

**FIFTH AMENDMENT TO
PARKING PREMISES AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
SP6 SAN JOSE HOTEL OWNER, LLC, SUCCESSOR IN INTEREST TO
PR SJM HOTEL, LLC, SUCCESSOR IN INTEREST TO
WALTON SAN JOSE INVESTORS III, LLC**

This FIFTH AMENDMENT TO PARKING PREMISES AGREEMENT ("Fifth Amendment") is entered into this _____ day of _____ 2022 ("Effective Date"), by the CITY OF SAN JOSE ("City"), a municipal corporation of the State of California, and SP6 SAN JOSE HOTEL OWNER, LLC, a Delaware limited liability company registered in the State of California ("Developer"), successor in interest to PR SJM HOTEL, LLC, a Delaware limited liability company registered in the State of California ("Successor Developer"), successor in interest to WALTON SAN JOSE INVESTORS III, LLC, a Delaware limited liability company registered in the State of California ("Original Developer").

RECITALS

WHEREAS, on June 6, 2000, City and Original Developer entered into an agreement entitled "Parking Premises Agreement Between City of San José and Walton San Jose Investors III, LLC" ("Agreement"); and

WHEREAS, on February 18, 2004, City and Original Developer entered into a First Amendment to the Agreement ("First Amendment") to (i) allow Original Developer to sublease the parking spaces in the Leased Premises with the Director's prior written approval, (ii) clarify that City will begin billing Original Developer for the leased parking spaces on June 1, 2003, and (iii) revise the Parking Operations Plan and description of the Leased Premises in order to make them consistent with the First Amendment; and

WHEREAS, on February 10, 2009, City and Original Developer entered into a Second Amendment to the Agreement (“Second Amendment”) to (i) modify the location and number of the parking spaces subleased in the Leased Premises, (ii) define the term “Director” in the Agreement as the Director of Transportation, and (iii) revise the description of the Leased Premises in order to make them consistent with the Second Amendment; and

WHEREAS, on June 10, 2010, The Prudential Insurance Company of America via Certified Mail to the Redevelopment Agency of San Jose (“RDA”), notified the RDA that as of June 10, 2010 all interests of Fortress Credit Opportunities I LP, Fortress Credit Funding I LP, and Fortress Credit Funding III LP, as successor in interest to the loan with the Original Developer, in connection with the Disposition and Development Agreement dated July 9, 2000 between the RDA and Original Developer were transferred and assigned to The Prudential Insurance Company of America; and

WHEREAS, on April 18, 2011, Original Developer via Certified Mail notified the City that on or about April 29, 2011, The Prudential Insurance Company of America or an affiliate of Prudential would acquire the hotel property and assume the Parking Premises Agreement dated June 6, 2000 between City and Original Developer; and

WHEREAS, on May 5, 2011, a Deed-in-Lieu of Foreclosure transferring the hotel property from Original Developer to Successor Developer was recorded in the Office of the Santa Clara County Clerk Recorder as Document No. 21167810; and

WHEREAS, on June 19, 2012, City and Successor Developer entered into a Third Amendment to the Agreement (“Third Amendment”) to (i) change the developer party to the Agreement from Walton San Jose Investors III, LLC to PR SJM Hotel, LLC, an affiliate of The Prudential Insurance Company of America, (ii) amend the monthly space rental fee from \$100 to \$120, (iii) amend the authority of the City Manager to adjust the monthly

rental fee, (iv) authorize the City Manager to approve and execute amendments to the Agreement, without City Council approval, under certain conditions, and (v) amend the addresses for notice to the City and Successor Developer; and

WHEREAS, on April 24, 2013, Successor Developer notified the City that on or about May 7, 2013, Developer would acquire the hotel property and assume the Agreement; and

WHEREAS, on May 9, 2013, a Deed of Sale transferring the hotel property from Successor Developer to Developer was recorded in the Office of the Santa Clara County Clerk Recorder as Document No. 22213847; and

WHEREAS, on September 10, 2014, City and Developer entered into a Fourth Amendment to the Agreement (Fourth Amendment) to (i) change the developer party to the Agreement from PR SJM Hotel, LLC, an affiliate of The Prudential Insurance Company of America, to SP6 San Jose Hotel Owner, LLC, and (ii) authorize the City Manager to approve and execute amendments to the Agreement, in regard to Assignment or Transfer of property ownership; and

NOW, THEREFORE, the parties agree to amend the amended Agreement as follows:

SECTION 1. SECTION 3, "PREMISES AND AUTHORIZED USE", subsection A, is amended to read as follows:

- "A. City leases to Developer for Developer's exclusive use, and Developer leases from City, those premises described on Exhibit B attached hereto and incorporated herein by this reference (the "Leased Premises") to be used solely by Developer for the Authorized Activities as described in Section 1. Neither Developer, nor any of its employees or agents, shall conduct, transact or otherwise carry on any business or service on the Leased Premises that is not authorized by this Agreement. Developer and Director may agree that Developer's actual plans for the Leased

Premises may vary from the depiction on Exhibit B, provided that Director approves in writing the actual plans of the Leased Premises, in his or her reasonable discretion, and further provided that the approved plans of the Leased Premises shall provide no more than 134 spaces.”

SECTION 2. SECTION 5, “SPACE RENTAL AND SECURITY DEPOSIT”, subsection

A entitled, “SPACE RENTAL FEE”, is amended to read as follows:

“A. Space Rental Fee. Commencing on June 1, 2022, the monthly space rental fee payable in advance on the first (1st) day of each month during the term of this Agreement shall be One Hundred Sixty-Two Dollars and One Cent (\$162.01) per space per month multiplied by the number of parking spaces on the Leased Premises, subject to the CPI adjustment pursuant to SECTION 5.D below and the reduction in leased spaces pursuant to SECTION 3.C above or 5.E below. As of June 1, 2022, the Leased Premises include 134 parking spaces and the total amount of the monthly space rental fee shall be Twenty-One Thousand Seven Hundred Nine Dollars and Thirty-Four Cents (\$21,709.34) (134 spaces x \$162.01) until adjusted pursuant to SECTION 5.D below. During the Term, the Leased Premises shall include a maximum of one hundred and thirty-four (134) parking spaces. The fee will not be adjusted in the event that the number of parking spaces on the Leased Premises are restriped by Developer, at Developers sole cost and discretion, or if the Developer stacks the parking in the Leased Premesis.”

SECTION 3. SECTION 27, “NOTICES” is deleted in its entirety and replaced with the following:

“If at any time after the execution of this Agreement it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be delivered personally, by facsimile transmission with verification of receipt, or by depositing the same in the United States mail, return receipt requested, postage prepaid and

(1) If intended for City shall be addressed to:

City of San José – Department of Transportation
200 East Santa Clara Street, 7th Floor Tower
San José, CA 95113-1905
Attention: Parking Division Manager
Fax: (408) 292-6092

With a copy to:

City of San Jose – City Manager
200 East Santa Clara Street, 17th Floor Tower
San Jose, CA 95113-1905
Fax: (408) 920-7007

and:

City of San José – City Attorney
200 East Santa Clara Street, 16th Floor Tower
San José, CA 95113-1905
Fax: (408) 998-3131

And (2) if intended for Developer shall be addressed to:

SP6 SAN JOSE HOTEL OWNER, LLC
c/o CBRE Global Investors
515 S. Flower Street, Suite 3100
Los Angeles, CA 90071
Attention: John Sauter, Managing Director
Fax: (213) 683-4336

With a copy to:

General Manager
San José Marriott
301 South Market Street
San José, CA 95113
Fax: (408) 278-4460

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given on the delivery date or the date delivery is refused by the addressee, as shown on the return receipt. In the event a postal strike shall be in progress at the time a notice is given or served, such notice shall not be deemed given or served unless and until a copy thereof is personally delivered to the parties entitled thereto. The provisions with respect to the form, nature and depositing of notices as set forth in this Section shall further apply to any notices to be given to a mortgagee pursuant to Section 14 of this Agreement.

Whenever pursuant to a provision of this Agreement the approval, consent or other action of a party will be deemed to be given or taken or a determination will become final and binding within a period of time, the item submitted or request for action shall be made in writing to such party and shall be accompanied by written notice stating prominently at the top of the first page thereof that it is being submitted or requested pursuant to a provision of this Agreement identified in such notice and stating that such item will be deemed approved or that a specified action will be deemed taken or a determination

will become final and binding within an identified period of time (as specified by such provision in this Agreement) unless objection is made or other action taken within the time stated in such notice. No approval, consent or other action of a party shall be deemed given or taken nor will a determination become final and binding under any term of this Agreement providing therefore unless the requirements of this paragraph are met."

SECTION 4. REVISED EXHIBIT B, DESCRIPTION OF PREMISES is deleted in its entirety and replaced with the THIRD REVISED EXHIBIT B, attached and incorporated in this Fifth Amendment.

SECTION 5. EXHIBIT A, PARKING OPERATIONS PLAN (POP), SECTION 1 entitled "INTRODUCTION" is amended to read as follows:

"SECTION 1.

This parking Operations Plan addresses the parking serving the hotel to be constructed at the southwest corner of San Carlos Street and Market Street, adjacent to the Convention Center ("East Hotel"), pursuant to the Agreement of Parking Premises between the City of San Jose and Developer ("Agreement").

The Convention Center garage ("Garage") has two levels of parking spaces. For purposes of this POP, the area dedicated for the exclusive use of the (East Hotel) shall be designated as "Parcel D." Parcel D consists of 134 parking spaces on the lower level of the Garage in the area designated in Exhibit B. The remaining number of spaces in the Convention Center garage will vary according to City's selection of striping plans and will be available for Convention Center events and other activities during the term of this POP.

Developer may, with the approval of the City, re-stripe Parcel D for more or fewer spaces without affecting this POP or the Space Rental Fee established pursuant to Section 5 of the Agreement.

Developer shall use the Market Street public entrance of the Garage as the designated entrance for access to the Developer's Parcel D parking area. The Market Street entrance to the Convention Center parking access is just south of the (East Hotel), and is the most convenient entry into the Convention Center lower level garage parking area from the (East Hotel) main entrance on Market Street."

SECTION 6. EXHIBIT A, PARKING OPERATIONS PLAN (POP), SECTION 2 “GENERAL METHOD OF OPERATION”, Subection C entitled “Parcel D Entrance/Exit” is amended to read as follows:

“C Parcel D Entrance/Exit:

- City has installed an access control system, including a barrier gate, to control access into and out of the Parcel D parking area for Developer’s valet parking operations.
- Under no circumstances shall the Parcel D barrier gate arms be broken to provide access or egress.
- City shall provide and control the Parcel D access control system.
- A 24-hour parking operation is authorized within the Parcel D parking area. See Section 6 for details regarding 24-Hour access to the Garage.
- Within Parcel D, valets may use “stack parking” or “aisle parking” methods to maximize the number of cars to be parked.”

SECTION 7. All of the terms and conditions of the amended Agreement not modified by this Fifth Amendment shall remain in full force and effect. Subject to the preceding sentence, the Agreement has not been modified except as expressly set forth in the First Amendment, the Second Amendment, the Third Amendment, or the Fourth Amendment. In the event of any conflict between any of the provisions of this Fifth Amendment and any other provisions of the Agreement, the First Amendment, the Second Amendment, the Third Amendment, or the Fourth Amendment, the provisions of this Fifth Amendment shall govern.

SECTION 8. As of the effective Date of this Fifth Amendment, there are no outstanding space rental fees or other charges due and payable by Original Developer or Successor Developer under the Agreement, as amended.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

Aaron Yu
Deputy City Attorney

By _____
City Clerk

“DEVELOPER”

SP6 SAN JOSE HOTEL OWNER, LLC, a
Delaware limited liability company
authorized to transact business in the
State of California

By:

By: _____

Name: _____
Vice President

THIRD REVISED EXHIBIT B

DESCRIPTION OF PREMESIS

Aproximately 39,094 square feet located at the San Jose McEnery Convention Center, 408 S. Almaden Blvd., San Jose, California, as shon on this Third Resvised Exhibit B.

