

STANDSTILL AGREEMENT

THIS AGREEMENT is made and entered into by and between the Town of Taos, a municipal corporation organized and existing under the Laws of the State of New Mexico ("Town"), and Taos Hotel Associates, LLC, a Delaware limited liability company, 10 E. Yanonali St., Suite 109, Santa Barbara, CA 93101 ("THA"), this 21st day of August, 2020.

WHEREAS, the property formerly known as Indian Hills Inn (the "Property") located in the center of the Town of Taos became ruined, damaged, and dilapidated over a period of years as a result of neglect, deferred maintenance and vandalism;

WHEREAS, the property eventually became so dilapidated that it was unsafe, a fire hazard, and an unattractive nuisance;

WHEREAS, the Governing Body of the Town of Taos eventually ordered that the premises be demolished by the Town with the Town recovering the costs of demolition through a municipal lien to be placed on the property;

WHEREAS, the owner of the property appealed the Governing Body's Demolition Order to state District Court;

WHEREAS, the owner of the property consented to entry of a stipulated judgment of the Court as a resolution for the pending litigation that provided that relief sought by the Governing Body was to be granted, and the stipulated order specifically found and ordered that the Governing Body had authority "to demolish the structure in question as specified in Resolution No, 17-14 of the Taos Town Council ..." and that the Town "may proceed as specified in its Resolution";

WHEREAS, the Town accordingly prepared a Request for Proposals to seek bids for the demolition ordered by the Court, and intended to proceed as outlined;

WHEREAS, Montecito Venture Partners, LLC, a Delaware limited liability company ("Montecito") based in California with experience renovating hotel properties, executed a contract to purchase the Property and entered into a standstill agreement with the Town dated June 17, 2019.

WHEREAS, Montecito assigned its rights under the purchase contract and standstill agreement to THA, with the Town's consent, and THA acquired the property on June 28, 2019.

WHEREAS, the Town and THA worked together to secure a \$500,000 grant for the Property, subject to certain terms and conditions, through the Community Development Block Grant (CDBG) Program, approved on November 20, 2019 by the State of New Mexico.

WHEREAS, THA has worked diligently to rehabilitate the Property, including the following milestones:

2/10/2020 Asbestos abatement commenced

- 2/19/2020 Met with Taos Planning Department to review plans for the Property
- 2/19/2020 Certificate of Appropriateness hearing -- Approval
- 4/22/2020 Model room permit submission to Town of Taos
- 5/01/2020 Asbestos abatement completed
- 5/20/2020 B1-B5 permit submission to Town of Taos
- 5/29/2020 Roofing work commenced
- 6/23/2020 Fire approval for model room permit
- 7/01/2020 Zoning Review / Town of Taos approval for model room scope complete
- 7/01/2020 Model room permit submitted to CID
- 7/14/2020 Site work permit submission to Town of Taos
- 8/03/2020 Public Works approval for Site work permit received
- 8/06/2020 CID model room approval received
- 8/07/2020 Fire approval for Site work permit received
- 8/13/2020 Requested roofing inspection
- 8/18/2020 Model room plumbing rough inspection
- 8/19/2020 Roofing inspection received
- 8/19/2020 Poured back concrete at model room following inspections
- 8/20/2020 Model room wall framing commences

WHEREAS, THA has worked diligently to prepare the Property for a successful reopening, including the following milestones:

- 12/03/2019 Hosted Taos Air event at The Pearl Hotel (Managed by Casetta Group, LLC, manager of the Property) in San Diego, CA
- 12/09/2019 Hosted 1st hotel naming event for the Property at Taos Center for the Arts, engaging with the local community and gathering name ideas

- 12/23/2019 THA acquired that certain real property located adjacent to the Property at 107 Los Pandos Road in Taos, NM, to be incorporated into Hotel Willa
- 2/18/2020 Hosted 2nd hotel naming event for the Property at Taos Center for the Arts, announcing “Hotel Willa” as the name of the hotel on the Property
- 5/15/2020 Confirmed partnership with Paseo Project for Artist in Residency program at Hotel Willa
- 6/01/2020 Hired General Manager for Hotel Willa
- 2019-2020 Established important local relationships and engaged with the community, including attendance at lodging meetings, arts foundation meetings, newspaper interviews, KNCE interviews, and connecting with local hotels and restaurants.

WHEREAS, THA continues to advance the rehabilitation and redevelopment of the Property so that it will comply with all relevant building and development codes and be re-opened as a hotel;

WHEREAS, the Town is willing to agree to withhold demolition under the Judge's order to give THA an opportunity to remodel and re-open the property so that it can once again be put to use as a hotel and, if the project is a success, the Town will agree to file a satisfaction of judgment with the Court or, if the hotel is not reopened for guest occupancy in accordance with the terms of this agreement set forth below, to preserve the Town's option to demolish the property as it sees fit; and

WHEREAS, the parties desire to set forth herein the conditions under which a standstill will exist, and to set forth herein the covenants and agreements of the parties.

IT IS THEREFORE COVENANTED AND AGREED, AS FOLLOWS:

1. So long as THA is proceeding with due diligence improving the Property as specified in this agreement, the Town shall refrain from, and will be barred and enjoined from executing on the Stipulated Judgment in Eighth Judicial District Court case No. D-820-CV-2017-00215.

2. For purposes of this agreement, THA shall be deemed to be proceeding with due diligence if, subject to extension pursuant to Sections 4, 10, and 13, below, THA:

(i) continues to secure the Property against trespassing and occupancy pursuant to applicable building and/or life safety codes;

(ii) completes construction no later than March 31, 2021;

(vii) receives a certificate of occupancy no later than March 31, 2021; and

(viii) make the hotel available for guest occupancy no later than April 15, 2021.

4. THA may amend the general construction schedule provided in the previous paragraph with the written consent of the Town upon reasonable grounds, but an amendment to the date when hotel guest occupancy begins (paragraph 3(viii)) will require a written amendment to this agreement.

5. A demolition permit (for portions of the property to be demolished and rebuilt immediately), may be obtained immediately, at the election of THA.

6. THA may, at its election, complete work on the newer buildings first, followed immediately and without interruption by the older buildings without interruption, so long as requirement that construction be complete no later than March 31, 2021 is met.

7. THA shall provide regular progress reports to the Town Manager as the design and construction progresses.

8. The Town will assist THA to obtain permits to perform the work that is the subject of this agreement and shall not unreasonably delay the issuance of any permit without tolling periods required for construction set forth above.

9. Upon completion of construction and following issuance of the certificate of occupancy and upon occupancy of the hotel by hotel guests, the Town will, within thirty (30) days, file a satisfaction of judgment with the Court that indicates that the Town is abandoning its right to demolish the structure and that any application to demolish the structure would require a new application.

10. If weather delays the project, THA shall provide notice to the Town of the nature of the weather delay, the duration of the delay, and how and why it will affect the timetable above. The Town shall agree to any reasonable weather delay and the parties shall adjust the deadlines and requirements of this agreement accordingly.

11. If THA fails to obtain a certificate of occupancy, or fails to re-open the hotel and serve hotel guests, or fails to prosecute the work as described in this agreement, then the Town may, in its discretion, terminate this agreement upon thirty (30) days' notice, notify the Court that it intends to act on the Stipulated Order, advertise, solicit bids, and contract for demolition of all the structures on the property, demolish the structures on the property, and file a lien against the property in the amount of the costs of demolition plus costs, attorneys' fees and expenses incurred in obtaining the order, and otherwise execute the Town's remedies under the Court's order.

12. If either party to this agreement refuses to comply with its material obligations hereunder, other than as specified in the previous paragraph, then in addition to other remedies available under applicable law, the aggrieved party may give notice to the other party concerning the alleged default, specifying a period of no less than thirty (30) days to cure the alleged default; if no cure is forthcoming, the aggrieved party may thereupon terminate the agreement; once terminating the

agreement, the aggrieved party shall have no further obligation to perform under the agreement, and the aggrieved party shall be entitled to exercise all remedies available at law or in equity.

13. In the event of civil tumult, strike, epidemic, interruption in or delayed transportation services, war conditions, terrorism, emergencies, act of or any cause or causes beyond the control of the Town and THA, other than weather (any of such events being hereinafter referred to as a "Force Majeure"), the schedule and obligations of THA shall be suspended until the event of Force Majeure has concluded.

14. This agreement shall be effective as of the date specified above, and shall remain in place and in force until the sooner of (a) satisfaction of judgment is filed with the Court, or (b) either party terminates this agreement pursuant to Section 12, above.

15. THA shall keep, maintain, and make available to the Town all records concerning the work described herein, including drawings, contracts, records, invoices, bills, etc. for a period of three (3) years. Said records shall be available for inspection, audit and/or copying by the Town or its authorized representative or agent, including federal and/or state auditors.

16. From and after the closing of the purchase of the property, THA shall maintain at all times during the term of this agreement a policy of Comprehensive General Liability Insurance, including premises operations, completed operations/products, contractual liability and independent contractor's coverage with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence. The policy, or a separate policy as applicable, shall provide employment practices liability insurance coverage (EPLI), as applicable. All insurance policies furnished pursuant to this paragraph shall name the Town of Taos, its Elected Officials, Appointed Officials, employees, officers, agents, and insurers as an additional insured.

17. THA shall not assign, transfer or subcontract any interest in this agreement or attempt to assign, transfer or subcontract any claims for money due under this contract without the prior written approval of the Town, provided that, notwithstanding the foregoing, Town acknowledges that THA may obtain debt financing to fund part or all of the purchase price and construction and renovation costs of the property, and agrees that THA (or the special purpose entity contemplated by Section 18, below) may assign its rights hereunder to any such lender making that loan and holding a mortgage or other lien in the property as collateral therefor, and that following foreclosure, such lender shall succeed to the rights of THA hereunder. Town agrees to execute such estoppel or other commercially reasonable instrument as any such secured lender may require, as a condition of making its loan, to confirm that this agreement is in full force and effect and that Town will deliver to such lender notices of any default by THA at the same time when such notices are delivered to THA and will permit such lender to cure any such default.

18. THA may create a special purpose entity to acquire, own, and develop the hotel property that is the subject of this agreement by notifying the Town by letter of the change and providing details of the entity. Upon delivery of such written notice, such special purpose entity will succeed to the rights and obligations of THA hereunder and THA shall thereupon be released from any obligations under this agreement.

19. This agreement shall be governed by the Laws of the State of New Mexico and the Ordinances, resolutions, rules and regulations of the Town. Any legal proceeding brought against the Town arising out of this agreement shall be brought before the Eighth Judicial District Court, Taos County, State of New Mexico.

20. This agreement (a) sets forth the entire understanding of the parties concerning the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings relating to the subject matter hereof, whether oral or written, and (b) may not be modified or amended, except either (i) as permitted by Section 4, or (ii) by a written instrument executed after the effective date of this agreement by the party sought to be charged by the amendment or modification.

THE TOWN OF TAOS, NEW MEXICO

By _____
Daniel R. Barrone, Mayor

Date: _____

Attest:

Francella Garcia, Clerk

Approved as to form:

Stephen C. Ross, Esq.

TAOS HOTEL ASSOCIATES, LLC

By: _____
Atticus Lowe, Authorized Representative

Date: _____