

## **ACCESS AGREEMENT**

THIS ACCESS AGREEMENT ("Agreement") is made as of January \_\_\_\_, 2019 (the "Effective Date") by and between City of Mesa, an Arizona municipal corporation ("Seller"), and MC Hotel- River View, an Arizona limited liability company ("Licensee") (each, a "Party" and, collectively, the "Parties").

### **RECITALS**

A. Seller and Licensee are parties to that certain Agreement to Purchase Real Property and Escrow Instructions dated as of January \_\_\_\_, 2019 (the "Purchase Agreement") for a sale by Seller to Licensee, as Buyer, of certain real property located in Maricopa County, Arizona, more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property"), owned by Seller.

B. Licensee desires to enter onto the Property in accordance with the Purchase Agreement and this Agreement for the purpose of conducting various inspections of and performing certain work on the Property as described herein.

### **AGREEMENTS**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. License to Enter Property. Seller hereby grants Licensee and its duly authorized agents, consultants and independent contractors (collectively, "Representatives") a nonexclusive license to enter upon the Property, at Licensee's sole cost and expense, from the Effective Date until the termination of the Purchase Agreement, for the purpose of conducting a land survey, design and engineering studies, and soil and environmental investigation (collectively, the "Tests"), and performing certain grading work (the "Work"). Except as may be required to enforce the terms and provisions of this Agreement, Seller agrees not to interfere with Licensee's entry upon the Property for the purpose of performing or conducting the Tests and the Work. Anything to the contrary contained herein notwithstanding, Licensee or any of its Representatives may not bore or perform ground penetration test, or place any permanent structure, sign or other improvement on the Property without Seller's prior written consent during the term of this Agreement.

2. Government Regulations. While on the Property, Licensee and its Representatives shall comply with all applicable governmental laws and regulations.

3. Liens. Licensee shall not suffer or permit to be enforced against the Property any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from the investigations performed by Licensee or its Representatives and Licensee shall pay or cause to be paid all of said liens, claims or demands before any action is brought to enforce the same against the Property or Seller.

4. Indemnity. Licensee shall and does hereby agree to indemnify, defend (by counsel reasonably satisfactory to Seller) and hold Seller, its elected officials and the members of any boards or commissions and its employees, its and their respective successors and assigns (collectively, the “Indemnitees”) harmless for, from and against any loss, damage, injury, accident, fire or other casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys’ fees) of any kind or character to any person or property, including the property of the Indemnitees (collectively, the “Claims”) arising from or relating to Licensee’s entry onto the Property, including without limitation: (a) any entry and/or use of the Property by Licensee, or any of its Representatives; (b) any act or omission of Licensee, or any of its Representatives; (c) any bodily injury, property damage, accident, fire or other casualty to or involving Licensee, or any of its Representatives and its or their property on the Property; (d) any violation or alleged violation by Licensee, or any of its Representatives, of any law or regulation now or hereafter enacted relating to the Property; (e) any loss or theft whatsoever of any property or anything placed or stored by Licensee, or any of its Representatives, on or about the Property; (f) any breach by Licensee, or any of its Representatives, of its or their obligations under this Agreement; and (g) any enforcement by Seller of any provision of this Agreement and any cost of removing Licensee, or any of its Representatives, from the Property; provided, however, that the foregoing indemnity shall not apply to the extent any such Claim is ultimately established by a court of competent jurisdiction to have been proximately caused by the acts or omission of any of the Indemnitees. Anything to the contrary contained herein notwithstanding, the terms and conditions of this Section 4 shall survive the termination or expiration of this Agreement, the close of escrow on the Property or the termination or cancellation of the Purchase Agreement. This indemnification provision shall not be limited by the amount of insurance set forth in Section 5 below.

5. Insurance. Licensee, at its sole cost and expense, and as a condition precedent to Licensee’s, or any of its Representatives’, entry onto the Property, shall maintain comprehensive general liability insurance (“Liability Insurance”) on an “occurrence basis” against claims for “personal injury,” including without limitation, bodily injury, death or property damage, occurring upon, on or about the Property, such insurance to afford immediate minimum protection at all times during the term of this Agreement, to a limit of not less than One Million and No/100 Dollars (\$1,000,000.00) with respect to personal injury or death to any one or more persons or to damage to property. Such insurance shall designate, and be for the benefit of, Licensee, as the named insured party, and Seller, as an additional insured on the policy. The limits of said insurance shall not, however, limit the liability of Licensee under the indemnification provisions of this Agreement. No such policy shall be cancelable, or subject to reduction of coverage, or other modification except after prior written notice to Seller.

6. Payment of Claims. In addition to, and not in limitation of, Seller’s other rights and remedies under this Agreement, should Licensee fail within ten (10) business days after written request from Seller to either: (a) pay and discharge any lien or claim arising out of Licensee’s or its Representatives’ use of the Property; or (b) indemnify, defend, pay and hold harmless the Indemnitees for, from and against any Claim as provided herein, then in any such case Seller, at its option, may pay any such lien or claim, or settle or discharge any action therefore, or satisfy any judgment thereon, and all costs, expenses and other sums incurred by Seller in connection therewith (including, but not limited to, reasonable attorneys’ fees) shall be paid to Seller by Licensee upon written demand from Seller together with interest thereon at the rate of ten percent

(10%) per annum, from the date incurred or paid until repaid in full. "Business day" in this Section 6 shall refer to any day that is not a Friday, Saturday, Sunday or legal holiday of the City of Mesa.

7. Termination. Licensee's rights granted by this Agreement shall terminate automatically without notice upon the earlier to occur of: (a) the termination of the Purchase Agreement for any reason whatsoever (including the consummation of such Purchase Agreement through the transfer of title to the Property); or (b) the date Licensee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which case Licensee is the bankrupt party.

8. Nature of Licensee's Rights. Licensee acknowledges that: (a) this Agreement grants Licensee a revocable, nonexclusive license only; and (b) Licensee has no rights as an owner, purchaser or tenant by virtue hereof. Upon termination or expiration of this Agreement, Licensee and its Representatives shall immediately vacate the Property.

9. Maintenance and Condition of Property. Licensee, at Licensee's sole cost, will be responsible for any damage done to the Property by Licensee or its Representatives and, upon departing from or being required to vacate the Property, will pay the costs of repairing and restoring the Property and every portion thereof, if caused by Licensee, or any of its Representatives, to at least as good a condition as existed prior to Licensee's, or any of its Representatives, entry onto the Property. The terms and conditions of this Section 9 shall survive the termination or expiration of this Agreement.

10. Assignability. This Agreement may not be assigned by Licensee, whether voluntarily or by operation of law, and Licensee shall not permit the use of the Property, or any part thereof, except in strict compliance with the provisions hereof, and any attempt to do so shall be null and void; provided, however, Licensee may assign this Agreement to any permitted assignee of Licensee's rights as buyer under the Purchase Agreement if the assignee agrees, in writing, to fully assume the obligations of Licensee under this Agreement and to otherwise be subject to and abide by the terms and provisions of this Agreement.

11. Attorneys' Fees. If any action is brought by either Party in respect to its rights under this Agreement, the prevailing Party, as determined by the court, shall be entitled to reasonable attorneys' fees and court costs as determined by the court.

12. Binding Effect. Subject to the provisions of Section 10, the provisions of this Agreement are binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

13. Applicable Law. This Agreement shall be construed according to Arizona law.

14. Notices. Notices shall be in writing and shall be given by personal or air courier service delivery to one of the persons listed below, or the person listed below, or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, to the City Manager if to the City of Mesa. Notices shall be delivered or addressed to Seller and Licensee at the addresses set forth below or at such other address as a party may designate in writing. The date notice is deemed to have been given, received and become effective shall be the date on which the

notice is delivered, if notice is given by personal or air courier service delivery or by facsimile, or the date of actual receipt if the notice is sent through the United States mail.

To Seller: CITY OF MESA  
20 East Main Street, Suite 500  
Post Office Box 1466  
Mesa, AZ 85211  
Attn: Kim Fallbeck  
Real Estate Services  
Telephone: (480) 644-2521  
Facsimile: (480) 644-3392

To Licensee: MC HOTEL-RIVER VIEW, LLC  
P.O. Box 21137  
Mesa, AZ 85277  
Attn: Bob Yost  
Telephone: (480) 988-3550  
Facsimile: (480) 988-9818

With a copy to: Pew & Lake PLC  
Attn: Reese L. Anderson  
1744 South Val Vista Drive, Suite 217  
Mesa, Arizona 85204-7366  
Telephone: 480-461-4670  
Facsimile: 480-461-4676  
Email: [reese.anderson@pewandlake.com](mailto:reese.anderson@pewandlake.com)

15. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained herein. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by Seller and Licensee.

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

[Signatures of the Parties Appear on the Following Page]

**SELLER:**

THE CITY OF MESA, an Arizona municipal  
corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**LICENSEE:**

MC HOTEL-RIVER VIEW, LLC,  
an Arizona limited liability company

By: Power Hotel Group, LLC, an Arizona limited  
liability company, Its Manager

By: \_\_\_\_\_  
Gaylord Bob Yost, Manager

**EXHIBIT A**  
**LEGAL DESCRIPTION**

A portion of land located in the Northeast Quarter of Section 18, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

Commencing for reference from the East Quarter corner of said section 18:

Thence S 89 ° 27' 10" W, 1035.04 feet along the east-west midsection line (basis of bearing)

Thence N 0 ° 16' 58" E, 554.01 feet:

Thence N 89 ° 43' 02" W, 62.00 feet:

Thence 89 ° 27' 12" W, 565.23 feet to the Point of Beginning;

Thence S 89 ° 27' 12" W, 121.46 feet:

Thence N 0 ° 16' 58" E, 99.39 feet:

Thence N 89 ° 27' 12" E, 120.02 feet:

Thence S 0 ° 32' 48" E, 99.38 feet back to the Point of Beginning.

Containing 12,000 Square Feet or 0.28 acres, more or less.