

MADERA COUNTY CONTRACT NO. _____

ECONOMIC INCENTIVE AGREEMENT

THIS ECONOMIC INCENTIVE AGREEMENT (the "Agreement") is entered into as of this ____ day of _____, 20__, by and between the County of Madera, a political subdivision of the State of California (the "County"), and Sky Ranch Yosemite, LLC, a California Limited Liability Company, its successors, or its assignees ("Developer"), all of whom are collectively referred to as the "Parties", with reference to the following facts:

RECITALS

A. Developer owns that certain real property (the "Property") in the County, as more particularly described in the legal description attached hereto as Exhibit "A". Developer intends to develop and operate a hotel complex on the Property, as generally described in Exhibit "B," as may be amended from time to time (the "Project"). Developer anticipates that the Project will generate Transient Occupancy Taxes ("TOT") in the approximate amount of Thirty-Eight Million Nine Hundred Fifty-Nine Thousand One Hundred Twenty-One Dollars (\$38,959,121.00) during the first twenty-five (25) years of the Project's operation. In addition, Developer and the County anticipate increased sales tax generated by the Project and operation of the business, including by increased visits to the County from those living outside the County.

B. Pursuant to Title 3, Chapter 3.20 of the County Code (the "Ordinance"), the County will impose the current TOT on all Project guests at a rate of nine percent (9%) of the total room rate revenue. Developer or operator of the Project will be required to collect the TOT and remit said tax to the County pursuant to the requirements set forth under the

Ordinance. All TOT revenue shall be placed in the County's general fund. Nothing in this Agreement is intended to affect the Developer's obligation to collect and remit the assessments levied under the Madera County Tourism Business Improvement District ("MCTBID").

C. The County approves this Agreement with Developer on the terms and conditions set forth within based on the unique aspects and benefits of the Project, including the new group of visitors the Project will attract, the Developer's new investment into the County, the establishment of new tax-generation uses for the County, and the provision of new temporary and permanent jobs.

D. The County has determined that providing the Developer with incentive funding to operate the Project is of public benefit and contributes to the general welfare of its citizens, because the Project will lead to increased visitation and will generate additional TOT and sales tax revenue for the County. The incentive will be in the form of an annual conditional obligation to pay Developer economic incentive payments (the "Incentive Payments"), in accordance with the terms and conditions set forth herein and as contemplated by this Agreement, and certain discounts in the payment of County impact fees, as set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and the following mutual covenants, agreements, conditions and representations, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Annual Incentive Payments. In consideration for Developer building, fully completing, and operating the Project on the Property, as described in Exhibit "B" and

generally depicted on Exhibit "D," and other conditions and covenants provided for herein, and subject to the limitations in this Agreement, the County agrees to pay Incentive Payments to Developer on an annual basis, as discussed further below. For clarity, the Project Description set forth in Exhibit "B" may be amended from time to time upon approval by the County, which approval shall not be unreasonably withheld, and Developer may modify the proposed brand and hotel operator at any time based on the successor provisions in Paragraph 20 below.

2. Incentive Payment Conditions.

a. The amount of Incentive Payments paid by the County to Developer shall be: seventy-five percent (75%) of all TOT payments received from Developer for years 1-15, and fifty percent (50%) of all TOT payments received from Developer for years 16-25, (not including MCTBID collections and remittances for all years,) which are collected on the Property by the Project and remitted to the County, each year for a total period of twenty-five (25) years, as set forth in Section 6. In no case shall the total of all Incentive Payments exceed a present value of Eleven Million Three Hundred Thirty Thousand Dollars (\$11,330,000.00), as adjusted pursuant to the Incentive Payment Adjustments, set forth in Exhibit "C," with present value calculated based on a 7.5% discount rate pursuant to the example in Exhibit "E".

b. In the event that the County increases the TOT rate set forth under the Ordinance, the amount of the TOT eligible for the Incentive Payments payable to Developer under this Agreement shall not be increased, unless approved by the Board of Supervisors

c. Developer shall require any third-party company that collects the TOT on behalf of Developer to levy the TOT and remit the required portion to the County

in accordance with this Agreement. Developer shall require any third-party online booking services that collects room revenues on behalf of Developer to collect and remit Project TOT payments to the County in accordance with this Agreement.

d. In the event that the County decreases the TOT or Ordinance tax rate, the Incentive Payments which are payable to Developer shall be reduced accordingly on a pro rata basis at the same percentages per year set forth in Paragraph 2.a of this Agreement. The Parties expressly acknowledge that this Agreement does not create a long-term debt of the County to Developer, but rather an annual, reoccurring obligation to pay Incentive Payments annually only upon County's receipt of TOT payments in accordance with the Ordinance and the terms of this Agreement.

3. Annual Certification and Payment. Developer agrees to provide the County a written certification within forty-five (45) days of the close of each fiscal year following implementation of this Agreement, signed by a certified public accountant attesting that all TOT taxes have been collected and submitted in accordance with the Ordinance and this Agreement (the "Certification Letter"). The letter shall be directed to the Chief Administrative Officer of the County at the address set forth for notices in Section 27 herein. Subject to Developer's compliance with the terms of this Agreement, including the provisions set forth in the Project Description in Exhibit "B" and Incentive Payment Adjustments in Exhibit "C," the annual Incentive Payment from the County to Developer shall be made within sixty (60) calendar days after the County receives the Certification Letter. In the event the County does not pay Developer within sixty (60) calendar days after the County receives the Certification Letter, interest will be immediately due and payable to Developer. Such interest will accrue on the Incentive Payment at the Applicable Federal Rate for short term obligations, as published by the United States

Department of Treasury, compounded daily. If Developer fails to submit the annual Certification Letter within the forty-five (45) day time period and such failure is not cured by Developer after notice and an opportunity to cure by transmitting a compliant annual certification within the cure period set forth in Section 11.a.ii., then County shall not be required to provide an Incentive Payment for that fiscal year until sixty (60) days after receipt of the annual Certification Letter from Developer,.

4. Record Retention. Developer agrees to retain all unaudited Project financial records regarding Project's revenues subject to TOT during the term of this Agreement plus five (5) additional years. Developer agrees to make the Project's financial records regarding revenues subject to TOT available to the County within thirty (30) days of a written request for auditing purposes.

5. Conditions of Incentive Payments. As a condition precedent to payment of any annual Incentive Payments, Developer shall (i) obtain a Certificate of Occupancy for the Project within twelve (12) years of the date of execution of this Agreement (the "Project Opening Date"), (ii) operate and maintain the Project as set forth in Exhibit "B," as may be amended from time to time, and (iii) pay all County Fees in connection with the issuance of Project building permits, including, impact and other fees, and the Special Impact Fee of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) as set forth in Exhibit "B." Developer shall be required to pay fifty percent (50%) of all impact fees.

6. Term. This Agreement shall have a term of twenty-five (25) years (the "Term"). The Term shall commence on January 1st in the year after the date in which the first TOT payment is made by Developer to the County following the initial opening of the Project and shall remain in effect, unless otherwise terminated as provided for herein. The Term of the Agreement shall not be extended in the event of a Developer default (as

defined in Section 11.a.) or in the event Developer does not qualify for an annual Incentive Payment, except under the circumstances provided in Section 11.c. County shall have the right to terminate this Agreement at any time by making a payment to Developer that would result in total Incentive Payments equal to the present value of [Eleven Million Three Hundred Thirty Thousand Dollars (\$11,330,000.00)], as adjusted pursuant to the provisions set forth in Exhibit "C," with the present value calculated based on a 7.5% discount rate pursuant to the example in Exhibit "E".

7. No Obligation to Build or Operate. Both Parties acknowledge that the Project is currently in the proposal stages, and until (a) execution of this Agreement by both Parties, and (b) approval of the building permits for the Project, Developer has no liability to the County for failure to build or operate Project as intended by the Parties herein. The Property and the Project as generally described in Exhibit "A" and Exhibit "B" respectively, and the Project Site Plan generally depicted in Exhibit "D" are conceptual and intended to provide an understanding of the general scale and direction of the Project. The Parties agree and acknowledge that Exhibits "B" and "D" are attached for reference and Developer may modify Exhibits "B" and "D" to conform with the approved and permitted Project as it progresses through the development process, and such modification shall not be deemed an amendment of this Agreement pursuant to Section 23. Any modifications or amendments to Exhibits "A" or "C" shall be deemed an amendment of this Agreement pursuant to Section 23 herein, and shall require approval of the Board of Supervisors.

8. Disclosure. Developer is informed and hereby acknowledges that the County is uncertain as to whether the benefits conferred by this Agreement create a public work for prevailing wage purposes, which in turn requires the payment of prevailing wages

on the Project. Developer expressly and affirmatively acknowledges that the County's representation of uncertainty, as specifically set forth in this Agreement, is the sole and complete representation made by the County regarding the prevailing wage issue. Developer hereby acknowledges that Developer has been informed of the County's uncertainty in this regard. Developer may wish to treat this Agreement as an event triggering the consequences attendant with a prevailing wage project to remove any uncertainty; Developer is encouraged to seek the advice of its own attorney(s) as to this issue, prior to the execution of this Agreement. Developer's execution of this Agreement is an acknowledgment that such independent advice and counsel has been obtained, and that Developer assumes this risk.

9. Indemnity Obligation.

a. Except to the extent caused by the negligence, fraud, intentional, or willful misconduct of the County or its vendors, contractors, subcontractors, or employees, Developer agrees to protect, defend (with legal counsel acceptable to the County which acceptance shall not be unreasonably withheld), indemnify and hold harmless the County, its council members, officers, agents, and employees from any and all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys' fees and court costs actually incurred), injuries and liabilities of every kind arising out of this Agreement or caused by Developer's negligence, gross negligence, or intentional wrongdoing under this Agreement, whether such activities or performance thereof is by Developer or anyone directly employed or contracted with or by Developer and whether such damage shall accrue or be discovered before or after commencement of operation of the Project, including but not limited to all claims that the benefits conferred by the County under this Agreement create a public work for prevailing wage purposes thereby requiring the

payment of prevailing wages, and all claims challenging the legality, constitutionality, or enforceability of this Agreement, including but not limited to the County's authority to pay TOT Incentive Payments. The County agrees to provide such assistance in the defense of such challenge as is reasonably requested by Developer. County's agreement to provide such assistance does not constitute County's agreement not to seek indemnity from Developer of its expenses in providing such assistance to Developer.

b. In the event that the County tenders the defense and indemnification of a claim contemplated by this Agreement to Developer and/or to its contractors, subcontractors, agents and/or employees, the County shall be entitled to actively supervise the claim and/or defense of the same, shall be authorized to select and retain its own separate independent counsel, at Developer and/or its contractors, subcontractors, agents and/or employees' expense, as necessary, which decision shall be made solely and exclusively by the County, and the County must consent to the disposition of any such claim, including but not limited to, the settlement of any such claim.

10. Authority to Execute Agreement. Each individual signing this Agreement represents and warrants that they have full authority to execute the same on behalf of the Party on whose behalf they so sign, and that they are acting within the scope of their authority. Each Party signing this Agreement agrees to indemnify and hold harmless the other Party for loss, damage, liability, cost, or expense (including reasonable attorneys' fees actually incurred) arising out of any claims made by anyone that such authority to sign this Agreement does not exist.

11. Default.

a. Default of Developer. Any one or all of the following events shall constitute a default by Developer, subject to the limitations described in Section 11.i.

i. Any misleading statement, misrepresentation, or warranty of Developer herein or in any other writing at any time furnished by Developer to County that materially and permanently harms the County or materially and permanently diminishes the benefits of the Agreement to the County.

ii. Nonperformance, when due, of any of the obligations described herein, or failure to perform any obligation or covenant contained herein, if noncompliance is not cured by Developer within sixty (60) days written notice of noncompliance provided to Developer by the County. If such noncompliance is not curable within such sixty (60) day period, then as long as Developer commences to cure within that period and cures within ninety (90) days after commencing to cure, the noncompliance shall not constitute a default.

iii. The filing by Developer of a petition for relief under the Bankruptcy Reform Act of 1978 or any bankruptcy or debtor relief law.

iv. A general assignment by Developer for the benefit of creditors or the appointment of any receiver or trustee of all or any portion of the assets of Developer.

b. Default of County. Any one or all of the following events shall constitute a default by the County and a basis for the Developer to terminate this Agreement and/or take legal action against the County.

i. Any misleading statement, misrepresentation, or warranty of County herein or in any other writing at any time furnished by County to Developer that materially harms the Developer or materially diminishes the benefits of the Agreement to the Developer.

ii. Nonperformance, when due, of any of the obligations

described herein, or failure to perform any obligation or covenant contained herein if noncompliance is not cured by County within sixty (60) days written notice of noncompliance provided to County by the Developer. If such noncompliance is not curable within such sixty (60) day period, then as long as County commences to cure within that period and cures within ninety (90) days after commencing to cure, the noncompliance shall not constitute a default.

iii. Any agreement by the County, governed by Government Code Section 53083 and subject to the Ordinance, which is entered into with another party proposing a development and which provides for a payment or credit that is more favorable to such party than the terms of this Agreement; provided, however, that this Paragraph 11.0.iii. shall only apply to an agreement reached with a party proposing a development where the development is located or will be located within a ten (10) mile radius of the outside boundary of the Project. This Paragraph 11.0.iii. may be waived by Developer only by informed written consent.

c. Developer Exceptions to Default. Notwithstanding any other provision in this Agreement, Developer shall not be in default if due to casualty loss, natural disaster, or other events beyond the control of Developer, its vendors, independent contractors, subcontractors, or employees' performance of Developer's obligations are impossible or commercially impracticable. The Parties contemplate, for example and not by way of limitation, a natural disaster which causes damage to the Project such that the taxable assessed value of the Project temporarily cannot be maintained at or above the amounts provided on Exhibit "C".

d. No Default of County or Developer. The lack of performance by either Party shall not be deemed a default where performance is prevented due to a court

order or final judgement is rendered in a lawsuit and all applicable appeal periods have expired, successfully challenging this Agreement, any governmental approval of the hotel Project, or Developer's or the County's authority to perform their respective obligations hereunder. Upon the effective date of any notice of termination, no Party shall have any rights against or liability to the other, except further that the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect and those liabilities occurring or arising prior to the date of such termination shall remain effective.

e. **Enforced Delay.** In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war, insurrection, terrorist acts, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God or other deities or nature, acts of public enemy, epidemics, pandemics, quarantine restrictions, moratoria, or other governmental restrictions, freight embargoes, national supply chain delays, filing of a lawsuit challenging this Agreement or any governmental approval or permit for the Project or Developer's or the County's authority to perform their respective obligations hereunder, an act or omission of the other Party, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause shall be deemed granted if notice by the Party claiming such extension is sent to the other Party within thirty (30) days from the commencement of the cause. No extension of time arising under this Section shall extend the term of this Agreement or the Project Opening Date.

f. **Dispute Resolution.** If a legal dispute arises related to the interpretation or enforcement of, or the status of compliance with the terms and conditions of this Agreement, including the rights and obligations of the Parties hereunder (a "Dispute"), the County and Developer shall first attempt to resolve such Dispute through

a meet and confer discussion. In the event a Dispute cannot be resolved by informal discussions within twenty-one (21) calendar days of a Party's request for a meet and confer discussion, the County and Developer shall endeavor to resolve the Dispute by mediation which, unless otherwise mutually agreed to by the Parties, shall be conducted under the then current JAMS rules and procedures for mediating business disputes by a neutral third party selected from the JAMS panel of neutrals. The Parties shall share the cost of mediation equally. This dispute resolution process shall be undertaken in good faith and exhausted prior to the initiation of judicial proceedings by either Party.

g. Remedies. Either Party shall have the right to terminate this Agreement if the other Party is in default and fails to timely cure as required under Section 11.a.ii. and Section 11.b.ii. Following an event of default by Developer which is not cured within the cure periods set forth in Section 11.a.ii., the County shall have the right to withhold disbursements of any future portion of the Incentive Payments until the default is cured. The Parties acknowledge and agree that the County's sole and exclusive remedies upon an uncured default shall be withholding any further disbursements of the Incentive Payments until such time as the default is cured, or termination of this Agreement.

h. No Liability of County Member. No County elected official, or employee of the County shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by County under this Agreement or for any amount which may become due to Developer or any successor or on any obligations under the terms of this Agreement.

i. Mortgagee Protections. The Parties acknowledge that for the Project to be developed, the Developer must acquire financing; such financing will include a

mortgagee or beneficiary ("Mortgagee") under a mortgage or deed of trust that will encumber the Project.

i. No Termination. No action by Developer or the County to cancel or surrender this Agreement or to materially modify the terms of this Agreement shall be binding upon a Mortgagee without its prior written consent, which such Mortgagee shall not unreasonably withhold, condition or delay, unless (solely with respect to cancelling or surrendering this Agreement) such Mortgagee fails to cure a default within the time frames set forth in this Section 11.

ii. Notices. If the County gives notice of default to Developer hereunder, the County shall simultaneously give a copy of such notice of default to any Mortgagee that has filed or recorded a request for such notice, at the address designated by the Mortgagee. No notice of default given by the County to Developer shall be binding upon or affect said Mortgagee unless a copy of said notice of default shall be given to Mortgagee pursuant to this Paragraph 11.i.ii. In the case of an assignment of such Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to the County, may change the address to which such copies of notices of default are to be sent. The County shall not be bound to recognize any assignment of such Mortgage unless and until the County shall be given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Mortgagee hereunder with respect to the Mortgage being assigned. If such Mortgage is held by more than one person, corporation or other entity, no provision of this Agreement requiring the County to give notices of default or copies thereof to said Mortgagee shall be binding upon the County unless and until all of said holders shall designate in writing one of their number to receive all such notices of

default and copies thereof and shall have given to the County an original executed counterpart of such designation.

iii. Performance of Covenants. Mortgagee shall have the right (but not the obligation) to perform any term, covenant, or condition and to remedy any default by Developer under this Agreement within the time periods specified herein, and the County shall accept such performance with the same force and effect as if furnished by Developer; provided, however, that said Mortgagee shall not thereby or hereby be subrogated to the rights of the County. Notwithstanding the foregoing sentence, nothing in this Paragraph 11.i.iii. shall be deemed to permit or authorize such Mortgagee (or its designee) to undertake or continue the construction or completion of the Project without first having expressly assumed Developer's obligations that relate to the Project, to the County or its designee by written agreement satisfactory to the County.

iv. Default by Developer. In the event of a default by Developer, the County shall not have the right to terminate this Agreement (1) unless and until the Developer's and Mortgagee's notice and cure periods have expired; and (2) in the case of a default which cannot practicably be cured by a Mortgagee without taking possession of the Project, said Mortgagee shall proceed diligently to obtain possession of the Project as Mortgagee (including possession by a receiver) and, upon obtaining such possession, shall proceed diligently to cure such default; or in the case of a default which is not susceptible to being cured by a Mortgagee, said Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire the Developer's right, title and interest hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure) and upon such completion of acquisition or foreclosure, such Mortgagee shall proceed diligently to cure such default.

v. No Obligation to Cure. No Mortgagee shall have any obligation or duty pursuant to this Agreement to perform the obligations of the Developer or other affirmative covenants of the Developer hereunder or to guarantee such performance, and nothing in this Agreement shall require any Mortgagee to cure any default of the Developer referred to above. However, in the event that a Mortgagee elects not to cure any default susceptible of being cured, the County's obligation to further fund any TOT Incentive Payments shall be suspended until such time as the default is cured, provided, however, such suspension shall not extend the Term of this Agreement.

vi. Further Assurances. The County and Developer agree to cooperate in including in this Agreement, by suitable amendment, any provision which may be reasonably requested by any Mortgagee or any proposed Mortgagee and deemed acceptable by the County. Such cooperation by the County shall not be unreasonably withheld or delayed as long it does not change the material economic terms of this Agreement, and as long as Developer reimburses the County for all reasonable expenses of the County in connection with such cooperation. Such cooperation is intended for the purpose of (i) more fully or particularly implementing the mortgagee protection provisions contained herein, (ii) adding mortgagee protections consistent with those contained herein and which are otherwise commercially reasonable, (iii) allowing such Mortgagee reasonable means to protect or preserve the security interest of such mortgagee in the Project, including its lien on the Property and the collateral assignment of this Agreement, and/or (iv) clarifying the terms or restructuring elements of the transactions contemplated hereby; provided, however, in no event shall the County be obligated to adversely modify any of Developer's obligations or the County's rights under this Agreement in any manner not already contemplated in this Section 11.

12. Compliance with Law and Governmental Regulations.

a. Developer shall, at its sole cost and expense, comply with all applicable municipal, county, state, and federal laws, rules, regulations and ordinances pertaining to its activities contemplated under this Agreement, issuance of building and use permits and compliance with all federal and state labor laws (collectively, "Laws"). Supplementing the indemnity set forth in Section 9 above, Developer shall defend, indemnify, and hold the County, its elected officials, officers, members, employees, and agents free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any failure or alleged failure of Developer to comply with such Laws relating to this Agreement other than those caused by the negligence, fraud, intentional or willful misconduct of the County or its vendors, contractors, subcontractors, or employees.

b. Specifically, by its execution of this Agreement, Developer certifies that it is aware of the requirements of and applicability of California Labor Code Sections 1720, et seq. and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain projects, funded in whole or in part by public funds. Developer agrees to fully comply with all applicable Prevailing Wage Laws in the development of the Project. If required, Developer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the work on the project available to interested parties upon request, and shall post copies at the Developer's principal place of business and the project site. Developer agrees to execute a waiver with regard to tax information to ensure that the County may verify any data required to fulfill reporting requirements under Government Code Section 53083, as set forth in Paragraph 12.c below.

c. County shall, at its sole cost and expense, comply with all applicable municipal, county, state, and federal laws, rules, regulations and ordinances now in force, or which may hereafter be in force, pertaining to the activities contemplated under this Agreement including Government Code Section 53083. Specifically, notwithstanding any other provision in this Agreement, County shall be solely responsible for preparing reports pursuant to Government Code Section 53083 and sending a copy to Developer.

13. Advice of Counsel. Each of the Parties hereto have received the advice of independent legal counsel prior to signing this Agreement. Each of the Parties hereto acknowledges that no other party or agent or attorney of any other party has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce the other Party to execute this Agreement.

14. Entire Agreement. It is expressly understood and agreed that this Agreement, including the preamble paragraph and Recitals, contains the entire agreement and understanding concerning the subject matter thereof, and supersedes and replaces all prior negotiations and agreements between the Parties, whether written or oral. It is expressly understood and agreed that there have been no promises, agreements, warranties, or inducements, not herein expressed, and the Parties acknowledge that they have read this Agreement and have executed it without relying upon any statements, representations, or warranties, whether written or oral, not expressly set forth herein.

15. Estoppel Certificates. Any Party to this Agreement shall, promptly upon the request of any other Party, execute, acknowledge and deliver to or for the benefit of the other Party, a certificate certifying that this Agreement is unmodified and in full force and

effect, whether there are then existing any defaults on the part of the Party requesting the certificate, and such other matters as reasonably requested.

16. Governing Law. All questions with respect to the construction of this Agreement and the rights and liabilities of the Parties hereto shall be governed by the laws of the State of California. Venue shall be located in Madera County.

17. Further Assurances. The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments, including, but not limited to, escrow instructions, and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purpose of this Agreement.

18. Time of the Essence. Time is of the essence for each provision of this Agreement of which time is an element.

19. Captions. Sections, titles, and options contained in this Agreement are inserted only as a matter of convenience and for reference and shall in no way be construed to define, limit, or extend the scope of this Agreement or the intent of any of its provisions.

20. No Third Party Beneficiaries. With the exception of the specific provisions set forth in this Agreement for the benefit of Mortgagees, there are no intended third party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

21. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties, as further defined herein. The terms of this Agreement shall run with the land, and shall bind all successors in title to the Property until the termination of this Agreement, except as for provisions that survive termination of this Agreement. The

successive owners of the Project, and the assigns of the Developer, may enter into a written assignment of all or a portion of the Developer's right to receive TOT Incentive Payments under this Agreement, subject to approval by the County, which approval shall not be unreasonably withheld. Any proposed assignment submitted to the County shall include at a minimum, the following information: Proof that a proposed assignee: (i) expressly assumes Developer's obligations under this Agreement in a written assignment agreement, and (ii) has entered a legally binding obligation to operate the Project in the manner contemplated in Paragraph 2 of Exhibit "B" attached hereto, and (iii) satisfies the following criteria: (a) owns and/or operates, or has owned and/or operated, two (2) or more properties of substantially the same size and scale of the Project and has the financial strength to own, operate and maintain the Project in substantially the same manner as Developer; (b) has not been found by a court of competent jurisdiction to have committed, or been under indictment or have been indicted for, a felony, fraud or crime of moral turpitude under any applicable law; and (c) is not a Sanctioned Person. Following County approval of such written assignment agreement, the County shall pay such TOT Incentive Payments to the successor owner or assignee indicated in the fully executed assignment agreement, all in accordance with the terms of such written assignment. A "Sanctioned Person" means any person that is listed on United States Treasury Department Office of Foreign Assets Control's ("OFAC's") Specially Designated Nationals and Blocked Persons List; (b) listed on OFAC's Consolidated Non-Specially Designated Nationals List; (c) a legal entity that is deemed by OFAC to be a sanctions target based on the ownership of such legal entity by Sanctioned Person(s); or (d) a person that is a sanctions target pursuant to any territorial or country-based sanctions program.

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22. Contingent on Board of Supervisors Approval. Developer understands and acknowledges that this Agreement is subject to approval by the Board of Supervisors of the County and that it cannot be fully performed by the County unless and until such approval has been duly and regularly made. The terms, conditions, and covenants set forth herein are all made expressly contingent upon approval by the Board of Supervisors. In the event this Agreement is not approved, neither Party shall be obligated to perform and is released and discharged by the other from any and all obligations hereunder.

23. Amendment. This Agreement shall not be amended except by a written instrument signed by the Parties or their respective successors and assigns. Minor modifications to this Agreement shall not require the approval of the Board of Supervisors. For purposes of this Section, “minor modifications” shall mean changes or modifications to the Agreement that do not impact the amount of the Incentive Payments or materially modify the Parties’ obligations under this Agreement “Minor modifications” do not include changes in the terms or conditions set forth in Exhibits “A” or “C”.

24. Recordation of Memorandum of Agreement. Developer and the County consent to the recordation of a Memorandum of this Agreement against the Property in the Office of the Madera County Recorder in a form that is mutually agreed to by the Parties.

25. Binding Effect. This Agreement shall be binding upon and inure to the benefits of the Parties and their respective successors and assigns.

26. Severability. If any provision of this Agreement or the application thereof, to any person or entity is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

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27. Notices. Notices required by this Agreement shall be in writing and shall be effective upon personal service or deposit in the mail, postage prepaid and addressed as follows:

COUNTY

Jay Varney
County Administrative Officer
Madera County
200 West 4th Street
Madera, CA 93637

DEVELOPER

Sky Ranch Yosemite, LLC
5051 E. Copa De Oro Dr.
Anaheim, CA 92807

With Copy to

Karen Scrivner, Clerk of the Board
Madera County Board of Supervisors
200 West 4th Street
Madera, CA 93637

28. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures if followed by mailing of an original to both Parties.

29. Number of Days. Provisions in this Agreement relating to the number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice, or to undertake any other action occurs on a Saturday, Sunday, or a bank or County holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding County working day.

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IN WITNESS WHEREOF the foregoing Agreement is executed on the date and
year first above-written.

COUNTY OF MADERA


ATTEST:


Chairman, Board of Supervisors

Clerk, Board of Supervisors

SKY RANCH YOSEMITE, LLC

Approved as to Legal Form:
COUNTY COUNSEL

By: **Dale E. Bacigalupi**

Digitally signed by: Dale E. Bacigalupi
DN: CN = Dale E. Bacigalupi email =
dbacigalupi@lozanosmith.com C =
US O = Lozano Smith
Date: 2022.12.15 11:16:38 -08'00'

By: 
(Signature)

Alkesh Patel

(Print Name)

Title: **Managing Member**

ACCOUNT NUMBER(S)

EXHIBIT “A”

The Property

The Developer intends to develop own, develop and operate the Project on the property in unincorporated Madera County, California. The developed Project will include, but not be limited to, the parcels listed below.

- a. APN 057-180-043
- b. APN 057-200-074
- c. APN 057-180-042
- d. APN 057-180-041
- e. APN 057-180-044

EXHIBIT “B”

Project Description: The “Project” includes the timely construction of all of the following facilities and, following completion, operating and maintaining these facilities so as to maximize occupancy and use.

1. Sierra Sky Ranch (“SSR”) is an existing 28-room hotel originally built in 1875 located just outside of Yosemite National Park’s Gate entrance in the community of Oakhurst, Madera County. SSR will be rebranded and undergo a major redevelopment into an upscale lifestyle hotel with 150 rooms and villas, programmed experientially with a host of full-service amenities including a restaurant plus bar (including full-service kitchen), curated outdoor event space, and approximately 29 acres of natural beauty to enjoy outdoor activities year-round. The property will bring to light nearly 150 years of Americana tradition, and will also be affiliated with a full-service highly amenitized signature hotel brand affiliated with the top 3 national hotel chains. Being part of a hotel brand’s system will provide maximum marketing and notoriety to Madera County as the best entrance to Yosemite National Park, and one of the best guest experiences.

Innovation and creativity will be driving forces in respect to both design and sustainability for the new development. SSR will offer a rare opportunity to retreat to fresh air, personal wellness, endless views, and high-quality outdoor amenities including meeting and event space, and a trail around the property.

The proposed major expansion will consist of twenty-two (22) new hotel structures comprising a total of 119,000 gross square feet as currently planned, and 10,000 square feet of outdoor event space. The final configuration and site plan will evolve and is subject to changing as Developer finalizes construction documents, but will result in a full-service hotel of at least 128 total rooms. The new meeting spaces will allow for events of up to

300 people. The currently planned new improvements at the site, if an EDIP is approved by the County of Madera, will add at least 100 new rooms for hospitality services, and will accommodate tens of thousands of guests per year in the market.

Developer will also pay a Special Impact Fee in the total amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in five (5) installments of Five Hundred Thousand Dollars (\$500,000.00) each, beginning on the date when the first building permit is issued for the Project, and then every six (6) months thereafter. The County, at its option, will expend these funds towards one or more of the following:

- Road improvements to the intersection of Highway 41 and Road 632
- Road improvements to Road 632 between Highway 41 and Sky Ranch Lane
- One fully equipped fire ladder truck (to be sourced by Madera County Fire Department)

2. Estimated Project Timeline:

(a) Date the applicant expects to begin construction of the Project:
October 2023.

(b) Date the applicant expects to complete construction of the Project:
October 2025.

EXHIBIT "C"

Incentive Payment Adjustments

1. One-time Adjustment

Within ninety (90) days after a Certificate of Occupancy is issued for the completed Project, Developer shall submit a final accounting of the "Developer Budget" for the Project, showing actual costs, using the format used in the pro-forma "Development Budget" attached hereto as Exhibit "C-1."

To the extent the total "All-in costs" for the completed Project is less than Seventy-Eight Million One Hundred Thousand Dollars (\$78,100,000.00), the maximum Incentive Payment amount described in Section 2 of this Agreement shall be reduced by fifty percent (50%) of the shortfall between the All-in cost and \$78,100,000.00.

2. Annual Adjustment

The annual Incentive Payment amount shall be reduced dollar-for-dollar to the extent that the sales tax received by the County from the Project is less than the sales tax "Amount Guaranteed", as shown below:

Year	F&B Revenue	Madera County Sales Tax	Amount Guaranteed
		Allocation (1%)	
2025	\$4,705,203	\$47,052	\$23,526
2026	\$4,924,359	\$49,244	\$24,622
2027	\$5,391,590	\$53,916	\$26,958
2028	\$5,464,958	\$54,650	\$27,325
2029	\$5,540,526	\$55,405	\$27,703
2030	\$5,618,362	\$56,184	\$28,092
2031	\$5,698,533	\$56,985	\$28,493
2032	\$6,406,109	\$64,061	\$32,031
2033	\$6,491,162	\$64,912	\$32,456
2034	\$6,578,767	\$65,788	\$32,894
2035	\$6,776,130	\$67,761	\$33,881
2036	\$6,979,414	\$69,794	\$34,897
2037	\$7,188,797	\$71,888	\$35,944
2038	\$7,404,460	\$74,045	\$37,022
2039	\$7,626,594	\$76,266	\$38,133
2040	\$7,855,392	\$78,554	\$39,277
2041	\$8,091,054	\$80,911	\$40,455
2042	\$8,333,785	\$83,338	\$41,669
2043	\$8,583,799	\$85,838	\$42,919
2044	\$8,841,313	\$88,413	\$44,207
2045	\$9,106,552	\$91,066	\$45,533
2046	\$9,379,749	\$93,797	\$46,899
2047	\$9,661,141	\$96,611	\$48,306
2048	\$9,950,976	\$99,510	\$49,755
2049	\$10,249,505	\$102,495	\$51,248

3. [No Incentive Payment shall be paid following any year in which the assessed valuation of the Project falls below Sixty-Two Million Six Hundred Thousand Dollars (\$62,600,000.00).]

EXHIBIT “C-1”

SIERRA SKY RANCH DEVELOPMENT BUDGET

	Total Budget	Per Sq. Ft.	Per Key
Hard Costs:	\$62,936,314	\$ 529.29	\$ 419,575
Soft Costs:	\$10,825,913	\$ 91.04	\$ 72,173
Financing Costs:	\$4,334,076	\$ 36.45	\$ 28,894
Total All-in Cost:	\$78,100,000	\$ 656.81	\$ 520,667

EXHIBIT "D"

Project Site Plan

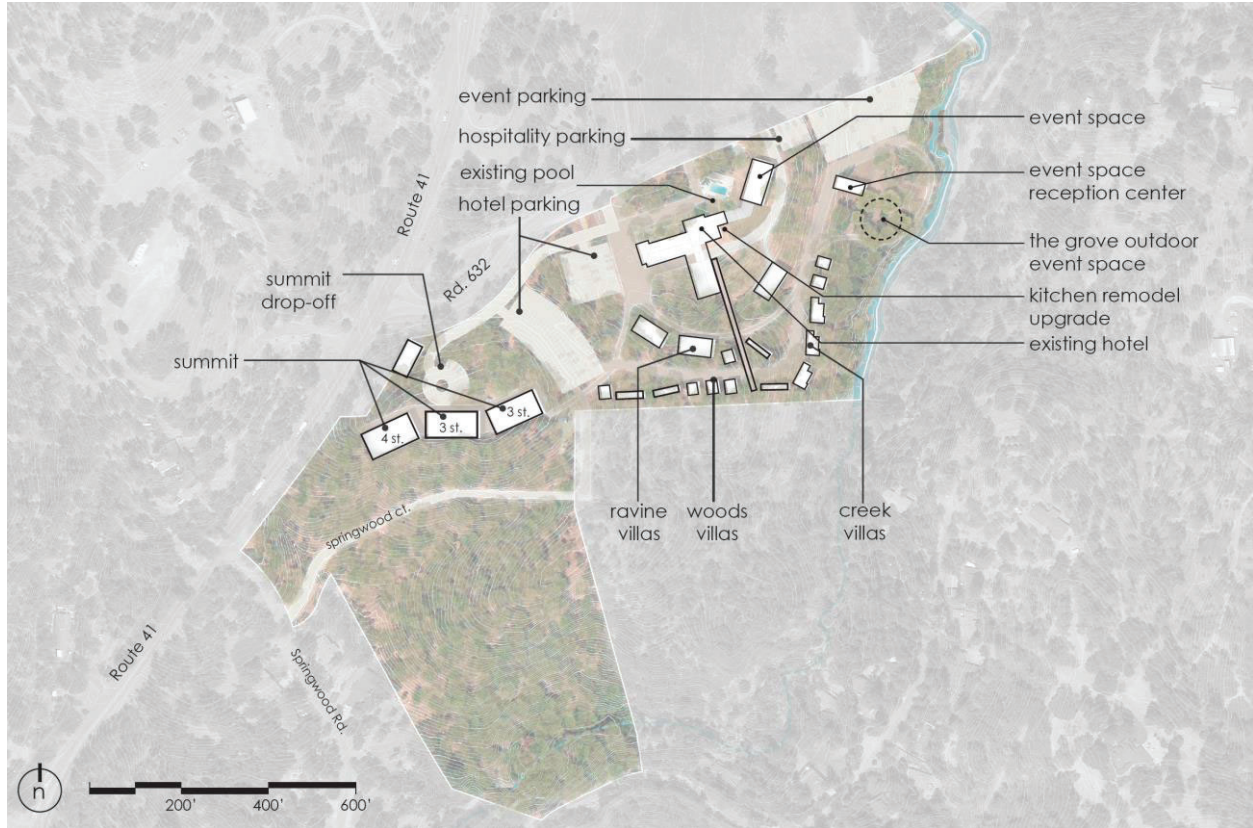


EXHIBIT "E"

Year	(A) TOT Collected	(B) % as Measure of Incentive Payment	(C) Incentive Payment*	(D) Present Value Adjustment Factor (7.5%)	(E) Present Value of Incentive Payment	(F) Total of All Incentive Payments
			= A x B		= C x D	= Current year E, plus prior year F
1	\$ -	75%	\$ -	1.0000	\$ -	\$ -
2	-	75%	-	0.9302	-	-
3	-	75%	-	0.8653	-	-
4	-	75%	-	0.8050	-	-
5	-	75%	-	0.7488	-	-
6	-	75%	-	0.6966	-	-
7	-	75%	-	0.6480	-	-
8	-	75%	-	0.6028	-	-
9	-	75%	-	0.5607	-	-
10	-	75%	-	0.5216	-	-
11	-	75%	-	0.4852	-	-
12	-	75%	-	0.4513	-	-
13	-	75%	-	0.4199	-	-
14	-	75%	-	0.3906	-	-
15	-	75%	-	0.3633	-	-
16	-	50%	-	0.3380	-	-
17	-	50%	-	0.3144	-	-
18	-	50%	-	0.2925	-	-
19	-	50%	-	0.2720	-	-
20	-	50%	-	0.2531	-	-
21	-	50%	-	0.2354	-	-
22	-	50%	-	0.2190	-	-
23	-	50%	-	0.2037	-	-
24	-	50%	-	0.1895	-	-
25	-	50%	-	0.1763	-	-
	<u>\$ -</u>		<u>\$ -</u>		<u>\$ -</u>	

*The Incentive Payment in a given year shall be adjusted such that the total of all Incentive Payments does not exceed \$11,330,000 (or as otherwise adjusted pursuant to Exhibit "C")