

**HOTEL DEVELOPMENT AGREEMENT**

**EXHIBITS**

- A. PARCELS COMPRISING HOTEL SITE AND GARAGE SITE
- B. HOTEL DESCRIPTION
- C. HOTEL RENDERING
- D. INSURANCE REQUIREMENTS
- E. EXPANSION PARCEL
- F. SITE CONCEPT

## **EXHIBIT A**

### **I. Parcels Comprising Hotel Site**

The City has acquired all parcels comprising the Hotel Site, as outlined on the attached Site Concept. An actual legal description will be prepared and delivered prior to September 1, 2007.

### **II. Parcels comprising the Garage Site**

Except for the land owned by Lincoln National Corporation ("LNC") and covered by the Parking Agreement between LNC and the City, the City has acquired all parcels comprising the Garage Site.

## **EXHIBIT B**

### **Hotel Description**

The Hotel shall be an "urban design" Courtyard by Marriott or comparable national brand and shall contain at a minimum the following elements and amenities:

Two hundred fifty (250) rooms;

Meeting space of at least 3500 square feet in one or more rooms;

Casual sports themed restaurant/bar;

A restaurant/coffee shop serving three meals each day;

Indoor pool and exercise facility;

Room service during restaurant hours; and

Kitchen, laundry, support and maintenance facilities appropriate to a the Hotel.

**EXHIBIT C**

**HOTEL RENDERING**



**EXHIBIT D**

**INDEMNIFICATION AND INSURANCE REQUIREMENTS  
FOR THE HOTEL DEVELOPMENT AGREEMENT**

**I. HOLD HARMLESS AND INDEMNIFICATION CLAUSE**

The Developer shall indemnify and hold harmless the City of Fort Wayne, and the Fort Wayne Redevelopment Commission, their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting from the performance of the Hotel Development Agreement provided that such claim, damage, loss or expense (1) is attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss of use resulting therefrom, and/or breach of the Hotel Development Agreement and (2) is not caused by the negligent act or omission or willful misconduct of the City of Fort Wayne, the Fort Wayne Redevelopment Commission or their employees acting within the scope of their employment.

**II. INSURANCE**

Prior to commencing work, the Developer and all Contractors and/or subcontractors shall obtain at their own cost and expense the following types of insurance through insurance companies licensed in the State of Indiana. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Indiana Insurance Law. Workers' Compensation written through qualified group self-insurance programs in accordance with Indiana law will also be acceptable. The Developer shall not commence work under this Hotel Development Agreement until all insurance required under the Hotel Development Agreement has been obtained and until Certificates of Insurance are submitted to and approved by the City's Risk Management Division, at the addresses listed at the end of this Exhibit. The Developer shall not allow any Contractor and/or subcontractor to commence work until the insurance required of such Contractor or subcontractor in this section has been obtained.

Without limiting Developer's indemnification requirements, it is agreed that Developer shall maintain in force for the entire term of this Hotel Development Agreement the following policy or policies of insurance covering its operations, and require all Contractors and/or subcontractors to procure and maintain these same policies until final acceptance of the work by the City of Fort Wayne and Fort Wayne Redevelopment Commission.

**A. DEVELOPER FOR ENTIRE TERM OF HOTEL DEVELOPMENT AGREEMENT:**

- 1. COMMERCIAL GENERAL LIABILITY**, via the Occurrence Form, with a minimum of \$1,000,000 Combined Single Limit for any one Occurrence and

\$5,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage, including:

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability and
- d. Independent Contractors Protective Liability

**B. CONTRACTORS AND SUBCONTRACTORS UNTIL FINAL ACCEPTANCE OF WORK:**

**1. COMMERCIAL GENERAL LIABILITY**, via the Occurrence Form, with a minimum of \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage, including:

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability and
- d. Independent Contractors Protective Liability

**NOTE:** The following clause shall be added to the Developers' and all approved Contractors and/or subcontractors' Commercial General Liability Policies:

"The City of Fort Wayne, and the Fort Wayne Redevelopment Commission are added as Additional Insured as respects operations of the Named Insured performed relative to Hotel Development Agreement for the design and construction of a 250 room hotel adjacent to the Fort Wayne-Allen County Grand Wayne Convention Center."

**C. DEVELOPER, CONTRACTORS AND SUBCONTRACTORS:**

- 1. AUTOMOBILE LIABILITY**, insuring all Owned, Non-Owned and Hired Motor Vehicles. \$1,000,000 is the minimum acceptable Combined Single Limit for any one accident. The Limit of Liability may be subject to increase according to any applicable State or Federal Transportation Regulations.
- 2. WORKERS' COMPENSATION**, insuring the employers' obligations and **EMPLOYERS' LIABILITY** with a minimum acceptable limit of \$100,000 for any one accident.
- 3. BUILDERS RISK INSURANCE**, The following coverage is required for construction of "Hotel" under the Hotel Development Agreement. The Developer must provide evidence of "Builders Risk" insurance coverage prior to beginning construction in either the form of a Certificate of Insurance or an actual policy copy. Developer shall purchase an "All Risk" (Comprehensive Form including theft of building materials, flood, earthquake, and Building Ordinance coverage including loss to the undamaged portion of the building; demolition and removal

costs of undamaged parts of the structure; and any increased cost of repairs or reconstruction) Builders Risk policy with Limits of Liability equaling the full estimated Replacement Cost of the building being constructed plus Replacement Cost of labor and materials. The policy shall list the City of Fort Wayne as a "Named Insured/Owner".

**4. ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY INSURANCE**, with a minimum \$1,000,000 Limit of Liability per occurrence and annual aggregate (or project):

A Professional Architects and Engineers Liability policy covering the development architectural firm's general practice (a Practice policy) which includes the Contractual Liability Endorsement. Developer shall maintain such coverage for at least one (1) year after substantial completion of the construction phase of the project.

**NOTE:** If the Developer subcontracts design work required under the Hotel Development Agreement, then Developer need not purchase this coverage, but must require the architectural firm approved to design these improvements to purchase this coverage, and Developer must obtain a Certificate of Insurance as proof of this coverage, and make it available to the City, upon request.

**5. PROFESSIONAL SERVICES INSURANCE REQUIREMENT.** If the Developer subcontracts portions of the work to be performed under this Hotel Development Agreement to a Contractor and/or subcontractor(s) relied upon principally because of the professional services rendered by their firm (such as, but not limited to, surveyors, civil, structural, geotechnical, or other professional engineering services), the Developer shall also require that these Contractor(s)/subcontractor(s) provide proof to the Developer, via a Certificate of Insurance, that the Contractor(s)/subcontractor(s) has purchased Professional Liability (Errors and Omissions) insurance, which includes a minimum Limit of Liability of \$1,000,000 per claim and aggregate, in addition to the other types of insurance referenced in Section II above. The professional service Contractor shall maintain such coverage for at least one year after substantial completion of the construction phase of the project. The Developer is responsible for obtaining and maintaining copies of the Certificate of Insurance until final acceptance of work by the Fort Wayne Redevelopment Commission, and for making these Certificates available to the City's Risk Management Division, upon request.

The following insurance coverages are to be procured and maintained by the Developer immediately upon substantial completion of the "hotel". These coverages must be maintained for the entire duration of the Ground Lease referred to in Section 1.04 of the Hotel Development Agreement.

**1. REAL PROPERTY INSURANCE,** Upon completion of the "Hotel," the Developer shall furnish the Fort Wayne Redevelopment Authority and the City's Risk Management Division (and continue to do so during the tenure



of the Ground Lease) a Certificate of Insurance evidencing that Real Property Insurance is in effect, as follows:

- a. Real Property insurance shall be written on the I.S.O. (or equivalent) Special Property Form with the real property limit of liability equal to full Replacement Cost of the "Hotel" including equipment and furnishings. The policy should also include the perils of Flood and Earthquake. The policy shall be endorsed to add the City of Fort Wayne as Mortgage ATIMA with respect to all real property.
2. **BUSINESS INTERRUPTION INSURANCE**, Developer shall secure Business Interruption insurance including Extra Expense coverages, in sufficient amounts to satisfy the Profit Participation agreement with the City of Fort Wayne, as described in Article VIII of the Hotel Development Agreement. This policy shall be endorsed to include the City of Fort Wayne and the Fort Wayne Redevelopment Commission as Loss Payees, if written separately from the above Real Property Insurance.
3. **COMMERCIAL GENERAL LIABILITY INSURANCE**, The Commercial General Liability insurance required of the Developer in Insurance Requirement Section II of this Exhibit, must be purchased and in force when the Developer enters into this Agreement. This insurance must be maintained for the duration of the Ground Lease. The policy shall be endorsed to add the City of Fort Wayne and the Fort Wayne Redevelopment Commission as Additional Insured as respects operations of the Named Insured performed under the Ground Lease with the City of Fort Wayne.

### **III. ACCEPTABILITY OF INSURERS**

Insurance covering the Developer, Contractor and all subcontractors must be placed with Insurance Companies with an A. M. Best Rating of no less than "A+ VI," unless proper financial information relating to the Company is submitted to and approved by the City's Risk Management Division.

### **IV. MISCELLANEOUS**

A. The Developer shall procure and maintain insurance policies as described herein and for which the Fort Wayne Redevelopment Commission the City's Risk Management Division shall be furnished Certificates of Insurance prior to the execution of the Hotel Development Agreement.

B. The Certificates shall include provisions stating that the policies may not be cancelled or materially amended without the City's Risk Management Division, and the Fort Wayne Redevelopment Commission having been provided at least (30) thirty days written notice. The Certificates shall identify the Hotel Development Agreement to which they apply and shall include the name and address of the person executing the Certificate of Insurance as

well as the person's signature. If policies expire before the completion of the Hotel Development Agreement, renewal Certificates of Insurance shall be furnished to both the City's Risk Management Division before the expiration date of such policies.

C. At the time the Developer signs the Development Agreement Certificates of Insurance required of the Developer shall be furnished to:

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\_\_\_\_\_

AND

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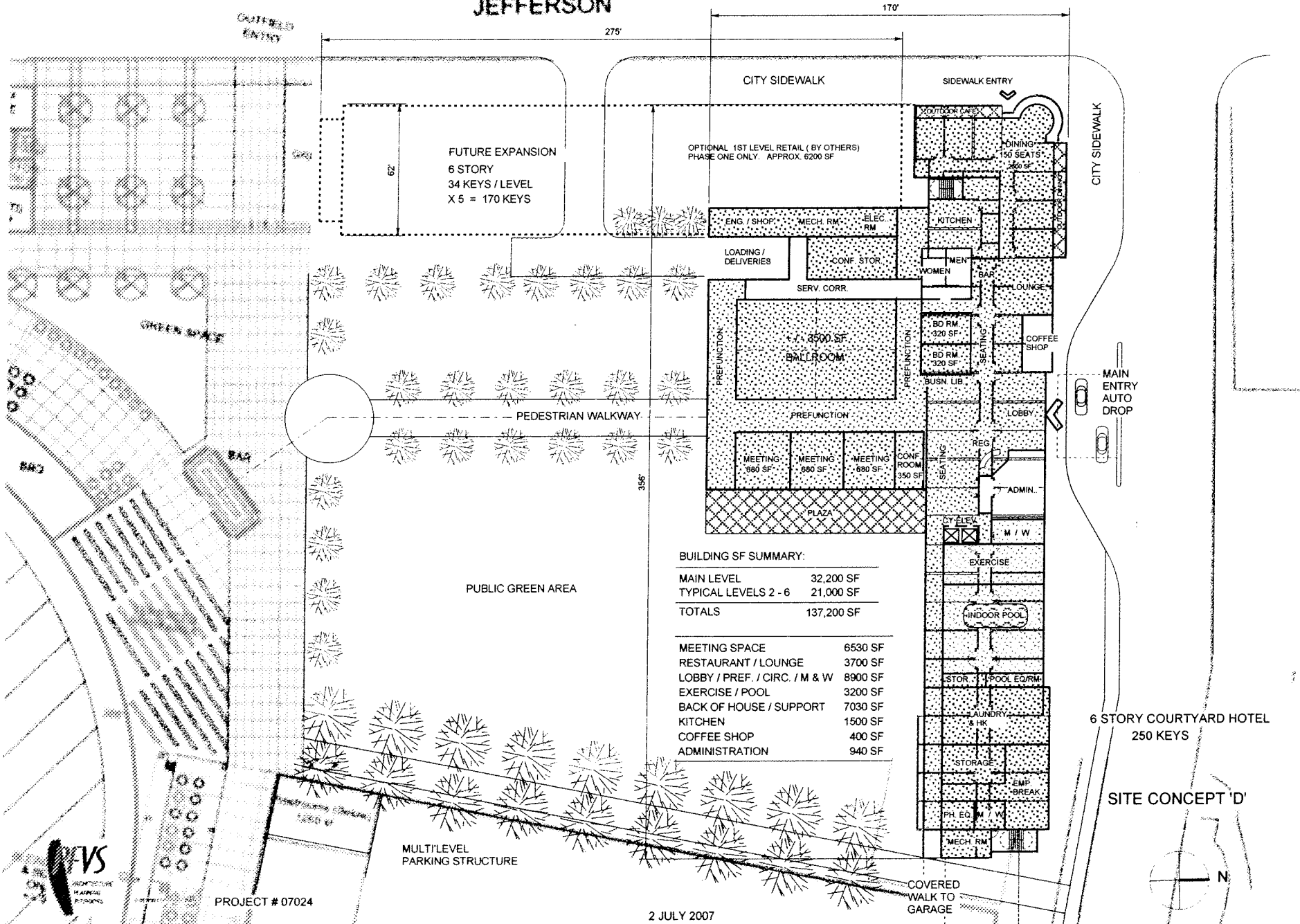
D. Approval of the insurance by the City shall not in any way relieve or decrease the liability of the Developer hereunder. It is expressly understood that the City or the Fort Wayne Redevelopment Commission does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Developer.

**EXHIBIT E**

**Expansion Parcel**

The expansion site shall be a parcel measuring approximately 170 feet by 75 feet and bounded by Jefferson Boulevard on the north, Webster Street on the west and the Hotel Site on the east, as outlined on the Site Concept attached as Exhibit F.

# JEFFERSON



**BUILDING SF SUMMARY:**

MAIN LEVEL	32,200 SF
TYPICAL LEVELS 2 - 6	21,000 SF
<b>TOTALS</b>	<b>137,200 SF</b>

MEETING SPACE	6530 SF
RESTAURANT / LOUNGE	3700 SF
LOBBY / PREF. / CIRC. / M & W	8900 SF
EXERCISE / POOL	3200 SF
BACK OF HOUSE / SUPPORT	7030 SF
KITCHEN	1500 SF
COFFEE SHOP	400 SF
ADMINISTRATION	940 SF

PROJECT # 07024

2 JULY 2007

Fort Wayne Courtyard by Marriott White Lodging Services / August

## EXHIBIT F SITE CONCEPT