

ESTOPPEL AND CONSENT

This Estoppel and Consent is dated as of this ____ day of _____, 2015 (the "Estoppel and Consent") by the City of Appleton, Wisconsin, a Wisconsin municipal corporation (the "City").

RECITALS REGARDING DEVELOPMENT AGREEMENT:

A. The City of Appleton, Wisconsin ("City"), the Redevelopment Authority of the City of Appleton, a body corporate and politic, Paper Valley Hotel and Conference Center, Inc., a Wisconsin corporation ("Developer") and Bergstrom Corporation, a Wisconsin corporation ("Guarantor") entered into that certain Development Agreement dated December 1, 1992 (the "Development Agreement"), a true and correct copy being attached hereto as Exhibit A, pursuant to which the City agreed, among other things, to construct a parking structure and skywalk adjacent to certain real property owned by the Developer and more particularly described as Parcel 1 on Exhibit B attached hereto and commonly referred to as the Paper Valley Hotel and Conference Center (said real property and any and all improvements thereon are herein referred to as the "Hotel"), and the Developer agreed to use reasonable efforts to construct certain improvements to the Hotel; and

B. The City and Developer intended terms of the Development Agreement to be binding on the Hotel and all successors and assigns of the Developer; and

C. The Developer and its parent corporation, Bergstrom Corporation, subsequently sold and conveyed the Hotel to Oly/Montclair Wisconsin Hotels LLC ("Oly/Montclair") and in connection with such sale assigned to Oly/Montclair all of their rights under the Development Agreement, such assignment having been consented to by the City pursuant to that certain Consent to Assignment of Development Agreement dated January 6, 1998 and recorded with the Register of Deeds of Outagamie County, Wisconsin on January 15, 1998 as Document No. 1254469; and

D. Oly/Montclair, subsequently sold and conveyed the Hotel to Watermark Montclair Wisconsin Properties LLC ("Watermark") and in connection with such sale assigned to Watermark all of their rights under the Development Agreement to Watermark, such assignment having been consented to by the City pursuant to that certain Consent to Assignment of Development Agreement dated November 29, 2006 and recorded with the Register of Deeds of Outagamie County, Wisconsin on December 4, 2006 as Document No. 1733926; and

E. Watermark's interest in the Hotel was foreclosed in Outagamie County Case Number 2012CV000614 (the "Foreclosure Action") and as a result of the foreclosure judgment and being the successful bidder, a Sheriff's Deed was issued to GCCFC 2007-GG9 Lodging 333, LLC and recorded as Document No. 1976446; and

F. Pursuant to that certain Agreement for Sale and Purchase of Properties ("Purchase Agreement") dated April 22, 2015, GCCFC 2007-GG9 Lodging 333, LLC ("GCCFC") will sell and convey the Hotel to Inner Circle Investments, LLC or to an affiliated entity owned and/or controlled by it ("Inner Circle") and as a condition of such sale and conveyance, GCCFC desires to assign its rights under the Development Agreement and Inner Circle Investments, LLC ("Inner Circle") desires to accept all rights of the Developer under the Development Agreement; and

G. Pursuant to the terms of the Development Agreement, the consent of the City is required to assign or otherwise transfer the rights under the Development Agreement, which consent is herein granted by the City; and

H. The City desires Inner Circle to assume the rights of the Developer under the Development Agreement at the closing of the Purchase Agreement.

RECITALS REGARDING SKYWALK LEASE:

A. The Hotel is connected to an elevated, enclosed pedestrian passageway (the "College Avenue Skywalk") owned by the City (either in fee or by virtue of a perpetual, irrevocable easement therefor), which is situated within the air rights legally described in Parcel 2 on Exhibit B attached hereto, which College Avenue Skywalk crosses College Avenue and connects with a commercial office building on the north side of College Avenue known as the Evans Building and which continues through a corridor within the Evans Building the City's parking facility located at West Washington Street; and

B. GCCFC, as successor to the interest of Paper Valley Hotel and Conference Center, Inc. ("Original Tenant"), leases the College Avenue Skywalk from City pursuant to that certain Lease between City and Original Tenant dated June 21, 1994 and recorded with the Register of Deeds of Outagamie County, Wisconsin on June 24, 1994 at Jacket 15584, Image 1-39 as Document no. 1127763 (the "Skywalk Lease"); and

C. In accordance with the terms of the Purchase Agreement and as a condition of closing, GCCFC has agreed to sell and convey the Hotel to Inner Circle Investments, and in connection with such sale intends to assign its rights and interest in the Skywalk Lease to Inner Circle at the closing; and

D. Pursuant to the Paragraph 29(b) of the Skywalk Lease, the assignment of the Skywalk Lease by GCCFC to Inner Circle is subject to City's consent; and

E. The City desires Inner Circle to assume the obligations of the Tenant under Skywalk Lease and, further, consents to the assignment of Skywalk Lease to be effective upon the closing of the Purchase Agreement.

RECITALS REGARDING PARKING AGREEMENTS:

A. The Hotel is connected to a public parking ramp owned by the City and commonly known as the "~~Red~~Midtown Ramp" by an elevated, enclosed pedestrian passageway (the "Superior Street Skywalk") also owned by the City crossing South Superior Street, which separates the Hotel from the ~~Red~~ Midtown Ramp; and

A-B. By City Council action on May 4, 2011, the name of the parking ramp referred to in the Parking Agreements (as hereinafter defined) was changed from "Midtown Ramp" to "Red Ramp"; and

B-C. The various rights and obligations of the City and GCCFC, as owner of the Hotel, relating to the Superior Street Skywalk and parking rights within the ~~Midtown~~Red Ramp are governed by the following documents (collectively, the "Parking Agreements"):

C-D.

1. Agreement to Construct, Operate and Maintain Parking Facility and Skywalk dated May 1, 1981 between the City and Paper Valley Hotel and Conference Center, Inc.;
2. First Amendment to Agreement to Construct, Operate and Maintain Parking Facility and Skywalk dated June 23, 1981 between the City and Paper Valley Hotel and Conference Center, Inc.;
3. Memorandum of Agreement dated January 28, 1994 between the City and Paper Valley Hotel and Conference Center, Inc.;
4. Memorandum of Agreement dated November 3, 1997 between the City and Paper Valley Hotel and Conference Center, Inc.;

5. Minutes from the January 9, 1985 City of Appleton Common Council Meeting, adopting Report of the Parking and Transit Commission;
6. Amendment to Parking Agreements dated as of January 1, 1999 between the City and Oly/Montclair. (Copies of those instruments identified at items 1-5 above were recorded with the Register of Deeds of Outagamie County as attachments to that certain Affidavit recorded on January 12, 1998 as Document No. 1254125, and the instrument identified at item 6 above was recorded with the Register of Deeds of Outagamie County recorded on June 25, 1999 as Document No. 1332079); and
7. Oly/Montclair assigned its interests in the documents identified above to Watermark Montclair Wisconsin Hotels LLC. Such assignment was recorded with the Register of Deeds of Outagamie County on December 4, 2006 as Document No. 1733928.

D.E. Inner Circle desires to obtain an assurance from the City that at the closing of the Purchase Agreement, it will obtain all rights and obligations previously granted under the Parking Agreements to the Developer and subsequent owners of the Hotel through assignment of any rights held by GCCFC or re-affirmation of said rights from the City; and

E.F. The City desires Inner Circle to assume all rights and obligations under the Parking Agreements and consents to the assignment and/or re-affirms all rights and obligations set forth therein.

NOW, THEREFORE, with the understanding and intent that the statements being made herein will be relied upon by Inner Circle in connection with its purchase of the Hotel, and by any lender holding a mortgage or other lien on the Hotel ("Lender"), City hereby represents and warrants as follows:

1. Consent-Development Agreement. The City hereby consents to the assignment of the Development Agreement by GCCFC to Inner Circle and/or the re-affirmation of the Development Agreement should GCCFC not have assumed any rights or obligations as a result of the Foreclosure Action.

2. Subordination-Development Agreement. The City hereby agrees that the terms and provisions contained in Paragraph 8 of the Development Agreement, which terms and provisions generally provide that the Development Agreement and the rights of the City contained in the Development Agreement respecting the Hotel and any interest that the City may have in and to the Hotel are and at all times shall remain subordinate to certain mortgages and liens affecting the Hotel, has not been amended and remains in full force and effect shall apply to any mortgages or other liens that may be placed now or in the future by Inner Circle against the Hotel for the purposes of financing the acquisition, construction, and operation of the Hotel or any improvements thereto, and any refinancing or renewals thereto, in particular, but without limitation, any mortgages or other liens granted by Inner Circle to Lender.

3. Estoppel-Development Agreement. The City hereby represents and warrants that there is no default by GCCFC or any predecessor owner of the Hotel under the Development Agreement, and there is no circumstance which, with the giving of notice and/or the passage of time, would result in such a default.

4. Estoppel-Skywalk Lease. The City hereby represents and warrants that the Skywalk Lease described above is in full force and effect between the City and GCCFC, the Skywalk Lease has not been amended there is no default by GCCFC or any predecessor owner of the Hotel under the Skywalk Lease, and there is no circumstance which, with the giving of notice and/or the passage of time, would result in such a default.

5. Consent-Skywalk Lease. Pursuant to the terms of Section 29(b) of the Skywalk Lease, the City does hereby consent to the assignment of the tenant's interest in the Skywalk Lease by GCCFC to Inner Circle and the assumption thereof by Inner Circle.

6. Estoppel-Parking Agreements. That the Parking Agreements identified in the foregoing recitals are in full force and effect between the City and GCCFC, as owner of the Hotel, and fully and accurately set forth the obligations and the rights of the City and GCCFC, as owner of the Hotel, regarding the subject matter of the ~~Midtown Red Ramp~~ (f/n/a the "Midtown Ramp") and the Superior Street Skywalk and that there is no default by GCCFC under the Parking Agreements, and there is no circumstance which, with the giving of notice and/or the passage of time, would result in such a default.

7. Consent-Parking Agreements. To the extent the consent of the City is required to assign the Parking Agreements or for Inner Circle to assume the rights and obligations thereunder, the City does hereby consent to the assignment of the Hotel owner's interest in the Parking Agreements by GCCFC to Inner Circle and the assumption thereof by Inner Circle.

8. Binding Effect. That the Development Agreement, Skywalk Lease and Parking Agreements are for the benefit of the owner of the Hotel from time to time and such benefits shall inure to Inner Circle upon such date as title to the Hotel is conveyed to it by GCCFC.

9. Consent to Collateral Assignment. The City further hereby consents to the assignment by Inner Circle of Inner Circle's interests under the Development Agreement, Skywalk Lease and/or Parking Agreements to Lender for the purposes of financing the acquisition, construction or operation of the Hotel or any improvements thereto.

10. Conflict. Except as expressly set forth herein, all of the terms and provision of the Development Agreement, Skywalk Lease and Parking Agreements shall remain in full force and effect. In the event of any conflict between the terms and provisions of this Consent and the terms and provisions of the Development Agreement, Skywalk Agreement or Parking Agreements, the terms and conditions of this Consent shall control.

11. Effective Date of Consents. The consents set forth above shall be effective upon the sale of the Hotel to Inner Circle.

12. Counterparts and Facsimile. This Consent may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile signatures on this Consent shall be valid and binding against the parties.

13. Successors and Assigns. This Consent shall be binding upon the City and inure to the benefit of GCCFC, Inner Circle and their respective successors and assigns, including, without limitation, the Lender.

{Balance of this page intentionally blank; Signatures pages follow}

IN WITNESS WHEREOF, the City has executed this Estoppel and Consent on the date first above written.

City of Appleton, Wisconsin

By: _____
Timothy Hanna, Its Mayor

By: _____
Dawn Collins, Its City Clerk

STATE OF WISCONSIN)
)ss.
COUNTY OF OUTAGAMIE)

I, a Notary Public in and for said County, in the State aforesaid, do hereby certify that I personally know to be the same person whose name is subscribed to the foregoing instrument as the Mayor for the City of Appleton, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this _____ of _____, 2015.

Notary Public State of Wisconsin
My Commission Expires: _____

STATE OF WISCONSIN)
)ss.
COUNTY OF OUTAGAMIE)

I, a Notary Public in and for said County, in the State aforesaid, do hereby certify that I personally know to be the same person whose name is subscribed to the foregoing instrument as the City Clerk for City of Appleton, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this _____ of _____, 2015.

Notary Public State of Wisconsin
My Commission Expires: _____

This consent was drafted by and should be returned to:
Attorney William S. Woodward
Davis & Kuelthau, s.c.
318 S. Washington Street
Green Bay, WI 54301
(920)431-2222
wwoodward@dkattorneys.com

Exhibit A
DEVELOPMENT AGREEMENT

See Attached

Exhibit B
Legal Descriptions

The land referred to in this Policy, situated in the County of Outagamie, City of Appleton, State of Wisconsin, is described as follows:

PARCEL 1:

The North 120 feet of Lot One (1), less the West 36.33 feet thereof, Lot Two (2), less the West 60 feet lying south of the North line of the alley, Lot Three (3), Lot Four (4), Lot Five (5), Lot Six (6), the East 20 feet of Lot Eight (8), Lot Nine (9), Lot Ten (10), Lot Eleven (11) and Lot Twelve (12), and all that part of the vacated alley lying in said lots, lying East of the West line of the West 20 feet of said Lot 2 as corrected by Final Resolution recorded in Jacket 15185, Image 38, as Document No. 1108789; all in Block Seven (7), Appleton Plat, City of Appleton, Outagamie County, Wisconsin, according to the recorded Assessor's Map of said City.

The perimeter description of the above parcel is described as:

Beginning at the Northeast corner of Lot Six (6), Block Seven (7), of APPLETON PLAT; thence along the West right-of-way line of South Superior Street, South $00^{\circ}04'40''$ West, 329.24 feet; thence along the North right-of-way line of West Lawrence Street, South $89^{\circ}56'15''$ West, 339.86 feet; thence North $00^{\circ}00'50''$ West, 198.19 feet; thence North $79^{\circ}29'25''$ West, 61.47 feet; thence South $89^{\circ}57'47''$ West, 38.64 feet; thence North $00^{\circ}23'38''$ West, 120.00 feet; thence along the South right-of-way line of West College Avenue, North $89^{\circ}58'13''$ East, 440.26 feet to the point of beginning.

PARCEL 2:

Leasehold Estate created by Lease entered into by and between City of Appleton, landlord and Paper Valley Hotel and Conference Center, Inc., tenant dated June 21, 1994 and recorded on June 24, 1994 in Jacket 15884, Image 1, as Document No. 1127763 demising a skywalk described as follows:

Description of the land under a covered Walkway located in the air rights of the City of Appleton above the street now known as College Avenue; in the air rights of the City of Appleton above the public alley and land owned by the City of Appleton in Block 25, Appleton Plat; and in the air rights of property owned by Stephen M. Evans in said Block 25: That part of College Avenue, City of Appleton, Outagamie County, Wisconsin as shown on the recorded Assessor's Map of said City lying between Lot Eight (8), Block Twenty-five (25) and Lot Two (2), Block Seven (7) in Appleton Plat; part of the East 49 feet of the South 55 feet of Lot 8 in said Block 25; part of the East 45 feet of the South 101.17 feet of the north 111.17 feet of Lot 8, Block 25; part of the public alley being a part of the North 10 feet of the East 45 feet of Lot 8 and the South 10 feet of the East 45 feet of Lot 2 in said Block 25 and Lot 1 of Certified Survey Map No. 1595, filed in Volume 8 of Certified Survey Maps, page 1595, as Document No. 1076318, Outagamie County Registry.

The Walkway or Skywalk that crosses College Avenue is connected on the North to a building located on the East 49 feet of the South 55 feet of Lot Eight (8), Block Twenty-five (25), Appleton Plat and connected on the South to a building located on part of Lot Two (2), Block Seven (7), in said Appleton Plat; the Walkway or Skywalk that crosses the alley is connected on the North to the Washington Street Parking Ramp located on Lot 1 of Certified Survey Map No. 1595 filed in Volume 8 of Certified Survey Maps, page 1595, as Document No. 1076318 and connected on the South to a building located on part of the East 45 feet of the South 101.17 feet of the North 111.17 feet of Lot 8, Block 25, Appleton Plat.

