

UPON RECORDING RETURN TO:

Womble Bond Dickinson, LLP
271 17th Street, Suite 2400
Atlanta, Georgia 30363
Attn: Joseph B. Foltz, Esq.

Cross Reference to:
Book 949, Page 468
Office of the Clerk of Superior Court
of Chatham County, Georgia

**STATE OF GEORGIA
COUNTY OF CHATHAM**

**FIRST AMENDMENT TO RECIPROCAL EASEMENT
AND
DEVELOPMENT AGREEMENT
(PLANT RIVERSIDE)**

THIS FIRST AMENDMENT TO RECIPROCAL EASEMENT AND DEVELOPMENT AGREEMENT (this “Agreement”) is entered into to be effective as of the _____ day of November, 2019 (the “Effective Date”), by and between **THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, GEORGIA**, a municipal corporation existing under the laws of the State of Georgia (“Grantor”), whose address is City Hall, P.O. Box 1027, Savannah, Georgia 31402, and **PLANT RIVERSIDE, LLC**, a Delaware limited liability company (“Grantee”) whose address is 4901 Vineland Road, Suite 650, Orlando, Florida 32811.

RECITALS:

WHEREAS, Grantor and Grantee made and entered into that certain Reciprocal Easement and Development Agreement (Plant Riverside) dated November 22, 2016 (the “REDA”) pursuant to which Grantor and Grantee agreed to certain reciprocal easements, construction obligations, terms and other conditions respecting Grantee’s development of the Hotel and the Project; and

WHEREAS, in order to fulfill the obligations and effectuate the purposes of the REDA, Grantee desires to obtain Grantor’s approval of revisions to certain plans and specifications for the development of the MLK, Jr. Park and to obtain certain easements over, under and upon

those certain portions of the Grantor's property from Grantor for the purposes more particularly described herein, subject to the terms and conditions hereinafter set forth; and

WHEREAS, in furtherance of the development and approval of the plans and specifications for MLK, Jr. Park, the parties desire to amend the REDA in accordance with the terms hereof.

WITNESSETH:

NOW, THEREFORE, the parties do hereby agree to amend the REDA as follows:

1. Recitals and Capitalized Terms. The Recitals are incorporated herein by reference as if set out for all purposes set forth herein. Unless otherwise defined herein, all capitalized terms in this Agreement shall have the meanings specified in the REDA.

2. Approval of Plans and Specifications for MLK, Jr. Park by Grantor. As of the date of this Agreement, Grantee has submitted revised construction plans and specifications (the "Plans") for the Walkway and the MLK, Jr. Park, prepared by Thomas and Hutton, dated July 29, 2016, last revised June 8, 2018 (the "Improvements"). Grantor has approved the Plans, as revised, and Grantee may complete construction of the Walkway and the MLK, Jr. Park, provided that the Improvements are completed in accordance with the Plans; provided further, that upon said completion the Improvements shall be used and controlled by Grantee in connection with the operation of the Grantee Property.

3. Grant of Permanent Maintenance and Use Easement by Grantor. Grantor, as the owner and holder of fee simple title in and to that extension of the existing "Riverwalk" pedestrian walkway adjacent to the northern boundary line of the Grantee Property comprised of a 1,100 feet Riverwalk extension cantilevered over the Savannah River (the "Riverwalk Property"), as more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference, for itself and its successors and assigns, does hereby agree to and grant, bargain, sell, transfer convey and warrant unto Grantee, its successors and assigns a perpetual, non-exclusive easement (the "Maintenance and Use Easement") over, under, upon, through and across the Riverwalk Property for the purposes of constructing, maintaining, repairing, replacing or upgrading and using those certain structures or improvements as shown within the outlined area on Exhibit "B", attached hereto and made a part hereof by this reference, comprised of the water features and fountains located or to be located within the Riverwalk Property as shown therein; provided further, that upon completion of those structures or improvements, those structures or improvements shall be used and controlled by Grantee in connection with the operation of the Grantee Property. Grantee further agrees that all costs of construction and maintenance of the water features shall be borne by Grantee.

4. Successors and Assigns. All of the rights, privileges, and easements granted under this Agreement shall continue as long as Grantee, its successors or assigns, use the easements granted herein to support and maintain the Grantee Property. Grantee shall have the right to revise and modify the improvements located on the Grantee Property described herein in the event the improvements on the Grantee Property are damaged, destroyed or otherwise demolished, provided that the improvements are rebuilt or restored in accordance with the Plans.

5. Limitation of Rights. Nothing herein shall be construed as a gift, grant, or dedication to the general public.

6. Quiet Enjoyment. Grantor hereby covenants and agrees that Grantee shall have quiet and peaceable possession, use and enjoyment of the aforesaid easements, right-of-way, rights and privileges, and that Grantor will execute such further assurances thereof as may be requisite.

7. Subordination. Any deed, lease, security deed, other security instrument, mortgage, or other document hereafter conveying or creating an interest in or affecting any part or all of the Grantor Property inclusive of the easements granted herein shall automatically and without further act or deed be subordinated to the terms and conditions of this Agreement.

8. Effective Date; Amendments. This Agreement shall become effective upon execution. This Agreement may be amended, from time to time, by recorded written instrument duly executed and acknowledged by the fee owners of the Grantor Property and Grantee, or its applicable successors and assigns.

9. Invalidity. If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity or effect of the remaining provisions of this Agreement, all of which shall continue in effect as if such invalid provision had not been included in this Agreement.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

11. Run with Land. The easements granted herein shall be appurtenant to, affect and run with the land, shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, heirs and assigns; provided, however, that in the event that any of these easements shall ever be adjudicated by a final unappealable order of a court of competent jurisdiction to be easements in gross, such easements shall be easements in gross of a commercial nature and may be assigned or transferred as such, subject to all limitations set forth herein.

12. No Further Changes. Except as specifically amended or modified by this Agreement, the REDA shall remain in full force and effect in accordance with its terms.

TO HAVE AND TO HOLD all and singular the said easements, right and rights of way, estates and privileges, unto Grantee, its successors and assigns, and Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the easements unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

{SIGNATURES ON FOLLOWING PAGE}

IN WITNESS WHEREOF, the parties has/have hereunto set their hands and seals as of the ____ day of November 2019.

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public
My Commission Expires:_____

GRANTOR:

THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, GEORGIA, a municipal corporation of the State of Georgia

By: _____
Name: _____
Title: _____

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public
My Commission Expires:_____

GRANTEE:

PLANT RIVERSIDE, LLC, a Delaware limited liability company

By: Plant Riverside Manager, LLC, a Delaware limited liability company, as its Manager

By: RCK Manager, LLC, a Delaware limited liability company, as its Manager

By: _____
Name: Richard C. Kessler
Title: Manager

Exhibits:

- Exhibit "A" - Riverwalk Property
- Exhibit "B" - Maintenance and Use Easement Area

Exhibit "A"

Riverwalk Property

All real property and improvements located thereon being described in that certain Department of the Army Permit # SAS-2014-00363 as that "certain pile-supported riverwalk extension ... constructed channelward of the new bulkhead and ... total[ing] 27,619 square feet (0.634 acre) over jurisdictional waters.

Exhibit "B"

Maintenance and Use Easement Area

