled Statutes, the "Tax Increment Allocation Redevelopment Act", as supplemented by the Local Government Debt Reform Act, as amended, and the other Omnibus Bond Acts, as amended (the "TIF Act"); and

WHEREAS, the City has, pursuant to the provisions of the Act, adopted a plan known as the Hospitality Improvement Zone Tax Increment Redevelopment Plan (the "Redevelopment Plan") pertaining to the redevelopment of the Redevelopment Project Area, a copy of which is available for inspection in the office of the City Clerk of the City; and

WHEREAS, the City has adopted a program to assure opportunities for development and redevelopment known as the Hospitality Improvement Zone Business District (the "Business District") pursuant to 65 ILCS 5/11-74.3, *et seq.* of the Illinois Compiled Statutes, as supplemented by the Local Government Debt Reform Act, as amended, and the other Omnibus Bond Acts, as amended (the "Business District Act"); and

WHEREAS, the City has, in connection with its designation of the Business District, adopted and approved the Hospitality Improvement Zone Business District Development Plan (the "Business District Plan") pertaining to the redevelopment of the Business District, a copy of which is available for inspection in the office of the City Clerk of the City; and

WHEREAS, as provided in the Business District Act, the City will impose certain additional sales and hotel taxes within the Business District, the receipts of which are expected to be available to assist in the redevelopment of the Business District; and

WHEREAS, the City, in order to achieve the objectives of the Redevelopment Plan, intends to assist the Redeveloper in (i) the rehabilitation of the Hotel Pere Marquette into a two hundred eighty-four (284) room Marriott Hotel and related facilities and the construction of a one hundred sixteen (116) room Courtyard Inn & Suites (collectively, the "Hotels", and each a

"Hotel"), on the real property located on Schedule 1 attached hereto and incorporated herein (the "Hotels Site"), and (ii) the construction of a structured parking facility containing four hundred sixty-six (466) parking spaces (the "Parking Deck") on the real property located on Schedule 2 attached hereto and incorporated herein (the "Parking Deck Site", and together with the Hotel Site, the "Project Site"); and

WHEREAS, Redeveloper, consistent with the Redevelopment Plan, intends to purchase the Project Site, which property is depicted on Schedule 3 attached hereto and incorporated herein; and

WHEREAS, in order to enhance the quality of life in the City, to provide an economic stimulus to the area of the City within which the Project Site is located in order to attract other private development which will enhance the tax base of the City and to further the objectives of the Redevelopment Plan, the City pursuant to its Home Rule Powers under Article 7 of the Constitution of the State of Illinois, the powers granted to the City pursuant to each of the TIF Act and the Business District Act, as supplemented by the power and authority of the City as a Home Rule Municipality, intends to assist the Redeveloper to help alleviate certain costs of the Redeveloper in the redevelopment and construction of the Project; and

WHEREAS, the City believes it is necessary to redevelop the Project Site in order to arrest the economic and physical decline of the Redevelopment Project Area, and to promote a policy of stabilization not only in the Redevelopment Project Area and the Business District, but also in the surrounding area of the City; and

WHEREAS, to support the Redeveloper in the construction and operation of the Project, the City is willing to provide the Redeveloper the incentives set forth in this Agreement; and

WHEREAS, without the assistance of the City as set forth in this Agreement, the Redeveloper would not redevelop the Project Site; and

WHEREAS, the City and EM have entered into that certain Redevelopment Agreement between the City of Peoria and EM Properties, Ltd. dated on or about June 2, 2010 (the "Original Agreement"); and

WHEREAS, certain disputes have arisen between the parties in connection with the Original Agreement (the "Disputes"); and

WHEREAS, the parties hereto intend to enter into this Agreement to settle said Disputes and amend, restate and supersede the provisions of the Original Agreement, which such Original Agreement shall no longer be in effect upon the execution of this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations of the parties hereto, each of them does hereby covenant and agree as follows:

ARTICLE I: DEFINITIONS

1.1 Definition of Terms. Certain terms used in this Agreement including any exhibits, amendments or schedules thereto shall have the following meanings unless their content or use clearly indicates otherwise:

"Agreement" means this Redevelopment Agreement, complete with all schedules and exhibits attached hereto, as it may be amended or supplemented from time to time.

"Applicable Law" means the TIF Act, the Business District Act, and all other laws, statutes, acts, ordinances, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of all Governmental Authorities, that now or hereafter during the term of this Agreement may be applicable to the City, the Redeveloper, and/or the Project, the Project Site, the Redevelopment Plan and the construction, maintenance, use and operation thereof, including those relating to design standards, employees, zoning, building, health, safety, Hazardous Materials, and accessibility of public facilities.

"Bonds" means the bonds issued by the City to fund its obligations under this Agreement, the Redevelopment Plan and the Business District Plan.

"Bond Construction Funds" means, pursuant to Section 5.1 below, the funds to which the proceeds of the Bonds have been deposited for the payment of construction costs for the Project pursuant to the Bond Documents.

"Bond Counsel" means Chapman and Cutler LLP, or, in the event Chapman and Cutler LLP is unwilling or unable to act as hereinafter provided, such nationally recognized legal counsel in the area of municipal bonds which have been designated by the City.

"Bond Documents" means any and all contracts, agreements, indentures, resolutions, ordinances and other documents or instruments entered into or adopted by the City in connection with the issuance of any Obligations.

"Business District Act" means 65 ILCS 5/11-74.3-1 *et seq*., as amended from time to time, and as further supplemented and amended by the Local Government Debt Reform Act, as amended, and the other Omnibus Bond Acts, as amended, and as may be superseded by the home rule powers of the City under Section 6 of Article VII of the 1970 Constitution of the State of Illinois.

"Business District" means the Hospitality Improvement Zone Business District designated by the City Count of the City on the 10th day of November, 2008, pursuant to the Business District Act.

"Business District Plan" means the Hospitality Improvement Zone Business District Development Plan heretofore approved by the City Council of the City on the 10th day of November, 2008, pursuant to the Business District Act.

"Business District Taxes" means the one percent (1%) retailers' occupation and service occupation taxes and hotel taxes imposed by the City pursuant to Sections 11-74.3-6 of the Business District Act.

"Cash Flow" means cash revenues from the operation of the Project.

"Certificate of Completion" means a certificate issued by the City, pursuant to Section 3.9 below, which indicates that the Redeveloper has Substantially Completed the Project or a phase or a part thereof.

"City Notice to Proceed" means that certain written notice to the City notifying the City that the Redeveloper is ready to proceed with the Financing Closing.

"Closing Date" shall mean the date upon which the Redeveloper acquires all real property located within the Project Site.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

"Connector" means the all-weather, climate controlled elevated pedestrian bridge or walkway connecting the Hotels and Parking Deck to the Peoria Civic Center and other reasonable facilities for ingress and egress to the Hotels, Parking Deck and Peoria Civic Center. Said Connector shall meet American With Disabilities Act requirements. Although a portion of said Connector is located beyond the boundaries of the Project Site, the Connector remains an integral part of the Project.

"Construction Contract" means that certain AIA Document A141 – 2004, by and between GEM Hospitality, LLC and CORE Construction Services of Illinois, Inc., dated as of August 15, 2011, as subsequently assigned to Hotel Owner.

"Construction Monitor" means any individual or entity engaged by the City, at the City's own expense, to (i) review and recommend to the City with respect to the Plans and Specifications, construction contracts, change orders during construction and Draw Requests with regard to the Project, (ii) inspect the construction of the Project, and (iii) monitor any other matters with regard to this Agreement and/or the Project as directed by the City.

"Construction Period Interest Rate" means a fixed per annum rate equal to zero percent (0%).

"Costs of the Project" means the costs and expenses related to the development of the Project in order to make it available for occupancy including, but not limited to, (i) property acquisition; (ii) demolition and removal of all existing buildings, structures and other improvements within the Redevelopment Project Area, (iii) site preparation, including clearing and grading of the Redevelopment Project Area; (iv) construction, reconstruction, rehabilitation or renovation of the commercial buildings and structures, parking structures and other physical construction activities; (v) screening and site landscaping; (vi) construction, reconstruction, renovation and/or rehabilitation of related infrastructure and/or improvements, including without limitation, surrounding roads, sidewalks, utilities and installation of lighting; (vii) environmental remediation; (viii) architectural and engineering design services and related consulting specialties; (ix) interior design and decorating; (x) purchase of FF&E, inventory and supplies necessary to begin Hotel operations; (xi) pre-opening marketing and operational expenses; (xii) interest expense related to the financing of the Project; (xiii) development fees, franchise fees and other ancillary and related expenses; and (xiv) all other work described in the Redevelopment Plan and this Agreement, or reasonably necessary to effectuate the intent of this Agreement. Notwithstanding the foregoing, with respect to the development fees, such fees shall be no more than allowed by the Internal Revenue Service in connection with the receipt of Federal Historic Preservation Tax Credits for the existing Hotel, and, the funded development fee for the Project shall be zero percent (0%).

"Design Concept Plan" means the initial plans for the Project to be provided by the Redeveloper pursuant to Section 3.3 below, which plans shall show the conceptual layout of the Project on the Project Site including the integration of the design and operation of the Project, the anticipated areas of ingress and egress, parking, driveways, the proposed relationship to the Redevelopment Plan and the anticipated elevation of the Project or any phase thereof, types of uses, the relationship to the real property adjacent to the Project Site, which Design Concept Plan shall contain the Exterior Architectural Appearance of the Project.

"Draw Requests" means the schedule to be submitted by the Redeveloper to the City during the term of this Agreement pursuant to a Master Disbursement Agreement (to be agreed to) detailing (i) the amounts incurred by the Redeveloper or the Redeveloper's contractor in connection with the construction of the Project, and (ii) the respective amounts approved for payment in accordance with this Agreement. The payment to be made from the Bond Construction Funds shall be made on a *pari passu* (50-50) basis equal with the proceeds of the Senior Debt, as more particularly set forth herein. The Project Loan shall be funded in full on the Financing Closing Date.

"Effective Date" means that which is set forth in the Preamble of this Agreement.

"EM" means EM Properties, Ltd., an Illinois corporation.

"Environmental Laws" means all statutes specifically described in the definition of Hazardous Materials and all federal, state and local environmental, health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

"Equity" means the Redeveloper's cash contribution to pay Project costs.

"Exterior Architectural Appearance" means the architectural character, general composition and general arrangements of the exterior of the Project and the adjacent plazas and pedestrian areas, including the kind, color and texture of the building material and the type and character of all windows, doors, light fixtures, signs and appurtenant elements, visible from public streets and thoroughfares.

"Federal Historic Preservation Tax Credits" mean the tax credits allowable pursuant to Section 47 of the Code for qualified rehabilitation expenditures incurred in connection with the "certified rehabilitation" of a "certified historic structure."

"FF&E" means those items of furnishings, fixtures and equipment for use in the operation of the Project.

"Final Completion" means the date upon which the following shall have occurred: (i) final completion of the Project in accordance with the Plans and Specifications as evidenced by the issuance of a certificate by the architect or architects of the components of the Project to such effect; (ii) the issuance of any approval of construction required under the Bond Documents or the Franchise Documents; (iii) a certificate of occupancy has been issued for each component of the Project; and (iv) all of the guest rooms, food outlets, meeting rooms and other facilities in the Hotels and Parking Deck are fully completed, open, and operational.

"Final Project Cost Analysis" means the statement of actual costs and expenses of the construction and development of the Project including the costs of the Project submitted by the Redeveloper to the City in certified form after completion of the Project.

"**Financing Closing**" is defined in Section 8.7.2.

"**Financing Closing Date**" means the date upon which the Financing Closing occurs.

"Franchise Documents" means that certain Management Agreement by and between Courtyard Management Corporation and GEM Hospitality, LLC, dated as of August 17, 2011, as subsequently assigned to Hotel Owner, and that certain Management Agreement by and between Marriott Hotel Services, Inc. and GEM Hospitality, LLC dated as of August 17, 2011, as subsequently assigned to Hotel Owner.

"Franchisor" means initially Marriott Hotel Services, Inc. and Courtyard Management Corporation, or any successor franchisor under any license or franchise agreement for the Hotels, reasonably acceptable to the City.

"Franchisor Requirements" means all requirements imposed upon the Project pursuant to the Franchise Documents.

"Governmental Approvals" means all plat approvals, re-zoning or other zoning changes, site or development plan approvals, conditional use permits, resubdivisions or other subdivision approvals, variances, sign approvals, building permits, grading permits, occupancy permits, liquor licenses (to the extent possible), changes to the size of the Redevelopment Project Area or made in accordance with this Agreement, street closings, street vacations and dedications, business licenses and/or other similar approvals required for the implementation or operation of the Project and consistent with the Redevelopment Plan, the Business District Plan and this Agreement.

"Governmental Authority" means any agency, authority, board, branch, division, department or similar unit of any Federal, state, county or municipal or other governmental entity having jurisdiction over or validly imposing requirements on the City, Redeveloper, the Project and the Project Site.

"Hazardous Materials" means any substance, material, waste, gas or particulate matter which is regulated by any local, state or federal governmental authority, including, but not limited to (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl, (iv) radioactive materials, and (v) any other material or substance which is defined as a "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste", or "restricted hazardous waste" under any statute, rule or regulation of any jurisdiction including without limitation Section 311 of the Clean Water Act, Section 1004 of the Resource Conservation and Recovery Act, and Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act.

"Historic Approvals" means collectively, (i) the application for the building at the Hotels Site to be a "certified historic structure" as defined in Section 47(c)(3) of the Code, as approved by the NPS; (ii) Part 2 of the historic preservation application and plans for rehabilitation of the Hotel submitted to and approved by the National Park Service ("NPS"); and (iii) Request for Certification of Completed Work (Form 10-168c) submitted to and approved by the NPS pursuant to Part 3 of the historic preservation application whereby the rehabilitation of the Hotel has been determined to constitute the "certified rehabilitation" of a "certified historic structure".

"Hotel Owner" means Pere Marquette Hotel, LLC, an Illinois limited liability company.

"Hotels" mean (i) the rehabilitated Hotel Pere Marquette, which name may be changed to a Marriott or comparable upscale full-service hotel, to reflect franchise affiliation, into an upscale

full-service hotel having two hundred eighty-four (284) guest rooms and appropriate support facilities such as a restaurant(s), a lounge(s), ballrooms, meeting rooms, fitness center, business center, supporting back-of-the-house areas, and food preparation facilities, and (ii) the newly constructed Courtyard Inn & Suites or comparable special service hotel having one hundred sixteen (116) rooms, an indoor swimming pool, large enough to serve the Hotels, and accessible from the rehabilitated Hotel Pere Marquette. With respect to the rehabilitation of the existing structure, such rehabilitation shall be undertaken in accordance with the Historic Approvals.

"Hotels Site" means the real property shown on Schedule 1 attached hereto and made a part hereof.

"Master Disbursing Agreement" means a disbursing agreement by and between the Senior Lender, the City and the Redeveloper in connection with the disbursement and funding of the Senior Debt and the Project Grant.

"Obligations" means Bonds, Redeveloper Notes or other obligations, singly or in one or more series, issued by the City in relation to or secured by any portion of the Revenues or as provided in this Agreement.

"Operating Expenses" mean all expenses of operation of the Project in the reasonable discretion of the Redeveloper, including without limitation, costs of utilities, maintenance, repairs and necessary replacements, real estate taxes, insurance premiums, professional fees, miscellaneous expenses, guaranteed payments, and any deposit to cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures, including funding of the reserves, if any, in such amounts as may be required by any creditor or may be determined from time to time by the Redeveloper.

"Parking Deck" means the structured parking facility owned by the Redeveloper containing parking for four hundred sixty-six (466) vehicles and fifteen thousand five hundred (15,500) square feet of commercial space to be located on or adjacent to the Parking Deck Site, to be constructed as part of the Project, pursuant to the Plans and Specifications.

"Parking Deck Site" means the real property shown on Schedule 2 attached hereto and made a part hereof.

"Permits" means all licenses, approvals, permits, variances, authorizations, entitlements, registrations, and the like required by any Governmental Authority.

"Plans and Specifications" means the Schematic Drawings for the Project, as such plans and specifications have been approved by the City pursuant to that certain letter from the City of Peoria Corporation Counsel Randy Ray to Redeveloper dated September 22, 2010.

"Project" means the Hotels, the Parking Deck, the Connector and all related FF&E, landscaping, and other ancillary improvements, amenities and features to be included in the construction and development thereof.

"Project Cost Analysis" means the statement of actual or estimated costs and expenses of the Project in order to make it available for occupancy including but not limited to architectural and engineering design services and related consulting specialties, physical construction activities, interior design and decorating, purchase of FF&E, purchase of inventory and supplies necessary to begin Project operations, pre-opening marketing and operational expenses, interest expense related to a construction loan, development fees and other ancillary and related expenses and as

the same may be amended, modified, restated or supplemented from time to time by the Redeveloper. Notwithstanding the foregoing, (i) with respect to the pre-opening marketing and operational expenses, and other ancillary and related expenses, such expenses shall be no more than the industry standard for a similar quality project; (ii) with respect to the development fees, such fees shall be no more than allowed by the Internal Revenue Service in connection with the receipt of Federal Historic Preservation Tax Credits for the existing Hotel, and, the funded development fee for the Project shall be zero percent (0%); and (iii) with respect to other fees or costs to be paid to Redeveloper or a related entity, such costs shall be no greater than that which would be charged by an unrelated third party in an arm's-length transaction for the Project.

"Project Grant" means the financial contribution of the City, made pursuant to Section 5.1 of this Agreement, to the Redeveloper.

"Project Loan" means the term loan made by the City to the Redeveloper pursuant to Article VI of this Agreement.

"Project Site" means the Hotels Site and the Parking Deck Site.

"Redeveloper" means Hotel Owner and TIF Member (and any permitted successors or assigns hereunder).

"Redeveloper Note(s)" means any note issued by the City to reimburse the Redeveloper for any portion of the Reimbursable Project Costs as hereinafter provided.

"Redevelopment Project Area" means the Hospitality Improvement Zone Redevelopment Project Area, heretofore designated by the City pursuant to the TIF Act.

"Reimbursable Project Costs" means those Costs of the Project or such other costs incurred by, or to be paid by the City on behalf of, the Redeveloper which are eligible for reimbursement or payment in accordance with the TIF Act or Business District Act.

"Schematic Drawings" means those certain Downtown Peoria Marriott Hotel Project – Hotel Site Plans and accompanying drawings dated May 3, 2010.

"Seller Financing Debt" means certain loans made by the sellers of portions of the Project Site to Redeveloper, in the amounts of Three Million and 00/100 Dollars ($3,000,000.00) and One Million Four Hundred Fifty Thousand and 00/100 Dollars ($1,450,000.00).

"Senior Debt" means that certain loan made by Senior Lender to Redeveloper in the approximate amount of Thirty Million and 00/100 Dollars ($30,000,000.00) for the Project.

"Senior Debt Documents" means any and all agreements, instruments and documents, including without limitation, all security agreements, loan agreements, notes, letter of credit applications, guarantees, mortgages, deeds of trust, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, notices, leases, financing statements and all other written matter at any time executed by or on behalf of the Redeveloper and delivered to the Senior Lender, together with all and all amendments, modifications, supplements, renewals, extensions, increases and rearrangements of, and substitutions for, any of the foregoing, and together with all agreements, instruments and documents referred to therein or contemplated thereby.

"Senior Lender" means National Real Estate Advisors, or an affiliate.

"**State Historic Preservation Tax Credit**" means the Historic Preservation Tax Credit under 35 ILCS 30 of the Illinois Compiled Statutes, available to the Project for the rehabilitation, renovation and reconstruction of the Project.

"Substantial Completion or Substantially Complete(d)" means complete construction, except for minor and ancillary alterations or additional work, so as to be available for the issuance of a certificate of occupancy pursuant to codes of the City.

"Taxable" means the status of interest paid on any Obligation as not excludable from the gross income of the owners thereof for federal income tax purposes.

"Tax Credit Equity" means Federal Historic Preservation Tax Credit and State Historic Preservation Tax Credit equity presently estimated to be in the amount of approximately $15,000,000.00.

"Tax Credit Investors" means any investor who has received Federal Historic Preservation Tax Credits or State Historic Preservation Tax Credits.

"Tax-exempt" means the status of interest on Bonds as excludable from the gross income of the owners thereof for federal income tax purposes.

"TIF Act" means the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11 74.4-1 *et seq.* as it may be amended from time to time, and as further supplemented and amended by the Local Government Debt Reform Act, as amended, and other Omnibus Bond Acts, as amended, and as may be superseded by the home rule powers of the City under Section 6 of Article VII of the 1970 Constitution of the State of Illinois.

"TIF Member" means Pere Marquette TIF, Inc., an Illinois corporation.

"TIF Revenues" means the ad valorem taxes, if any, arising from the tax levies upon the taxable real property in the Redevelopment Project Area by any and all taxing districts or municipal corporations having the power to tax real property in the Redevelopment Project Area, which taxes are attributable to the increase in the then current equalized assessed valuation of each taxable lot, block, tract or parcel of real property in the Redevelopment Project Area over and above the total initial equalized assessed value of each such taxable property within the Redevelopment Project Area, all as determined by the County Clerk of the County of Peoria, Illinois, in accordance with the TIF Act.

1.2 **Construction of Words**. The words "hereof", "herein", "hereunder" and other words of similar import refer to this Agreement as a whole. The words "above" or "below" refer to the location of an Article, Section or other subdivision of this Agreement within this Agreement. Unless otherwise specified, references to Articles, Sections and other subdivisions of this Agreement are to the designated Articles, Sections and other subdivisions of this Agreement as originally executed. The headings of this Agreement are for the convenience of reference only and shall not limit or define the provisions hereof.

1.3 **Use of the Definitions**. Each of the foregoing definitions and basic provisions shall be construed in conjunction with the references thereto contained in the other provisions of this Agreement and shall be limited by such other provisions. Each reference in this Agreement

to any of the foregoing definitions and basic provisions shall be construed to incorporate each defined term set forth above under such definition or provision

1.4 **Joint and Several Obligations**. All of the obligations of the Redeveloper under this Agreement shall be joint and several obligations of Hotel Owner and TIF Member.

ARTICLE II: DESCRIPTION OF THE PROJECT

2.1 **The Project**. The Project shall consist of the Hotels, the Parking Deck and the Connector, all as conceptually depicted on Schedule 3 attached hereto. The Hotels consist of (i) the rehabilitated Hotel Pere Marquette, which name may be changed to reflect franchise affiliation, into an upscale full-service hotel having two hundred eighty-four (284) guest rooms and appropriate support facilities such as a restaurant(s), a lounge(s), ballrooms, meeting rooms, fitness center, business center, supporting back-of-the-house areas, food preparation facilities, together with such other amenities and features characteristic of a first-class, full-service hotel, as determined by Redeveloper in its sole discretion, and (ii) a newly constructed Courtyard Inn & Suites or comparable special service hotel having one hundred sixteen (116) guest rooms, an oversized indoor pool large enough to serve the Hotels, and accessible from the rehabilitated Hotel Pere Marquette. With respect to the rehabilitation of the existing structure, such rehabilitation shall be undertaken in accordance with the Historic Approvals. The Redeveloper agrees that it will employ reasonable and good faith efforts to incorporate green aspects in the construction of the Courtyard Inn & Suites. The Parking Deck is the structured parking facility owned by the Hotel Owner containing parking for four hundred sixty-six (466) vehicles and fifteen thousand five hundred (15,500) square feet of commercial space to be located on or adjacent to the Parking Deck Site, to be constructed as part of the Project, pursuant to the Plans and Specifications. The Connector is the all-weather, climate controlled elevated pedestrian bridge or walkway connecting the Hotels and Parking Deck to the Peoria Civic Center and other reasonable facilities for ingress and egress to the Hotels, Parking Deck and Peoria Civic Center. Said Connector shall meet American With Disabilities Act requirements. Although a portion of said Connector is located beyond the boundaries of the Project Site, the Connector remains an integral part of the Project. The Project also anticipates the inclusion of five (5) restaurants to be located within the Hotels or Parking Deck, two of which are anticipated to be fine dining restaurants.

Notwithstanding the foregoing, prior to any Material Change to the Project, the Redeveloper shall obtain the advance written consent of the City, which consent as to a Material Change may be withheld in the City's sole discretion. For purpose of this Section 2.1, "Material Change" shall mean any change that would (a) increase or decrease the final total number of rooms in either Hotel by five percent (5%), (b) increase or decrease the final total number of parking spaces contained in the Parking Deck by five percent (5%), or (c) increase or decrease the final total number of square feet of commercial space to be located on or adjacent to the Parking Deck Site by five percent (5%).

2.2 **The Estimated Costs of Project**. The estimated Costs of the Project is set forth on Schedule 4 attached hereto and incorporated herein.

ARTICLE III: ACQUISITION OF PROJECT SITE AND CONSTRUCTION OF THE PROJECT

3.1 **Acquisition**. Redeveloper represents that, as of the date of this Agreement, Hotel Owner or a related entity is the fee owner of, or has contracts or option contracts for the purchase of, the Project Site, excluding the existing alley located on the Project Site. Notwithstanding the foregoing, the parties acknowledge that the Project Site currently occupied by the ballroom located within the Hotel Pere Marquette, shall be ground leased. Any additional properties acquired by the Redeveloper for completion of the Project shall be held in the name of the Hotel Owner or a related entity and shall be subject to the terms, conditions, and covenants contained herein and in the Redevelopment Plan immediately upon acquisition. As of the Financing Closing Date, Redeveloper represents that Hotel Owner shall be the fee owner of the Project Site, excluding the existing alley located on the Project Site, and the holder of a ground leasehold interest in that certain portion of the Project Site currently occupied by the ballroom located within the Hotel Pere Marquette.

3.2 **Commencement and Completion Requirements**.

3.2.1 **Commencement**. The Redeveloper shall commence construction of the Project within forty-five (45) days of the Financing Closing Date. At any time prior to the date the Redeveloper sends the City the City Notice to Proceed with the Financing Closing (as set forth in Section 8.7.1 hereof), the Redeveloper may, by giving written notice to the City, abandon the Project and terminate this Agreement and the Redeveloper's further obligations hereunder, if the Redeveloper determines, in its sole discretion, that the Project is no longer economically feasible. Upon such termination, the City shall have no obligation to reimburse the Redeveloper any amounts whatsoever.

3.2.2 **Completion of the Project**. The Redeveloper shall complete construction of the Project not later than three and one-half (3 ½) years after the Financing Closing Date (subject to Force Majeure as defined in Section 3.2.3 of this Agreement). In the event of any delay caused by an event of Force Majeure, Redeveloper shall be granted additional time to complete the Project, but under no circumstance shall such time to complete the Project extend beyond four and one-half (4 ½) years after the Financing Closing Date. For the purpose of this Section 3.2, "completion of construction" means the complete construction of the Project, except for minor and ancillary alterations or additional work, so as to make such element of the Project eligible for a certificate of occupancy and assessment of tax levy. The Redeveloper shall be responsible for any cost overruns.

3.2.3 **Force Majeure**. Neither the City nor the Redeveloper nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by Force Majeure (except as expressly limited in Section 3.2.2), including without limitation damage or destruction by fire or casualty; strike; lockout; civil disorder; war; restrictive government regulations; lack of issuance of any Permits and/or legal authorization by the governmental entity necessary for the

Redeveloper to proceed with construction of the Project or any portion thereof; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other like causes beyond the parties' reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of the Redevelopment Plan, the Project or this Agreement ("Force Majeure"); provided that (i) such event of Force Majeure shall not be deemed to exist as to any matter initiated or sustained by the Redeveloper in bad faith, and (ii) the Redeveloper notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

3.3 **Design Concept Plan**. The Redeveloper has submitted to the City the Design Concept Plan for the Project, which Design Concept Plan has been approved by the City.

3.4 **Review and Approval of Design Concept Plan**. In the event of a change to the approved Design Concept Plan, the Redeveloper shall submit to the City such updated Design Concept Plan (the "Updated Design Concept Plan"). The City shall within thirty (30) days from receipt approve or disapprove the Updated Design Concept Plan. The City's approval or disapproval of the Updated Design Concept Plan must be made in writing and, if disapproved, shall set forth the reasons for such disapproval. If the City disapproves the Updated Design Concept Plan, the Redeveloper shall, within fifteen (15) days from the date of disapproval, resubmit a revised plan which the City shall review within twenty eight (28) days. This process shall repeat until the plans are approved by the City; provided that if the plans are not approved within seventy-five (75) days of the date of the first submittal of the Updated Design Concept Plan, the Redeveloper may terminate this Agreement by giving written notice to the City. In reviewing said plans, the City will take into account the normal and customary costs of developing and construction projects of this type. Any request for change in the Updated Design Concept Plan by the City shall not cause an unreasonable increase in the costs of the Project. Notwithstanding anything to the contrary contained herein, the City shall not withhold its approval of any aspect of the Updated Design Concept Plan required under or by the Franchisor Requirements, the Historic Approvals, or that is not a Material Change as defined in Section 2.1 hereof. For purposes of this Section 3.4, the "City" shall mean the City of Peoria City Council.

3.5 **Schematic Drawings**. The Redeveloper has submitted to the City the Schematic Drawings for the Project, which Schematic Drawings have been approved by the City pursuant to that certain letter from the City of Peoria Corporation Counsel Randy Ray to Redeveloper dated September 22, 2010.

3.6 **Amended Schematic Drawings**. Prior to completion of the Project as certified by the City pursuant to Section 3.9, if the Redeveloper desires to make any substantial change in the Schematic Drawings which significantly affects the appearance, function, or structural integrity of the Project, the Redeveloper shall submit the proposed change to the City for its approval. If the Schematic Drawings, as modified by the proposed change, conform to the requirements of the Redevelopment Plan and this Agreement, meet Applicable Law and do not create a fundamental change in the nature, size or aesthetics of the Project, the City shall approve the proposed change and notify the Redeveloper in writing of its approval. If the City disapproves of such change, it shall notify the Redeveloper in writing with specificity as to the reasons for the disapproval, in which event the Redeveloper may submit a revised change within

a reasonable time thereafter. This process shall repeat until the revised plans are approved by the City or the change is abandoned by the Redeveloper. If such change is not so approved or rejected in writing within ten (10) working days of receipt of the submission to the City from the Redeveloper, such change will be deemed approved. Notwithstanding anything to the contrary contained herein, the City shall not withhold any such approval that is required under the Redevelopment Plan, the Franchisor Requirements, the Historic Approvals, or that is not a Material Change as defined in Section 2.1 hereof. For purposes of this Section 3.6, the "City" shall mean the City Manager, or his designee.

3.7 **Quality of Construction and Conformance to Federal, State and Local Requirements**. All work with respect to the Project and any other structures of buildings on the Project Site (the "Works") shall conform to the City's zoning code, building code and all applicable federal, state and local laws, regulations and ordinances including, but not limited to, environmental codes and life safety codes. The Redeveloper shall cause the construction of the Works to be commenced and to be prosecuted with due diligence and in good faith in accordance with the terms of this Agreement, and shall cause the Works to be constructed in a good and workmanlike manner in accordance with the Schematic Drawings. For purposes of this Section 3.7, the "City" shall mean the City Manager, or its designee. With respect to the Construction Contract, upon written request of the City, the Redeveloper shall provide to the City evidence of labor, material, performance and payment bonds issued by a company reasonably acceptable to the City for any contractor, subcontractor or subcontractors with the City named as a dual obligee or, in lieu thereof, a guarantee of performance of said contractors and subcontractors by the Redeveloper in such form as to be acceptable to the City in its reasonable discretion.

3.8 **Utilities**. All arrangements for utilities must be made by the Redeveloper with the applicable utility company. The City makes no representations whatsoever with respect to the adequacy or availability of utilities with respect to the Project or Project Site.

3.9 **Certificate of Completion**. The parties hereto acknowledge the Project shall be completed in three (3) phases: (a) the Pere Marquette Hotel, (ii) the Courtyard Inn & Suites, and (iii) the Parking Deck. Upon Substantial Completion of the Pere Marquette Hotel, Courtyard Inn & Suites, and/or Parking Deck (as applicable), and upon request of the Redeveloper, the City will execute and deliver to the Redeveloper a Certificate of Completion for the Pere Marquette Hotel, Courtyard Inn & Suites, and/or Parking Deck (as applicable). Any Certificate of Completion by the City shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction with respect to the obligations of the Redeveloper and its successors and assigns that the construction of the Pere Marquette Hotel, Courtyard Inn & Suites, and/or Parking Deck (as applicable) has been Substantially Complete in accordance with the provisions of this Agreement.

3.10 **Form of Certification**. The Certificate of Completion provided for in Section 3.9 shall be in such form as will enable it to be recorded in the Office of the Recorder of Deeds, Peoria County, Illinois. If the City refuses or fails to provide any certification in accordance with the provisions of this Agreement, the City shall, within fifteen (15) days after written request by the Redeveloper, provide the Redeveloper with a written statement indicating in adequate detail in which respects the Redeveloper has failed to Substantially Complete construction of the Pere

Marquette Hotel, Courtyard Inn & Suites, and/or Parking Deck (as applicable) in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or steps will be necessary, in the opinion of the City, for the Redeveloper to take or perform in order to obtain such certification. The Certificate of Completion as provided herein shall not be unreasonably withheld by the City and the Project shall be deemed approved if the City fails to conform to the provisions of Section 3.9 and this Section 3.10.

3.11 **Lien Waivers**. All contracts for construction of the Project shall provide that all contractors and subcontractors shall furnish contractor's affidavits in the form provided by state statute and that waiver of liens be required for all payments made.

3.12 **Rights of Inspection**. During construction of the Project, the City or its designee shall have the right at any time and from time to time to enter upon the Project for the purposes of inspection. Inspection by the City of the Project shall not be construed as a representation by the City that there has been compliance with the Schematic Drawings or any building or life safety codes adopted by the City, or that the Project will be or is free of faulty materials or workmanship, or a waiver of any right the City or any other party may have against the Redeveloper or any other party for noncompliance with the Schematic Drawings, building or life safety codes or any other ordinances of the City or the terms of this Agreement.

ARTICLE IV: CITY REPRESENTATIONS, WARRANTIES AND CERTAIN COVENANTS

The City represents, warrants and agrees as a basis for the undertakings on its part contained herein that:

4.1 **Organization and Authorization**. The City is a municipal corporation organized and existing under the laws of the state of Illinois, and has the power to enter into and by proper action has been duly authorized to execute, deliver and perform this Agreement.

4.2 **Redevelopment Plan**. The Redevelopment Plan has been properly approved, the Redevelopment Project Area has been properly designated, and tax increment financing has been properly adopted by the City in accordance with Illinois law and is in full force and effect.

4.3 **Business District**. The Business District Plan has been properly approved and the Business District has been properly designated by the City in accordance with Illinois law and is in full force and effect.

4.4 **Non-Conflict or Breach**. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the City is now a party or by which the City is bound.

4.5 **Pending Lawsuits**. There are no lawsuits either pending or threatened that would affect the ability of the City to perform this Agreement.

4.6 **Zoning**. The City represents that the Project Site is zoned B-1. The City further represents that hotels, restaurants and parking are permitted uses under a B-1 zoning classification.

4.7 **Enterprise Zone Designation**. The City represents that the Project Site is located within the City of Peoria Enterprise Zone. After submission by the Redeveloper of a complete and properly filed application, the City agrees to employ reasonable and good faith efforts to cooperate with the Redeveloper and to process and timely consider and respond to all applications to provide Redeveloper a Certificate of Exemption to qualify Redeveloper for sales tax exemption on the purchase of building materials within the Project Site and any and all other benefits and incentives available to the Project through its inclusion in the City of Peoria Enterprise Zone. Redeveloper acknowledges that it does not qualify for any real estate tax abatement through its inclusion in the City of Peoria Enterprise Zone.

4.8 **Vacation of Alleys and/or Streets**. The City shall employ reasonable and good faith efforts and take any and all action necessary to cooperate with Developer in vacating the eastern half of the existing alley located on the Project Site, and to convey such property to Redeveloper at no cost.

4.9 **Signage**. The Redeveloper will comply with the City's Sign Ordinance, which is found in Appendix B, Article 17. If the Redeveloper desires any variances from the City's Sign Ordinance, the Redeveloper shall go through the process set forth in said Article 17 to obtain said variance. The City shall employ reasonable and good faith efforts and take any and all action necessary to cooperate with Redeveloper in obtaining the necessary Permits or licenses relating to signage for the Project.

4.10 **Highway Signage**. The City will utilize its best effort to provide dedicate signage in the streets and highways located within the City directing traffic from Interstate 74, Interstate 474 and Interstate 155 to the Hotels.

4.11 **Landmark Designation**. The City shall employ reasonable and good faith efforts and take any and all action necessary to cooperate with Redeveloper in working with the Historic Preservation Commission or any other governmental agency in the event the Hotel is designated a "landmark" pursuant to 65 ILL. COMP. STAT. 5/11-48 *et seq.* and PEORIA, ILL., CODE § 16.

4.12 **Historic Tax Credits**. The City shall employ reasonable and good faith efforts and take any and all action necessary to assist Redeveloper in obtaining Federal Historic Preservation Tax Credits and State Historic Preservation Tax Credits, and structure the agreements between the parties to maximize the receipt of such credits.

4.13 **Liquor Licenses**. The City represents that the existing Pere Marquette Hotel has a Class D Liquor License, which permits the retail sale of alcoholic liquors on the premises for consumption on the premises when such retail sale is made by the same person who operates the Hotel. Any expansion of the Class D License, or any new licenses required for the Project Site, shall be subject to the City Liquor Ordinances, Chapter 3 of the Code of the City of Peoria, including the site approval process set forth in Article III of Chapter 3 and the licensing process set forth in Article II of Chapter 3. The City represents that there is no restriction that would

prohibit applications for Class D (hotel) Licenses or Class B (restaurant) Licenses on the Project Site.

4.14 **Connector**. The City approves and consents to the construction and perpetual exclusive use by and for the Project of the Connector for (i) pedestrian traffic between the Hotels and Parking Deck, and the Peoria Civic Center; and (ii) the installation and operation of electrical and telecommunication wiring and equipment within or affixed to the Connector. The final design of the Connector shall be approved by the City as part of the Schematic Drawings pursuant to Section 3.3 hereof. The Connector shall be the subject of a three-party agreement among the City, the Redeveloper, and the Peoria Civic Center Authority (the "Connector Agreement"). The Redeveloper shall cause the hotel operator to maintain the Connector. The parties acknowledge that the projected costs for the construction of the Connector are set forth in Schedule 4 and the Redeveloper acknowledges that it will seek no additional funding from the City for the construction of the Connector beyond the amount of the Project Grant (as such term is defined in Section 5.1).

4.15 **Governmental Approvals**. After submission by the Redeveloper of a complete and properly filed application, the City agrees to employ reasonable and good faith efforts to cooperate with the Redeveloper and to process and timely consider and respond to all applications for the Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State of Illinois.

ARTICLE V: PROJECT GRANT

5.1 **Project Grant**. The City agrees, subject to the terms and conditions set forth in this Agreement, including Article VIII below, to make available to the TIF Member a grant for the Project in the amount of Twenty Nine Million and 00/100 Dollars ($29,000,000.00) (the "Project Grant"); provided that such Project Grant shall not exceed that amount which is equal to the Reimbursable Project Costs; and provided further that the TIF Member shall use the proceeds of the Project Grant solely to make a loan or capital contribution to Hotel Owner, who shall use the proceeds of the Project Grant exclusively for Reimbursable Project Costs.

ARTICLE VI: PROJECT LOAN

6.1 **Project Loan**. The City agrees, subject to the terms and conditions in this Agreement including those set forth in this Article VI, to make available to Redeveloper a term loan for the Project in the principal amount of Seven Million and 00/100 Dollars ($7,000,000.00) (the "Project Loan"), which shall be repayable in accordance with the terms of this Agreement and a promissory note made by the Redeveloper in favor of the City in form and content reasonably acceptable to the City and Redeveloper (the "Project Loan Note"), and shall be secured and guaranteed as set forth in this Article VI.

6.2 **Project Loan Funding**. The Project Loan shall be fully funded and fully drawn upon and disbursed to Redeveloper on the Financing Closing Date.

6.3 **Payment Terms**.

(a) The Project Loan shall be interest free from the Financing Closing Date until the earlier of (i) Final Completion or (ii) the third (3rd) anniversary of the Financing Closing Date. Thereafter, the Project Loan shall bear interest at the rate of seven percent (7%) per annum.

(b) The Project Loan shall be payable in twenty-three (23) equal annual payments of principal in the amount of $304,348 each, plus accrued interest thereon, commencing on the third anniversary of the Finance Closing Date and continuing on the next twenty-two (22) consecutive anniversaries of such Finance Closing Date. On the twenty-fifth (25th) anniversary of the Finance Closing Date, all unpaid principal and accrued interest shall be due and payable

(c) The Project Loan may be prepaid at any time without penalty. In addition, the entire outstanding balance of the Project Loan shall become due and payable on the date that either Hotel is sold.

6.4 **Mortgage**. The Project Loan shall be secured by a mortgage on the Project junior to the mortgage of the Senior Loan in form and content reasonably acceptable to the City and Redeveloper (the "Project Loan Mortgage").

6.5 **Guaranty of Project Loan**. Gary E. Matthews shall guarantee the payment of the Project Loan pursuant to a guaranty in form and content reasonably acceptable to the City and Gary E. Matthews (the "Project Loan Guaranty").

6.6 **Subordination and Intercreditor Agreement**. The City shall enter into a Subordination and Intercreditor Agreement with the Senior Lender whereby the City agrees (i) that payment of any and all payments under the Project Loan shall be subordinate and subject in right and time of payment to the prior payment of any and all scheduled payments of principal and interest in connection with the Senior Debt, and (ii) until the Senior Debt is paid in full in cash and all commitments to lend under the Senior Debt Documents shall have been terminated, the City shall not, without the prior written consent of the Senior Lender, take any enforcement action with respect to the Project Loan (the "Project Intercreditor Agreement").

6.7 **Subordination, Non-Disturbance and Attornment Agreement**. The City shall enter into a Subordination, Non-Disturbance and Attornment Agreement with Chevron TCI, Inc., or an affiliate, whereby the City agrees not to terminate any master lease in connection with the Project until the date which is five (5) years from the opening of the of the Pere Marquette Hotel (the "Project SNDA").

6.8 **Debt Service Payments**. The debt service payments on the Project Loan shall be made after payment of Operating Expenses, scheduled payments of principal and interest on the Senior Debt; payment of tax credit investor asset management fees, tax credit investor preferred returns or other amounts owed to any Tax Credit Investors; and scheduled payments of principal and interest on the Seller Financing Debt.

ARTICLE VII: ADDITIONAL FINANCING PROVISIONS

7.1 **Developer Fee**. Any and all developer fee due and owing to the Redeveloper shall be paid out of Cash Flow. No developer fee shall be funded.

7.2 **Project Cost Savings Prior to Financing Closing Date**. Any cost savings in connection with the Project, between the Effective Date and the Financing Closing Date, shall be deposited in a contingency account to be used to pay hard costs.

7.3 **Project Cost Savings During Construction**. Any Project savings between the Financing Closing Date and Final Completion shall be used as follows:

(a) fifty percent (50%) of such savings, up to $1,500,000.00, shall be used to fund a debt service reserve for the Project Loan (the "Project Loan Debt Service Reserve"); and

(b) the remainder of such savings shall be used to fund a debt service reserve for the Senior Debt (the "Senior Debt Service Reserve").

7.4 **Sale of Project**. Notwithstanding the foregoing, in the event Redeveloper sells the Project, any remaining amounts in the Project Loan Debt Service Reserve and Senior Debt Service Reserve, at the time of the closing of such sale, shall be paid to the City, to be used in their sole discretion.

ARTICLE VIII: ISSUANCES AND DISBURSEMENT OF BONDS; CONDITIONS TO MAKING PROJECT GRANT AND PROJECT LOAN

8.1 **Bond Proceeds to Fund Project Grant**. Subject to the terms and conditions of this Agreement (including this Article VIII), the City intends to issue Taxable Bonds, the proceeds of which shall be utilized, in whole or in part, for the making of the Project Grant to TIF Member. The structure and pricing of the Bonds shall be as set forth in the Bond Documents as determined by Bond Counsel and the City's financial advisor in their reasonable discretion and approved by the City.

8.2 **Creation of Bond Construction Funds**. Subject to the terms and conditions of this Agreement (including this Article VIII), prior to the commencement of construction of the Project and subject to the provisions of the Bond Documents, the City shall deposit the Project Grant, from the proceeds from the sale of the Bonds, in a Bond Construction Funds account from which disbursements shall be made to make the Project Grant to TIF Member to pay the Draw Requests for the Costs of the Project, in accordance with the terms of the Master Disbursing Agreement. The Redeveloper consents and agrees that it has no claim or entitlement to any interest earned on unused funds in the Bond Construction Funds and that such interest may be transferred by the City from the Bond Construction Funds at the City's direction and as provided in the Bond Documents.

8.3 **Draw Requests**. Upon the submission of a Draw Request to the City from the Redeveloper, the City shall disburse the Project Grant in accordance with the terms of the Master Disbursing Agreement. Further, upon the submission of a Draw Request to the City from the Redeveloper, if the City determines that any cost identified as a Reimbursable Project Cost is not a "redevelopment project cost" under the TIF Act or has not been approved by the City in the Redevelopment Plan, the City shall so notify Redeveloper in writing within thirty (30) days, identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon Redeveloper shall have the right to identify and substitute other costs as Reimbursable Project Costs with a supplemental application for payment and the thirty (30) day period shall begin anew. Upon Final Completion, so long as such costs are Reimbursable Project Costs, it shall be deemed that the Project Grant proceeds were used to reimburse TIF Member for acquisition costs and other costs not eligible to qualify for Federal Historic Preservation Tax Credits.

8.4 **Project Grant and Project Loan Funding**. Subject to the terms and conditions of this Agreement (including Section 8.5 and Section 8.6 hereof), (a) the Project Grant shall be drawn on a *pari passu* (50-50) basis with the Senior Debt; and (b) the Project Loan shall be fully dibsured on the Financing Closing Date.

8.5 **Conditions Precedent to Project Grant and Project Loan**. Notwithstanding anything to the contrary, the City shall have no obligation to make the Project Grant and Project Loan unless the following are satisfied to the reasonable satisfaction of the City:

(a) The Redeveloper certifies in writing to the City that there are no amendments to the Plans and Specifications previously approved by the City; or if there are proposed amendments, the Redeveloper secures the written approval of the City, if required in accordance with the provisions of this Agreement;

(b) The Redeveloper certifies in writing to the City that there are no amendments to the Construction Contract previously approved by the City; or if there are proposed amendments, the Redeveloper secures the written approval of the City, which approval shall not be unreasonably withheld;

(c) The Redeveloper certifies in writing to the City that there are no amendments to Schedule 4 hereto; or if there are amendments to Schedule 4, the Redeveloper secures the written approval of the City, which approval shall not be unreasonably withheld. For purposes of this Section 8.5(c), the "City" shall mean the City Manager;

(d) The Redeveloper certifies in writing to the City that there are no amendments to the Franchise Documents previously approved by the City; or if there are proposed amendments, the Redeveloper secures the written approval of the City, which approval shall not be unreasonably withheld; and

(e) The Redeveloper certifies to the City, accompanied by underlying supporting documentation reasonably acceptable to the City, that the Redeveloper has secured and has in place equity and/or debt financing in an amount sufficient to construct and open the entire Project (including, without limitation, the Senior Debt, Seller Financing Debt and all Tax Credit Equity).

8.6 **Deliveries by Redeveloper to Escrow Agent** . Notwithstanding anything to the contrary, the City shall have no obligation to make the Project Grant or Project Loan unless the Redeveloper shall deliver to _____ (the "Escrow Agent ") (with copies to the City) the following items set forth in this Section 8.6, all in form and content reasonably acceptable to the City:

(a) FEIN of Hotel Owner and TIF Member;

(b) Organizational documents of Hotel Owner and TIF Member;

(c) Resolutions and/or consents of the directors, managers, shareholders and members Hotel Owner and TIF Member approving this Agreement and all of the documents and agreements of the Redeveloper to be delivered pursuant hereto, or alternatively, at the election of Redeveloper, an opinion of Redeveloper's counsel, in form and content reasonably acceptable to the City, opining as to the due authorization and enforceability of this Agreement and all of the documents and agreements of the Redeveloper;

(d) Connection Easement Agreement executed by Hotel Owner;

(e) The executed Pere Marquette Hotel Construction Agreement dated September 21, 2010, executed by EM and the various unions, contractors and subcontractors party thereto, pertaining to project labor, as subsequently assigned to Hotel Owner;

(f) Master Disbursing Agreement entered into by the Senior Lender and City, on terms and conditions consistent with this Agreement and otherwise in form and content reasonably acceptable to the City;

(g) Evidence that Hotel Owner shall become the fee owner or holder of a ground leasehold interest in the Project Site as of the Financing Closing Date; and

(h) Project Intercreditor Agreement entered into by the Senior Lender and City, on terms and conditions consistent with this Agreement and otherwise in form and content reasonably acceptable to the City;

(i) Project Loan Note, executed by the Redeveloper;

(j) Project Loan Mortgage, executed by the Redeveloper;

(k) Project Loan Guaranty, executed by Gary E. Matthews;

(l) Title Commitment, showing the entire Project Site to be owned in fee simple by the Redeveloper and Policy, insuring the Project Loan Mortgage (from the title insurance company issuing a title policy to the Senior Lender);

(m) Opinion of counsel to the Redeveloper in form and content reasonably acceptable to the City;

(n) Declaration of Covenants, Uses and Restrictions (Schedule 5), executed by Hotel Owner;

(o) Payment and Performance Bond with respect to the Construction Contract in form and content acceptable to the City;

(p) Notice to proceed to contractor with a start date no more than forty-five (45) days after the Financing Closing Date;

(q) Certificate of the Redeveloper providing that all of the representations and warranties and certifications of the Redeveloper hereunder (including any certifications required under this Article VIII) are true and correct as of the Financing Closing Date;

(r) Construction drawings sufficient to obtain a building permit for the Hotel Pere Marquette and a shell permit for the Courtyard Inn & Suites;

(s) An affidavit establishing that Gary E. Matthews is in control (as defined in Section 9.15 hereof) of each Redeveloper;

(t) Written confirmation from each source identified pursuant to Sec. 8.5(e) that their commitment remains in effect and that they are prepared to close by the Financing Closing Date; and

(u) Such other documents and other items reasonably required by the City and its counsel to make the Project Grant and Project Loan.

8.7 Issuance of Bonds; Financing Closing.

8.7.1 **Issuance of Bonds**. The City shall issue the Bonds as soon as reasonably possible after (a) all of the conditions precedent as set forth in Section 8.5 hereof are met; (b) the Redeveloper makes all deliveries to the Escrow Agent and City hereunder, including those set forth in Section 8.6 hereof; and (c) the Redeveloper sends the City the City Notice to Proceed with the Financing Closing; provided, however, that if the interest rate necessary to sell the Taxable Bonds would exceed seven and one-half percent (7.50%), the Redeveloper and the City agree to delay the Financing Closing Date until the Taxable Bonds can be sold with an interest rate not exceeding seven and one-half

percent (7.50%) or less, not to exceed ninety (90) days after all such conditions are met and documents deposited unless otherwise agreed to by the parties hereto in writing.

8.7.2 **Financing Closing**. The Financing Closing shall be the date on which the following shall occur or shall have occurred: (i) the City has issued the Bonds, (ii) the Hotel Owner shall close on the acquisition of all right, title and interest in fee simple and/or leasehold rights to the entire Project Site, (iii) the Redeveloper and the appropriate counterparties shall close on the Senior Debt, Seller Financing Debt, and Project Loan, respectively, (iv) the City shall make the Project Grant, (v) and the Redeveloper has closed with the Tax Credit Investors and the Tax Credit Investors have been admitted to the Project.

8.7.3 **Escrow Agent Instructions**. The Redeveloper and the City shall enter into an escrow agreement with the Escrow Agent consistent with the purpose and intent of this Article VIII (including this Section 8.7.2).

8.8 Termination of Agreement. Subject to Sections 8.5 and 8.6 hereof, the parties hereto agree to use best efforts to cause the Financing Closing Date to occur on or before December 31, 2011, or at such other date and time as the Redeveloper and City may agree. This Agreement shall terminate if the Financing Closing does not occur on or before January 31, 2012, unless the Redeveloper satisfied the conditions set forth in Section 8.5 and 8.6 hereof before January 31, 2012 and the Financing Closing did not occur on or before January 31, 2012 solely as a result of a breach of this Agreement by the City. In the event of such termination, the Parties shall have no further rights and obligations under this Agreement. For the avoidance of doubt, this Section 8.8 is not conditioned by or subject to any Force Majeure rights of the Redeveloper under Section 3.2.3.

ARTICLE IX: REDEVELOPER COVENANTS AND RESTRICTIONS

9.1 Redeveloper. Each Redeveloper is organized, existing and in good standing under the laws of the State of Illinois.

9.2 Authorization. Each Redeveloper has power to enter into, and by proper action has been duly authorized to execute, deliver and perform this Agreement.

9.3 Non-Conflict or Breach. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which either Redeveloper is now a party or by which either Redeveloper is bound.

9.4 Pending Lawsuits. There are no lawsuits either pending or threatened that would affect the ability of either Redeveloper to proceed with the construction and development of the Project on the Project Site.

9.5 Conformance with Requirements. That the Plans and Specifications and construction of the Project in accordance with the Plans and Specifications will in all respects

conform to and comply with Franchisor Requirements and all covenants, conditions, restrictions, zoning ordinances, environmental regulations and land use regulations affecting the Project Site.

9.6 **Project Subject to Redevelopment Plan and Agreement**. The Redeveloper agrees to comply with the terms and conditions of this Agreement and to use its best efforts to construct the Project subject to the terms, covenants, building and use restrictions, and other conditions in the Redevelopment Plan and this Agreement.

9.7 **Non-Discrimination**. The Redeveloper shall not discriminate in violation of any applicable federal, state or local laws or regulations upon basis of race, color, religion, sex, age, or national origin or other applicable factors in the sale, lease or rental, or in the use or occupancy of the Project or any part thereof.

9.8 **Construction Monitor**. The Redeveloper agrees that it will cooperate with and facilitate the activities of the Construction Monitor and any other consultants retained by the City with regard to the design and construction of the Project.

9.9 **Civic Center**. The Redeveloper agrees that it will employ reasonable and good faith efforts to work together with the Peoria Area Convention and Visitors Bureau and Peoria Civic Center to maximize business at the Peoria Civic Center.

9.10 **Memorandum of Understanding and Agreement**. The Redeveloper hereby agrees to negotiate in good faith with respect to a memorandum of understanding and agreement with the West Central Illinois Building Trades for the Project.

9.11 **Continuous Operations**. During the term of this Agreement, the Redeveloper for itself and its successors and assigns covenants that it (i) will maintain the Project in good condition (reasonable wear and tear excepted) and (ii) shall operate the Hotels in a professional manner that meets Franchisor Requirements, including the establishment and funding of a reserve for the replacement of FF&E that equals or exceeds industry standards for hotels of this type if required by the Franchisor, and will do all things reasonably necessary to operate the Hotels in substantial compliance with Applicable Law. Notwithstanding anything to the contrary contained herein, (i) such maintenance and operation shall not be inconsistent with the Historic Approvals, and (ii) this Section 9.11 shall not be subject to the limitations set forth in Section 12.2 of the Agreement.

9.12 **Declaration of Covenants, Uses and Restrictions**. On or prior to the Financing Closing Date, Hotel Owner hereby agrees that it will execute the Declaration of Covenants, Uses and Restrictions attached hereto as Schedule 5 and made a part hereof.

9.13 **FF&E Standards**. The Redeveloper agrees to furnish the Hotels with FF&E as required by that certain Management Agreement by and between Marriott Hotel Services, Inc. and GEM Hospitality, LLC, dated August 17, 2011. Upon Substantial Completion of the Hotels, the City shall have the opportunity to inspect the Hotels and confirm that such FF&E have equaled or exceed such industry standards.

9.14 Identification of TIF Revenues and Business District Taxes. The Redeveloper agrees to cooperate with the City and take all reasonable actions necessary to identify the TIF Revenues and Business District Taxes.

9.15 Control of Each Redeveloper. As of the date hereof (and as of the date of the Financing Closing), each Redeveloper is (and shall be) controlled by Gary E. Matthews. For this purpose, "control" means, with respect to an entity, direct or indirect ownership (based on value) or control (based on voting or management rights) of fifty percent (50%) or more of the entity. For purposes of the preceding sentence, the term management rights means the power to influence the management or investment decisions of the entity.

ARTICLE X: INDEMNIFICATION

10.1 The Redeveloper's Indemnification of the City. So long as the Redeveloper maintains a direct interest in the Project or any part thereof (excluding, for example, an interest therein solely as a creditor or mortgagee) and subject to Sections 15.11 and 15.12 of this Agreement, the Redeveloper agrees to indemnify and save the City and its officers, agents, employees and attorneys harmless against all claims by or on behalf of any person, firm or corporation arising from (i) the Redeveloper's operation or management of either Hotel, or from any work or thing done by the Redeveloper on the Project Site, or any work or activity of the Redeveloper connected to the construction of the Project; (ii) any breach or default on the part of the Redeveloper in the performance of any of its obligations under or in respect of this Agreement; (iii) any act of negligence or willful or wanton misconduct of the Redeveloper or any of its agents, contractors, servants or employees; (iv) any violation by the Redeveloper of any easements, conditions, restrictions, building regulations, zoning ordinances, Environmental Laws or land use regulations affecting the Project Site or the Project; (v) any violation of Applicable Law or (vi) any violation by the Redeveloper of state or federal securities law in connection with the offer and sale of interests in the Redeveloper, its affiliates or any part of the Project. The Redeveloper agrees to indemnify and save the City harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon. In case any such claim shall be made or action brought based upon any such claim in respect of which indemnity may be sought against the Redeveloper, upon receipt of notice in writing from the City setting forth the particulars of such claim or action, the Redeveloper shall assume the defense thereof including the employment of counsel and the payment of all costs and expenses. The City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the City. It is agreed and understood that the aforesaid indemnities in this Article X shall be binding on the Redeveloper only for such period as the Redeveloper maintains a direct interest in either Hotel, or part thereof (excluding, for example, a direct interest therein solely as a creditor or mortgagee), and only with respect to such direct interest in the Project or Project Site or part thereof, provided, notwithstanding the foregoing, the Redeveloper shall not be liable to indemnify and hold the City harmless from any portion of any such loss, liability, cost or expense which results from the negligence or willful misconduct of the City, its officials, agents, or employees.

ARTICLE XI: PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

11.1 <u>Prohibition Against Transfer of Project and Project Site Prior to Completion of Construction</u>. The Redeveloper represents and agrees that prior to the Substantial Completion of construction of the Project as certified by the City (in accordance with Sections 3.9 and 3.10 hereof) the following prohibitions and restrictions shall apply to the transfer of the Project or Project Site:

11.1.1 Prohibitions. Except only by way of the Senior Debt, Seller Financing Debt, Project Loan or otherwise for the purpose of obtaining financing or equity necessary to enable the Redeveloper to purchase the Project Site and construct the Project, and except as is necessary to admit Tax Credit Investors, the Redeveloper has not made or created, and will not, prior to the Substantial Completion of construction of the Project as certified by the City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement, the Project, the Project Site or any part thereof or any interest therein, or any contract agreement to do any of the same, except for utility easements, without the prior written approval of the City.

11.1.2 Conditions for Approval. The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval pursuant to this Section 11.1, that:

(a) Any proposed transferee shall have the qualifications and financial responsibility and capacity, as reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper (or, in the event the transfer is of or related to part of the Project, such obligations to the extent that they relate to such part).

(b) Any proposed transferee, by instrument in writing reasonably satisfactory to the City and in a form recordable among the land records, shall expressly assume all of the obligations of the Redeveloper under this Agreement and agree to be subject to all the conditions and restrictions to which the Redeveloper is subject (or, in the event that the transfer is of or relates to part of the Project, such obligations, conditions and restrictions to the extent that they relate to such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Project, or any part thereof, shall not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the Agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, agreements, conditions, or restriction, or deprive or limit the City of or with respect to any rights or

remedies or controls with respect to the Project or the construction thereof; it being the intent of this, together with other provisions of this Agreement that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of the Project or Project Site or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate legally or practically, to deprive or limit the City, of any rights or remedies or controls regarding the Project and the construction hereof that the City would have had, had there been no such transfer.

(c) There shall be submitted to the City for review all instruments and other legal documents involved in effecting transfer.

(d) The Redeveloper and its transferee shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes of the Redevelopment Plan and this Agreement.

11.2 <u>Transfer of Project and Project Site After Opening of the Project</u>. After opening to the public of the Project, the Redeveloper (and any subsequent owner of the Project or Project Site or any part thereof) may transfer the Project or Project Site (or any portion thereof) without the consent of the City; provided that any proposed transferee, by instrument in writing reasonably satisfactory to the City and in a form recordable among the land records, shall expressly assume all of the obligations of the Redeveloper under this Agreement and agree to be subject to all the conditions and restrictions to which the Redeveloper is subject (or, in the event that the transfer is of or relates to part of the Project, such obligations, conditions and restrictions to the extent that they relate to so such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Project, or any part thereof, shall not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the Agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, agreements, conditions, or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the Project or the construction thereof; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of the Project or Project Site or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate legally or practically, to deprive or limit the City, of any rights or remedies or controls regarding the Project and the construction thereof that the City would have had, had there been no such transfer. Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with the right of the Redeveloper to encumber or collaterally assign its interest in the Project Site or any portion thereof or its rights, duties and obligations under this Agreement to secure loans, advances or extensions of credit to finance or from time to time refinance all or any

part of the costs associated with the Project, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment.

11.3 **Status of Assignee**. Any assignee of the Redeveloper under the provisions hereof shall be considered the "Redeveloper" for all purposes of this Agreement.

11.4 **No Release of Redeveloper**. Any consent by the City to any total or partial transfer of the Project or the Project Site, which consent shall not be unreasonably withheld, shall not be deemed a release of the Redeveloper from any of its obligations hereunder, or from any conditions or restrictions to which the Redeveloper is subject, unless the Redeveloper is expressly released in writing by the City.

11.5 **Assignment to Affiliated Entity**. Nothing herein shall be construed to prevent the Redeveloper from assigning its interest in this Agreement to an affiliated entity controlled by Gary Matthews provided that: (i) the Redeveloper provides forty-five (45) days prior written notice of such assignment along with appropriate written documentation to satisfy the requirements of this Section 11.5; (ii) such entity has the financial capacity to perform the obligations of the Redeveloper pursuant to this Agreement; (iii) such entity in writing assumes all of the obligations of the Redeveloper under the Agreement; and (iv) the Redeveloper submits to the City at least fifteen (15) business days before execution and delivery of such documents effecting such an assignment the final execution form copies of such documents for the City's review and commentary; provided, further, that such an assignment shall not relieve the Redeveloper of its obligations pursuant to this Agreement as it may be amended from time to time.

11.6 **Opinion of Bond Counsel**. If the City has issued Tax-exempt Bonds in connection with the Project, any transfer, sale, assignment, pledge, mortgage or other disposition of either Hotel, the Parking Deck or this Agreement shall only be made after obtaining the written opinion of Bond Counsel that such transfer, sale, assignment, pledge, mortgage or other disposition will not adversely affect the Tax-exempt status of any interest on the Obligations issued as Tax-exempt.

ARTICLE XII: MORTGAGE FINANCING AND RIGHTS OF MORTGAGEES

12.1 **Limitation Upon Encumbrance of Property**. Prior to the Final Completion of the Project, as certified by the City, the Redeveloper shall not engage in any financing or any other transaction creating a mortgage or other encumbrances or lien upon the property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to either Hotel, or the Parking Deck, except for the purposes of obtaining funds necessary for the construction and development of the Project. Prior to the Final Completion of the Project as certified by the City, the Redeveloper (or successor in interest) shall notify the City in advance of any financing, secured by a mortgage or other similar lien instrument, it proposes to enter into with respect to the Project, or any part thereof, and in any event it shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Project, whether by voluntary act of the Redeveloper or otherwise. In the event the Redeveloper is in

default under this Agreement, the right of the mortgagee to cure the default is governed by Section 12.4 of this Article.

12.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, including, but not limited to those which are or intended to be covenants running with the land, the holder of any mortgage (including any such holder who obtains title to the Project or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including: (i) any other party who thereafter obtains title to the Project or such part from or through such holder, or (ii) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be so construed to so obligate such holder; provided, that nothing in this Section 12.2 or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in the Redevelopment Plan and this Agreement.

12.3 Notices of Default. Whenever the City shall deliver any notice of demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under the Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by the Agreement at the last address of such holder shown in the records of the City.

12.4 Mortgagee's Option to Cure Defaults. After any breach or default referred to in Section 12.3 hereof, each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the Project covered by its mortgage) and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided, that if the breach or default is with respect to any matter concerning the construction of the Project, nothing contained in this Section or any other Section of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction of the Project or financing relative thereto (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to the City, by written agreement satisfactory to the City, to complete, in the manner provided in this Agreement, the Project or the part thereof to which the lien or title of such holder relates. Any such holder who shall properly complete the Project or applicable part thereof shall be entitled, upon written request made to the City, a certification or certifications by the City to such effect in the manner provided in Section 3.9 of this Agreement, and any such certificate shall, if so requested by such holder, mean and provide that nay remedies or rights by the City against said holder with respect to any default in or breach of this Agreement by the Redeveloper or such successor, shall not apply to the part or parcel of the Project to which such certification relates. Nothing contained in this paragraph shall limit the remedies the City has against the Redeveloper pursuant to other provisions of this Agreement.

12.5 City's Option to Pay Mortgage Debt or Purchase Property. Prior to Final Completion of the Project as certified by the City, and in any case where subsequent to default or

breach by the Redeveloper or successors in interest under this Agreement, the holder of any mortgage on the Project or any part thereof:

(a) has, but does not exercise, the option to construct or complete the Project or any part thereof covered by its mortgage or to which it has obtained title, and such failure to exercise said option continues for a period of sixty (60) days after the holder has received notice or has been otherwise informed of the default or breach; or

(b) undertakes construction of completion of the Project but does not complete such construction within the period as agreed upon the City and such holder (which period shall in any event be at least as long as the period for such construction or completion in the Agreement), and such default shall not have been cured within sixty (60) days after written demand by the City to do so; or

(c) has initiated foreclosure proceedings pursuant with regard to any mortgage on the Project or any part thereof,

the City shall (and every mortgage instrument made by the Redeveloper or successor in interest shall so provide) have the option of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured thereby, on in the event ownership of the Project (or any part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, the City shall be entitled, at its option, to a conveyance of the Project or any part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of:

1. the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including but not limited to those resulting from collection and application of rentals and other income received during foreclosure proceedings);

2. all expenses with respect to the foreclosure;

3. the next expense if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent management of the Project;

4. the costs of any improvements made by such holder; and

5. an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt has continued in existence.

12.6 **<u>City's Option to Cure Mortgage Default</u>**. In the event of a default or breach by the Redeveloper, or any successor in interest in or of any of its obligations under, and to the

holder, of any mortgage or other instrument creating an encumbrance or lien upon the Project or any part thereof which Redeveloper fails to timely cure, the City may at its option cure such default or breach by entering upon the Project making the necessary improvements, in which case the City shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this Agreement, operation of law, or otherwise, to reimburse from the Redeveloper or successor in interest of all costs and expenses incurred by the City in curing such default or breach and to a lien upon the Project (or the part hereof to which the mortgage, encumbrance, or lien relates) for such reimbursement; provided, that any such lien shall be subject always to the lien (including any lien contemplated, because of the advances yet to be made), of any existing mortgages on the Project as authorized by the Agreement.

ARTICLE XIII: DEFAULT AND REMEDIES

13.1 **Events of Default**. The following shall be events of default ("Events of Default") with respect to this Agreement:

(a) If any material representation made by the Redeveloper or City in this Agreement, or in any certificate, notice, demand or request made by the Redeveloper or City, in writing and delivered to the other party pursuant to or m connection with any of said documents shall prove to be untrue or incorrect in any material respect as of the date made; or

(b) Breach by the Redeveloper or City of any material covenant, warranty or obligation set forth in this Agreement.

13.2 **Remedies of Default or Bankruptcy**. In the case of an Event of Default or bankruptcy by either party hereto or any successors to such party, such party or successor shall, upon written notice from the other party, take immediate action to cure or remedy such Event of Default or bankruptcy within sixty (60) days after receipt of such notice. If, in such case action is not taken, or not diligently pursued, or the Event of Default or bankruptcy shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or bankruptcy, including but not limited to, proceedings to compel specific performance by the party in default of its obligations.

In case the City or Redeveloper shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the party initiating such proceedings, then and in every such case the Redeveloper and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Redeveloper and the City shall continue as though no such proceedings had been taken.

13.3 **Other Rights and Remedies of City and Redeveloper Delay in Performance Waiver**.

13.3.1 No Waiver by Delay. Any delay by the City or the Redeveloper in instituting or prosecuting any actions or proceedings or otherwise asserting their rights under this Agreement shall not operate to act as a waiver of such rights or to deprive them of or limit such rights in any way (it being the intent of this provision that the City or Redeveloper should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by the City or Redeveloper with respect to any specific Event of Default by the Redeveloper or City under this Agreement be considered or treated as a waiver of the rights of the City or Redeveloper under this Section or with respect to any Event of Default under any section in this Agreement or with respect to the particular Event of Default, except to the extent specifically waived in writing by the City or Redeveloper.

13.3.2 Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the time or different times, of any other such remedies for the same Event of Default by the other party. No waiver made by either such party with respect to the performance, nor the manner of time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

ARTICLE XIV: EQUAL EMPLOYMENT OPPORTUNITY

The Redeveloper, for itself and its successors and assigns, agrees that during and with respect to the construction of the Project provided for in this Agreement that the following will apply:

14.1 Non-Discrimination. The Redeveloper will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, or national origin. The Redeveloper will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or natural origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.

14.2 Advertising. The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will

receive consideration for employment without regard to race, color, religion, sex, or national origin.

14.3 **Terms and Conditions**. The Redeveloper or Redevelopers conducting business with the City of Peoria shall comply with the fair employment and affirmative action provisions of Chapter 17, Article III, and Division 4 of the municipal code. The Redeveloper shall comply with the terms and conditions set forth on Schedule 6, Equal Employment Opportunity, attached hereto and made a part hereof. Where reference is made to "contractor" in Schedule 6, it shall mean the Redeveloper.

ARTICLE XV: MISCELLANEOUS

15.1 **Authorized Representatives**.

15.1.1 **Redeveloper**. By complying with the notice provisions hereof, the Redeveloper shall designate an authorized representative from time to time, who, shall have the power and authority to make or grant or do all things, requests, demands, approvals, consents, agreements and other actions required or described in this Agreement for and on behalf of the Redeveloper.

15.1.2 **City.** By complying with the notice provisions hereof, the City shall designate an authorized representative from time to time, who shall communicate with the Redeveloper on behalf of the City. Such representative shall not have the authority to make agreements on behalf of the City.

15.2 **Entire Agreement**. The terms and conditions set forth in this Agreement and exhibits attached hereto supersede all prior oral and written understandings and constitute the entire agreement between the City and the Redeveloper.

15.3 **Binding Upon Successors in Interest**. This Agreement shall be binding upon all the parties hereto and their respective heirs, successors, administrators, assigns or other successors in interest.

15.4 **Titles of Paragraphs**. Titles of the several parts, paragraphs, sections or articles of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any provision hereof.

15.5 **Severability**. If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected thereby.

15.6 **Memorandum of Agreement**. At either party's request, the parties shall execute and record a Memorandum of Agreement with respect to the Project Site in the form attached as Schedule 7.

15.7 **Illinois State Historic Tax Credits**. The parties agree to employ reasonable and good faith efforts to cooperate to qualify the Project for State of Illinois historic tax credits and maximize the amount of such credits.

15.8 Further Assistance and Corrective Instruments. The City and the Redeveloper agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required by the parties hereto, for carrying out the intention of or facilitating the performance of this Agreement.

The parties hereto acknowledge that the City intends to issue Bonds, the proceeds of which will be utilized to fund the City's obligations contemplated hereunder. The Redeveloper and the City agree to execute, acknowledge, deliver and cause to be executed, acknowledged, or delivered, such instruments, opinions, certificates and documents as may be required reasonably by Bond Counsel.

15.9 Supersedes Original Agreement. This Agreement amends, restates and supersedes the Original Agreement, and upon execution of this Agreement, the parties agree that the Original Agreement shall no longer be in effect and shall be terminated.

15.10 Notices. Any written notice or demand hereunder from any party to another party shall be in writing and shall be served by (a) personal delivery, (b) fax with confirmation by first-class mail or (c) certified mail, return receipt requested at the following addresses:

To the City at:

City Clerk
City of Peoria
419 Fulton Street, Room 401
Peoria, IL 61602

With copies to:

City Manager
City of Peoria
419 Fulton, Room 207
Peoria, IL 61602

and

Corporation Counsel City of Peoria
419 Fulton, Room 200
Peoria, IL 61602

and

John S. Elias
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Ste. 1400
Peoria, IL 61602

And, to the Redeveloper at:

EM Properties, Ltd.
Pere Marquette Hotel, LLC
Pere Marquette TIF, Inc.
450 N. Main Street
East Peoria, IL 61611
Attn: Gary E. Matthews

With a copies to:

Jane E. Ohaver
245 N.E. Perry
Peoria, IL 61603

and

Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Attn: David G. Richardson

or to the last known address of any party or to the address provided by an assignee if such address is given in writing. Any party may change its address by providing notice in accordance with this provision. In the event said notice is mailed, the date of service shall be deemed to be two (2) business days after the date of delivery of said notice to the United States Post Office.

15.11 No Private Payments. The parties hereby expressly acknowledge that security for the Bonds and payments of debt service on the Obligations may include certain business district or other taxes imposed by the City which are other than taxes of general applicability and which may be deemed to be private payments under the Code. In addition, each of the City and the Developer recognize that payments from the Developer to the City or to another party at the direction of the City other than payments made by the Developer of taxes of general applicability may also be deemed to be private payments under the Code. Each of the City and the Developer further recognize that any such payments (collectively, the "Private Payments") of taxes imposed by the City or made by the Developer to the City or to another party at the direction of the City pursuant to this Agreement may cause interest on any Obligations to be includible in the gross income of the owners thereof for federal income tax purposes. Accordingly the City and the Developer covenant and agree that the City will neither accept nor direct any payment from the Developer pursuant to any provision of this Agreement without first obtaining the advice of Bond Counsel that such payment or direction will not impair the status of interest on any such Obligations issued on a Tax-exempt basis under the Code as excludable from the gross income of the owners thereof for federal income taxation purposes.

15.12 Taxpayer Agreements. The City hereby further expressly agrees and recognizes that security for any such Obligations and payments of debt service on any such Obligations are limited to (A) taxes of general applicability, (B) the amounts on deposit in the funds and accounts created under the Bond documents authorizing the issuance of any such Obligations and (C) for any Obligations issued as Tax-exempt, that amount of Private Payments which may be allowable under the Code. The City recognizes that improper agreements with taxpayers may cause tax receipts to be classified as private payments under the Code. Accordingly the City

covenants not to enter into or enforce any agreements with any taxpayers, including, specifically, the Developer, that would modify the obligations of such taxpayers under general law without an opinion of Bond Counsel that such agreement or enforcement will not adversely affect the Tax-exempt status of interest on any such Obligations issued on a Tax-exempt basis. No provision of this Agreement or any other agreement, written or oral, will be enforced for the benefit of the holders of any such Obligations or in any way to increase revenues available to pay debt service on such Obligations. The City and the Developer hereby expressly acknowledge that Bond Counsel will rely upon this Section 15.12 in rendering its approving legal opinion on any Obligations issued on a Tax-exempt basis.

15.13 Term of Agreement. This Agreement shall terminate on the later of (i) the termination of the Redevelopment Plan, or (ii) October 27, 2031.

(Remainder of Page Intentionally Left Blank.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF PEORIA

By:_____
Its City Manager

Attest:_____
Its City Clerk

ACCEPTED AS TO FORM:

By:_____
Its City Attorney

EM PROPERTIES, LTD.

By:_____
Gary E. Matthews, President

PERE MARQUETTE HOTEL, LLC

By: GEM Hospitality, LLC

By: _____
_____, _____

PERE MARQUETTE TIF, INC.

By: _____
Gary E. Matthews, President

EXHIBITS

SCHEDULE 1 -	Hotels Site
SCHEDULE 2 -	Parking Deck Site
SCHEDULE 3 -	Project Site
SCHEDULE 4 -	Estimated Costs of the Project
SCHEDULE 5 -	Declaration of Covenants, Uses and Restrictions
SCHEDULE 6-	Equal Employment Opportunity
SCHEDULE 7 -	Memorandum of Agreement

SCHEDULE 1

Hotels Site

TRACT 1:

The Northeasterly 14 feet of even width by full depth of Lot 7 and all of Lots 8, 9, and 10 in Block 17 of the ORIGINAL TOWN (now City) OF PEORIA, being a part of the Northeast Quarter of Section 9, Township 8 North, Range 8 East of the Fourth Principal Meridian, all of which being more particularly described as follows: Beginning at the Southeasterly corner of said Lot 10, being also the intersection of the Northerly Right of Way line of Madison Avenue and the Westerly Right of Way line of Main Street; thence North 89 degrees 40 minutes 00 seconds West (bearings based on a land title survey by Associated Engineers III, Inc., dated December 24, 1981), along the Southerly line of said Lots 10, 9, 8, and 7 and also the Northerly Right of Way line of said Madison Avenue, 230.58 feet; thence North 00 degrees 55 minutes 42 seconds East, along a line 14.00 feet Westerly of and parallel with the Easterly line of said Lot 7, 171.91 feet to the Northerly line of said Lot 7; thence South 89 degrees 43 minutes 43 seconds East, along the Northerly line of said Lots 7, 8, 9, and 10, 230.58 feet to the Northeasterly corner of said Lot 10 and the Westerly Right of Way line of said Main Street; thence South 00 degrees 55 minutes 42 seconds West, along the Easterly line of said Lot 10 and the Westerly Right of Way line of said Main Street, 172.16 feet to the point of beginning; situated in PEORIA COUNTY, ILLINOIS.

Together with a Leasehold Estate created by certain indenture of lease made by Walter L. Spurck and Anna L. Spurck his wife, to Emmet C. May, and by the latter assigned to Pere Marquette Building Corporation, (now known as Peoria Hotel Corporation, an Illinois corporation, said original lease being dated February 21, 1925, and recorded April 18, 1925, in Book 374, Page 412 in the Office of the Recorder of Peoria County, Illinois, demising and leasing for a term of years beginning March 1, 1925, and ending February 29, 2024, the following described premises, to-wit: A part of Lots 9 and 10, in Block 17, in the ORIGINAL TOWN, now City of Peoria, being a strip of land having a frontage of 66 feet on Main Street and extending back of even width along Madison Avenue, 114 feet off of the Southeasterly ends of said Lots 9 and 10 more particularly bounded and described as follows, to-wit: Beginning at the Easterly corner of said Lot 10 in said Block, the same being the point and place of intersection of the Southwesterly line of Main Street with the Northwesterly boundary line of South Madison Avenue, extending thence in a Northwesterly direction along and with the Southwesterly boundary line of Main Street and the Northeasterly boundary line of said Lot 10, a distance of 66 feet to a point; thence in a Southwesterly direction and parallel to the Northwesterly boundary line of South Madison Avenue, a distance of 114 feet to a point; thence in a Southeasterly direction and parallel to the Southwestern boundary line of Main Street a distance of 66 feet to the Northwestern boundary line of South Madison Avenue; thence in a Northeasterly direction along and with said Northwestern boundary line of South Madison Avenue a distance of 114 feet to the point and place of beginning; situated in the City of Peoria, County of Peoria and State of Illinois.

PIN: 18-09-206-015

TRACT 2:

A part of Lots 1 and 2 in Block 17 in the ORIGINAL TOWN OF PEORIA, as shown on the plat thereof recorded in Plat Book "G", page 131, more particularly described as follows: Commencing at the most Northerly corner of said Lot 1 as the Place of Beginning; thence Southwesterly, along the Southeasterly line of Monroe Street, 144 feet to the dividing line between Lots 2 and 3 in said Block; thence Southeasterly, along the dividing line between Lots 2 and 3 in said Block, 85.5 feet to a point; thence at right angles, parallel with Monroe Street, 44 feet; thence at right angles Northwesterly, parallel with Main Street, 50 feet; thence at right angles Northeasterly, parallel with Monroe Street, 100 feet to Main Street; thence at right angles Northwesterly, along Main Street, 35.5 feet to the Place of Beginning; situated in PEORIA COUNTY, ILLINOIS.

PIN: 18-09-206-010

TRACT 3:

A part of Lots 1 and 2 in Block 17 in the ORIGINAL TOWN OF PEORIA, as shown on the plat thereof recorded in Plat Book "G", page 131, more particularly described as follows: Commencing on the line of said Lot 1 on Main Street, 35.5 feet Southeasterly of the Southeasterly line of Monroe Street; thence Southeasterly, along the line of said Lot 1 on Main Street, 25 feet; thence Southwesterly, parallel with Monroe Street, 100 feet; thence Northwesterly, parallel with Main Street, 25 feet; thence Northeasterly, parallel with Monroe Street, 100 feet to the Place of Beginning; situated in PEORIA COUNTY, ILLINOIS.

PIN: 18-09-206-011

TRACT 4:

A part of Lots 1 and 2 in Block 17 in the ORIGINAL TOWN OF PEORIA, as shown on the plat thereof recorded in Plat Book "G", page 131, more particularly described as follows: Commencing on the line of said Lot 1 on Main Street, 85.5 feet from Monroe Street; thence Southwesterly, parallel with Monroe Street, 100 feet; thence Northwesterly, parallel with Main Street, 25 feet; thence Northeasterly, parallel with Monroe Street, 100 feet; thence Southeasterly, along the line of said Lot 1 on Main Street, 25 feet to the Place of Beginning; situated in PEORIA COUNTY, ILLINOIS.

PIN: 18-09-206-012

TRACT 5:

A part of Lots 1 and 2 in Block 17 in the ORIGINAL TOWN OF PEORIA, as shown on the plat thereof recorded in Plat Book "G", page 131, more particularly described as follows: Commencing on the Northeasterly line of said Lot 1 on Main Street, 42.75 feet Northwesterly of the intersection of Main Street and the alley in said Block; thence Northwesterly, along the line of said Lot 1 on Main Street, 42.75 feet; thence Southwesterly, parallel with the alley in said

Block, 144 feet to the line dividing Lots 2 and 3 in said Block; thence Southeasterly, along said dividing line, 42.75 feet; thence Northeasterly, parallel with the alley in said Block, 144 feet to the Place of Beginning; situated in PEORIA COUNTY, ILLINOIS.

PIN: 18-09-206-013

TRACT 6:

A part of Lots 1 and 2 in Block 17 in the ORIGINAL TOWN OF PEORIA, as shown on the plat thereof recorded in Plat Book "G", page 131, more particularly described as follows: Commencing at the Easterly corner of said Lot 1 at the intersection of Main Street with the alley in said Block; Northwesterly, along the line of said Lot 1 on Main Street, 42.75 feet; thence Southwesterly, parallel with the alley in said Block, 144 feet to the line dividing Lots 2 and 3 in said Block; thence Southeasterly, along said dividing line, 42.75 feet to the line of said Lot 2 on said alley; thence Northeasterly, along the alley line of Lots 2 and 1, 144 feet to the Place of Beginning; situated in PEORIA COUNTY, ILLINOIS.

PIN: 18-09-206-014

SCHEDULE 2

Parking Deck Site

Lots 3, 4, and 5 in Block 17 in the ORIGINAL TOWN (now City) OF PEORIA, being a part of the Northeast Quarter of Section 9, Township 8 North, Range 8 East of the Fourth Principal Meridian; situated in PEORIA COUNTY, ILLINOIS.

PIN: 18-09-206-016

SCHEDULE 3

SCHEDULE 4

Estimated Costs of the Project

Pre-Construction Professional Services (e.g. legal, architectural, engineering, etc.)		
Feasibility Study		$38,938
Environmental		$37,793
Appraisal		$23,000
Technical Services		$345,000
Legal Historic Tax Credits		$525,000
Accounting Historic Tax Credits		$42,500
Rotherham & Company, Inc.		$15,000
Faithful & Gould		$212,000
Architects & Engineers		$2,408,369
GH2 Architects		$47,674
Getty's		$30,000
Subtotal		$3,725,274
Courtyard		
Land Acquisition		$11,051,000
Property Acquistion	10,600,000	
Al's moving expense	$250,000	
CY Real Estate Taxes	$51,000	
CY Vacate Incentive	$150,000	
FF & E and OSE		$2,054,000
Courtyard Construction		$14,154,318
Courtyard Opening Expenses		$265,000
Subtotal		$27,524,318
Rehabilitation of Pere Hotel		
Land Acquisition		$9,650,000
FF & E and OSE		$8,743,000
Rehabilitation		$23,505,000
Pere Opening Expenses		$2,000,000
Subtotal		$43,898,000
Parking Deck & Skywalk Connector Construction		$6,340,682
Miscellaneous Soft Costs & Contingency		$6,263,043
HTC Isusance Fee	$179,931	
Project Management	$2,508,311	
Operating Reserve	$500,000	
Pere Working Capital	$300,000	
Hard cost project contingency	$1,439,099	
Soft cost project contingency	$1,335,702	
Capitalized Interest & Bank Fees		$5,093,605
All financing costs	$5,093,605	
Total Project Costs		**$92,844,922**

SCHEDULE 5

DECLARATION OF COVENANTS, USES AND RESTRICTIONS

Pere Marquette Hotel, LLC (the "Declarant"), is the owner of certain real property located in the City of Peoria, the County of Peoria, the State of Illinois, as depicted on Schedule 3 attached hereto and made a part hereof (the "Project Site").

The Declarant has entered into the Redevelopment Agreement (the "Agreement") dated as of October ___, 2011, with the City of Peoria ("City"). The Agreement provides that the Declarant shall develop a project as described in the Agreement (the "Project") on the Project Site, which Project will further the redevelopment of the Hospitality Improvement Zone Redevelopment Plan approved by the City on _____ (the "Plan"). The Plan was recorded with the Peoria County Recorder on _____ as Document No. _____. For the purpose of enhancing and protecting the value, the attractiveness and the desirability of the Project as developed pursuant to the terms of the Agreement; for the purpose of protecting the rights of the City pursuant to the terms of the Agreement; and for the purpose of enhancing and protecting the purposes of the Plan as aforementioned, the Declarant hereby declares that all of the Project and Project Site and each part thereof shall be held, sold, and conveyed only subject to the following covenants, uses and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any rights, title or interest in said property or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

1. The Project Site and the Project shall be subject to the Agreement and the terms, covenants, building and use restrictions, and conditions in the Plan.

2. The Declarant agrees that the Declarant shall not discriminate in violation of all applicable federal, state or local laws or regulations upon basis of race, color, religion, sex, age, national origin or other applicable factors in the sale, lease or rental or in the use or occupancy of the Project Site or Project or any part hereof.

3. The Declarant for itself and its successors and assigns covenants that it will maintain the Project in good condition (reasonable wear and tear excepted) during the term of this Agreement. The Declarant shall operate the Hotel in a professional manner that meets Franchisor Requirements, including the establishment and funding of a reserve for the replacement of FF&E that equals or exceeds industry standards for hotels of this type if required by the Franchisor, and will do all things reasonably necessary to operate the Hotel in substantial compliance with Applicable Law. Notwithstanding anything to the contrary contained herein, such maintenance and operation shall be undertaken in accordance with the Historic Approvals and this Section 3 shall not be subject to the limitations set forth in Section 11.2 of the Agreement.

GENERAL PROVISIONS

4. It is intended and agreed that the covenants provided in Section 1 of this Declaration shall remain in effect until the earlier of (i) termination of the Plan or (ii) the completion of the project, that the covenants provided in Section 2 shall remain effective without any time limitation, and that the covenants provided in Section 3 shall remain effective during the term of the Agreement; provided, that all such covenants shall be binding on the Declarant only for such period as the Declarant maintains a direct ownership interest in the Project Site or Project or part thereof (excluding, for example, a direct interest therein solely as a creditor or mortgagee), and only with respect to such direct ownership interest in the Project Site or Project or part thereof. The termination of the covenants in Sections 1 shall be effective upon the happening of the events described in this Section 4 without any further action by either Declarant or the City and without the recording of any release or other document.

5. So long as the Declarant owns the Project, the Declarant covenants and agrees that it will not appeal any property tax assessment on the Project.

6. Subject to Section 4 above, it is intended and agreed that the covenants set forth in Sections 1 through 3 above shall be covenants running with the land and that they shall in any event be binding to the fullest extent permitted by law and equity, for the benefit and in favor of and enforceable by the City and with regard to Section 2 above, the City, the State of Illinois, and the United States of America.

7. Subject to Section 4 above, it is also intended and agreed that the foregoing covenants set forth in Sections 1 through 3 above shall in any event, and without regard to technical classification or designation as legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit of the City and enforceable by the City, the State of Illinois and the United States of America as provided in Section 5.

8. Failure by the City or as the case may be, by the State of Illinois or the United States of America to enforce any covenant or restriction herein contained, shall in no event be deemed a waiver of the right to do so thereafter.

9. Invalidation of any one of these covenants or restrictions by judgment or court order, shall in no way affect any other provisions, which shall remain in full force and effect.

10. Covenants and restrictions of this declaration may be amended by the Declarant only by duly recording an instrument, executed and acknowledged by the City.

Executed at Peoria, Illinois, on the date first above written,

Pere Marquette Hotel, LLC

By: GEM Hospitality, LLC

By:_____
Print Name: _____
Title: Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of Pere Marquette Hotel, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as such _____ and as the free and voluntary act of Pere Marquette Hotel, LLC for the uses and purposes therein set forth; and on his respective oath stated that he was duly authorized to execute said instrument.

GIVEN under my hand and notary seal this ____day of _____, 20__.

_____
Notary Public

SCHEDULE 6

EQUAL EMPLOYMENT OPPORTUNITY

In the event of the Redeveloper's noncompliance, with any provision of this Equal Employment Opportunity clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights, the Redeveloper may be declared nonresponsible and, therefore, ineligible for future contracts or subcontracts with the City of Peoria and such other sanctions or penalties may be imposed or remedies invoked as provided by ordinance.

During and with respect to the Redevelopment and construction of the Project, the Redeveloper agrees as follows:

It is hereby declared to be the public policy of the City of Peoria, that it will not execute a contract for good and/or services with any individual, business enterprise, supplier/vendor; maintain a financial relationship with any financial institution; or use the services of any labor organization or member thereof found to be in violation of the provisions of the Municipal Code for the City of Peoria, Chapter 17, Article III, Division 4, Section 17-118.

This clause covers contractors, vendors, suppliers, borrowers and/or recipients of city resources, purchasers and/or Redevelopers of city owned property, and any other individuals or entities providing goods and/or services to the City of Peoria; and are hereinafter referred to as "Contractor".

If any Contractor conducting business with the City of Peoria fails to comply with the fair employment and affirmative action provisions of Chapter 17, Article III, Division 4 of the municipal code (hereinafter “Chapter 17”), the city, at its option, may do any or all of the following:

(1) Cancel, terminate, or suspend the contract in whole or in part;

(2) Declare the contractor ineligible for further contracts for one calendar year;

(3) The Fair Employment and Housing Commission (hereinafter “FEHC”, in accordance with its rules and regulations, shall have the power to impose a penalty upon any Contractor failing to comply with Chapter 17 in an amount not less than $50.00; nor more than as provided in Chapter 1, Section 1-5 of the municipal code, for each day that the Contractor fails to comply, upon a specific finding of such violation. The FEHC my order a Contractor found guilty of failure to comply with the provisions of Chapter 17 to pay all or a portion of the legal costs incurred by the city as a result of prosecution of such violations. Penalties assessed under this clause may be recovered from the Contractor by setoff against unpaid portion of the contract price; and

(4) Such other sanctions as may be imposed by the FEHC pursuant to the provisions of Chapter 17 and other applicable ordinance provisions of the municipal code.

During the performance of this contract, the Contractor agrees:

(1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual harassment, ancestry, national origin, place of birth, age, or a physical and/or mental disability which would not interfere with the efficient

performance of the job in question. The contractor/vendor will take affirmative action to comply with the provisions of Peoria City Code, Chapter 17 and will require any subcontractor to submit to the City of Peoria a written commitment to comply with this division. The Contractor will distribute copies of this commitment to all persons who participate in recruitment, screening, referral, and selection of job applicants, prospective job applicants, members, or prospective contractors. The Contractor agrees that the provisions of Chapter 17, of the Municipal Code of the City of Peoria are hereby incorporated by reference, as if set out verbatim.

(2) That it will examine each one of its workforce job classifications to determine if minorities and/or females are underutilized; and it will take appropriate affirmative action steps to rectify such identified underutilization.

(3) That if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability of minority and females in the area(s) from which it may reasonably recruit; and every good faith effort will be made in its selection process to minimize or eliminate identified areas of minority and/or female underutilization for each job classification for which there are employment opportunities.

(4) That during the performance of this contract, the Contractor will maintain its "eligibility" status to conduct business with the City of Peoria under the provisions of the EEO (as defined below) certification registration program.

(5) That in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, sex religion, national origin, age, or physical and/or mental disability.

(6) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under Chapter 17. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with Chapter 17, the Contractor will promptly so notify the Equal Opportunity Office (hereinafter “EOO”) an/or the FEHC for the City of Peoria.

(7) That it will submit reports as required and furnish all relevant information as may from time to time be requested the EOO and/or the FEHC.

(8) That it will permit access to all relevant books, records, accounts and work sites by EOO staff members for purposes of investigation to ascertain compliance with Chapter 17.

(9) That it will include verbatim or by reference the provisions of Section 17-120 of Chapter 17 so that such provisions will be binding in the same manner as with other provisions of this contract. The Contractor will be liable for compliance with applicable provisions of this clause by all its subcontractors; and further, it will promptly notify the EOO and/or FEHC to be non-responsive and therefore, ineligible for contracts or subcontracts with the City of Peoria.

(10) That during the performance of this contract, the Contractor agrees: that it will have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under state law; (iii) a process including penalties ; (v) the legal recourse, investigative and

complaint process available through the Illinois Department of Human Rights and the Human Rights Commission; (vi) directions on how to contact the Department of Human Rights and the Commission; and (vii) protection against retaliation as provided by Section 6-101 of this Act (Public Act 87-1257). A copy of the policies shall be provided to the Illinois Department of Human Rights or the City of Peoria upon request.

(11) That during the performance of this contract, the Contractor agrees that they do not and will not maintain or provide for their employees, any segregated facilities at any of their establishments, or permit employees to perform their services at any location under their control where segregated facilities are maintained.

As used in this document, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, religion, color, national origin, because of habit, local custom, or otherwise.

SCHEDULE 7

Prepared By:

Peoria, Illinois 61602

After recording return to:

Peoria, Illinois 61602

MEMORANDUM OF AGREEMENT

Pere Marquette Hotel, LLC and Pere Marquette TIF, Inc. ("Redeveloper") and EM Properties, Ltd., and the City of Peoria have entered into a City of Peoria, Illinois Redevelopment Agreement dated as of _____, 20____ ("Agreement") with respect to certain real property located in the City of Peoria, the County of Peoria, the State of Illinois, as depicted on Schedule 3 attached hereto and made a part hereof (the "Project Site"). The Agreement provides that the Redeveloper, subject to certain terms and conditions set forth in the Agreement, shall develop a project as described in the Agreement (the "Project") on the Project Site.

Dated: _____, 20____.

CITY OF PEORIA

By:_____
Its City Manager

Attest:_____
Its City Clerk

PERE MARQUETTE HOTEL, LLC

By: GEM Hospitality, LLC

By:_____
Its Manager

By:_____

Print Name:_____

ACCEPTED AS TO FORM:

By:_____
Its City Attorney

PERE MARQUETTE TIF, INC.

By: _____
_____, _____

EM PROPERTIES, LTD.

By:_____
Gary E. Matthews, President

ACCEPTED AS TO CONTENT:

_____
Its Director of Economic Development

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that Patrick Urich and _____, personally known to me to be the City Manager and City Clerk, respectively, of the City of Peoria, an Illinois municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such City Manager and City Clerk, respectively, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act as such City Manager and City Clerk, respectively, and as the free and voluntary act of said municipal corporation for the uses and purposes therein set forth; and on their respective oaths stated that they were duly authorized to execute said instrument.

GIVEN under my hand and notary seal this _____ day of _____, 20____.

_____
Notary Public