

## HOTEL LEASE AND DEVELOPMENT AGREEMENT

### OVERVIEW

(11/5/14)

- I. Project Specifications
  - a. Minimum 225 rooms
  - b. Full service, convention headquarters hotel (pool, lounge, coffee shop, fitness & business centers, concierge, etc.)
  - c. Minimum of 17,000 sq. ft. of meeting space (includes min. 4,000 sq.ft. of pre-function)
  - d. Passageway (north-south) for access between Garage and AGNCPA
- II. Parties
  - a. Land owner—City of Amarillo (Granted Prime Lease to LGC to develop the project)
  - b. Landlord – Amarillo Local Government Corp.
  - c. Tenant/Operator— Newcrest Image LLC
    - (i) Hotel “flag” (subject to landlord approval)
    - (ii) Retail subtenant(s)
- III. Term
  - a. Single term of 80 years
  - b. No renewal term
  - c. Must meet and maintain required operating standards
- IV. Mortgage Security
  - a. Tenant may mortgage its leasehold interest in the project
  - b. City’s fee title in the land cannot be mortgaged or encumbered
- V. Basic Structure of Document
  - a. 1<sup>st</sup> Phase = construction document
  - b. 2<sup>nd</sup> Phase = lease of property
  - c. 3<sup>rd</sup> Phase = operating and maintenance agreement
- VI. Rent and Other Consideration
  - a. Tenant to pay LGC \$1,000/yr. as Base rent and \$120,000/yr. as Parking rent (150 spaces)
  - b. Rent increases by the CPI (starts 2<sup>nd</sup> yr. for Base rent and 5<sup>th</sup> yr. for Parking rent)
  - c. Tenant to pay property taxes for taxable areas
  - d. Tenant to maintain hotel at its expense
- VII. Non-Compete Clause
  - a. For 5 years from Hotel opening
  - b. Prohibits direct or indirect incentives, ownership, operation, lease, construct another hotel
  - c. Within the Central Business District
  - d. This applies to Landlord, Tenant, City, and affiliates; excludes Marriott Courtyard @Fisk
- VIII. Operating Standard

Hotel will be maintained consistent with reasonable and prudent operator of a comparable property that is rated Four Diamonds by the AAA.
- IX. Conditions to Commence Construction
  - a. Tenant obligations/LGC Approvals
    1. Approval of budget
    2. Approval of financing
    3. Approval of Project schematics, Site Plan, Elevations, etc.
    4. Approval of draw schedules, fees, etc.
    5. Approval of contracts for architect & general contractor
  - b. LGC obligations
    1. Obtain the Prime Lease with City for the land & City to relocate utilities
    2. Obtain and approve a signed contract for the Parking Garage project (Wallace Bajjali)
    3. Approve/Aid in obtaining economic incentive agreements:
      - (i) Center City funding for streetscape
      - (ii) TIRZ streetscape grant
      - (iii) TIRZ rebate of property tax paid
      - (iv) State/Local HOT from the Hotel
      - (v) State sales tax from the Hotel

- c. Other—Limited Performance Assurance
    - (i) City will provide a single sum of \$2 million to be used, if needed, to assure minimum performance of the hotel. No more than \$1 million of it may be drawn in any 12 month period.
    - (ii) The conditions that trigger a payment are:
      - Prior to MPEV Opening: Hotel must achieve 65% Occupancy or higher and Avg. Daily Room Rate of \$130 or better, both on a monthly basis
      - Post-MPEV Opening: 63% Occupancy or higher and \$125 ADR or better
    - (iii) The performance is measured monthly, any assurance payment made quarterly, and an annual true-up
    - (iv) Effective: starts 9 months after Hotel opens and lasts for 42 months
- X. Default
- a. Requires Tenant and subtenants to maintain Hotel to the Operating Standard
  - b. Allows step-in to leasehold by any mortgage holder interest, if Tenant defaults on that obligation
  - c. Various remedies for LGC, including termination, subject to prior notice to Tenant & opportunity to cure.
- X. Construction Schedule
- a. Commence by 30<sup>th</sup> day after Conditions met & site is free from laydown use by Hotel project.
  - b. Substantial Completion: 730 days after Lease commencement
  - c. Mandatory Substantial Completion: 900 days after Lease Commencement
  - d. Final Completion: 240 days after Substantial Completion
  - e. \$1,000 per day penalty if fails to meet the Substantial Completion deadline.
- XI. Transfers
- a. Foreclosure of leasehold by lender is a permitted transfer (no Landlord approval required)
  - b. Transfer of Lease requires Landlord approval
  - c. Transfer of interests in Newcrest or change in control of Newcrest requires Landlord consent.
- XII. Miscellaneous provisions
- a. Bonds-on construction phase
  - b. Insurance—construction phase and the operation/maintenance phase
  - c. Cancellation of relevant provisions of the Master Development Agreement; continuation of:
    - (i) MPEV provisions
    - (ii) Garage provisions (until separate LDA is signed)
  - d. Aerial Easement—LGC will consider recommending to City approval of such for canopy between Hotel and Garage, subject to DAUDS and board approval of the design
  - e. Hotel operator will cooperate with Amarillo CVC on up to 200 room block, 9 months out