

**LEASE AGREEMENT BETWEEN CITY OF RAPID CITY AND CORTEZ LLC
FOR A PORTION OF SIXTH STREET PARKING RAMP**

For and in consideration of the mutual promises and agreements contained herein, the **CITY OF RAPID CITY** ("City"), a municipal corporation, of 300 Sixth Street, Rapid City, SD 57701, agrees to lease to the **CORTEZ LLC**, (Lessee), a South Dakota limited liability company of 927 Main Street, Rapid City, SD 57701, a specified area more particularly described below subject to the following terms and conditions:

1. Property. City hereby leases to Lessee sixty-six (66) spaces on the top level of the parking ramp located on Sixth Street on the property legally described as:

**Lots 1 through 16, Block 75, Original Town of Rapid City,
Pennington County, South Dakota**

The Leased Area consists of the sixty-six (66) spaces that are on the west side of the top tier of the ramp, as shown on Exhibit "A" attached hereto and incorporated herein by this reference.

2. Construction. The parties agree that Lessee desires to build a fence and gate at the easternmost edge of the Leased Area ("Improvements"). Lessee agrees to submit the plans for the Improvements and any appurtenances to the City's Public Works Department in advance of the start of construction for City's review and approval. Construction of any improvements at the Leased Area shall conform with the regulatory codes of the City and be subject to the approval of the Public Works Director or his designee. Upon approval of the Public Works Department, Lessee may construct the Improvements at its own cost. During the term of the Lease, Lessee shall complete all maintenance, repairs, and upgrades to the Improvements at Lessee's cost to ensure the continued operation of the Improvements as originally installed by Lessee and approved by the City. If Lessee replaces, removes, or otherwise significantly alters the installed Improvements at Lessee's cost at any point during the term of this Lease, Lessee shall obtain the approval of the Public Works Director or his designee. The parties understand and agree that any permanent Improvements or fixtures constructed by Lessee in the Leased Area shall be considered the property of the City, subject to Lessee's rights to use the Leased Area and Improvements pursuant to this Lease. Any denial by the Public Works Director may be appealed to the Common Council. Any permanent improvements or fixtures constructed by Lessee on the Leased Area shall be considered the property of the City.

3. Use. Lessee shall have use of the property and facilities during the lease term, subject to the terms of this Lease, for the purpose of providing parking for its employees and hotel guests. Lessee, its agents, employees, and guests shall use the Leased Area for parking only and shall not otherwise store items other than vehicles on the Leased Area except with the written express permission of the Finance Officer or his/her designee. Lessee shall make no use of the property and/or facilities inconsistent with such purpose, and Lessee shall comply with all federal, state, and local laws and regulations in carrying out said use.

4. Operation and Maintenance. Lessee shall be responsible for all maintenance and repair of the Leased Area and the Improvements at its cost, except as provided in Section 5. Such maintenance shall include, but not be limited to, keeping all portions of the Leased Area,

including the pavement, (including paint), fencing and gate equipment in an attractive, safe, repaired condition. Lessee agrees that it will repair any damage and/or vandalism to the Leased Area or Improvements within two working days or as soon as reasonably possible, whichever is shorter. The City may elect to assist Lessee with the maintenance when the City deems it feasible, but is not obligated to provide such assistance pursuant to this Lease.

Lessee shall maintain said facilities to all City standards for buildings and grounds. Lessee shall be responsible for cleaning the facilities and picking up all trash, debris, and waste material of every nature resulting from the use of the Leased Area by itself or any visitors, employees, and guests on a regular basis. Lessee shall be responsible from removing all collected trash from the Leased Area.

5. Snow Removal. City agrees that it will provide snow removal for the Leased Area. Lessee shall provide City with a key or access code to permit City's contractor to access the Leased Area for snow removal purposes and shall ensure that contractor has suitable access to remove the snow. City shall not have any other responsibility for maintenance or repair to the Leased Area, including the Improvements.

6. Possession. Lessee shall be entitled to possession of the Leased Area upon execution of this Lease by both parties. The parties understand that this possession will consist of Lessee's employees and hotel guests utilizing the Leased Area via a locked gate.

7. Expenses. Lessee agrees to pay its own expenses and costs. City shall ensure the continuance of the electric utilities present in the Leased Area at the time of execution of this Lease, at no cost to Lessee, to include electrical costs utilized to operate the Improvements installed pursuant to Section 2.

8. Term. The term of this Lease shall run from the date of approval by City and Lessee until September 1, 2024. The parties may agree in writing to extend the term of this Lease for no more than two additional five-year terms. Any extension shall be signed by both parties prior to the expiration of the original term, or if the term is extended then prior to the expiration of the additional five-year term. If, at the expiration of this Lease, the City does not wish to gain possession of some or all of the Improvements constructed by Lessee, Lessee shall remove the same at its cost prior to the end of the Term. If Lessee fails to remove the Improvements, City shall perform the removal at Lessee's cost.

9. Early Termination. The City shall have the option to terminate this Lease before the end of the term if any of the following occur:

- a. Lessee abandons the use of the Leased Area for one year;
- b. City sells all or a controlling interest in the property;
- c. Lessee is dissolved;
- d. Lessee enters any type of proceedings related to its insolvency, whether bankruptcy, receivership, or otherwise; or
- e. Lessee defaults in its compliance with any other term or covenant hereunder, which default is not cured within ninety (90) days after notice is given.

Should the City choose to exercise its option to terminate this Lease early, such termination will be effective upon mailing of written notice to Lessee, at which time Lessee shall have no further rights under this Lease. If at the termination of this Lease the City does not want to gain possession of some or all of the Improvements constructed by Lessee, Lessee shall remove the same at its cost no more than two weeks after termination. If Lessee fails to remove the Improvements, City shall perform the removal at Lessee's cost.

10. Surrender of Leased Area. Lessee agrees to surrender and vacate the Leased Area at the expiration or termination of this Lease.

11. Lease Payments. Lessee agrees to pay the City monthly lease payments. Upon execution of this Agreement, Lessee shall pay a monthly payment of Five Thousand Two Hundred Eighty Dollars (\$5,280). Thereafter, in March of each calendar year in the original term and any extended term, the rental payments shall be adjusted for inflation based on the Consumer Price Index (CPI). Payments shall be made on or before the first of each month; late payments will be assessed interest of no more than 6 percent.

12. Liability. Lessee agrees to defend, release, indemnify and hold City harmless from any and all liability arising from any operation or use of the described Leased Area by Lessee, its officers, directors, contractors, agents and/or employees or by any other person using the Leased Area. Lessee agrees to purchase and maintain liability insurance for each occurrence of injury or property damage in the minimum amount of Five Million Dollars (\$5,000,000) with participant's injury liability of at least Five Million Dollars (\$5,000,000) per occurrence. The City shall be named an additional insured in said policy or policies, and Lessee shall annually furnish to the City evidence of insurance by a certificate of insurance of required coverage.

Notwithstanding any provision in this Lease to the contrary, if the requirements of this Section are not met by Lessee or its contractor, including a failure to secure said insurance, lapse of said insurance, or any other default of this Section, Lessee shall have fifteen (15) days to cure said default. If the default is not cured, City may terminate this Lease without further obligation.

13. Assignment and Subletting. This Lease shall not be assigned nor shall the Leased Area be sublet by Lessee except upon written consent and approval of the City Council.

14. No Warranties; Release. Lessee's taking of possession of the Leased Area shall be conclusive evidence that Lessee (i) accepts the Leased Area as suitable for the purposes for which same are leased; (ii) accepts the Leased Area and each and every part and appurtenance thereof as being in a good and satisfactory condition, and (iii) waives any defects in the Leased Area and its appurtenances. IT IS UNDERSTOOD AND AGREED THAT THE LEASED AREA IS BEING LEASED HEREUNDER "AS IS," WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY THE CITY OF RAPID CITY. The City has not made (except as expressly set forth herein) any representations or warranties of any kind or character whatsoever, express or implied, with respect to the Leased Area, its condition (including without limitation any representation or warranty regarding suitability, habitability, quality of construction, workmanship, merchantability, or fitness for a particular purpose), environmental condition or compliance with environmental or other applicable laws, and Lessee

acknowledges that it is entering into this Lease without relying upon any such statement or representation or warranty. The City shall not be liable, and Lessee hereby releases the City, for injury or damage which may be sustained by Lessee, or any invitee or their property, caused by or resulting from the state of repair of the Leased Area.

15. Notices. All notices given hereunder shall be made by hand delivery or certified mail, return receipt requested, to the parties at the following addresses:

City of Rapid City
Attn: Finance Officer
300 Sixth Street
Rapid City, SD 57701

Cortez LLC c/o Hotel Alex Johnson
Attn: General Manager
523 Sixth Street
Rapid City, SD 57701

cc: LIV Hospitality LLC, c/o CEO
502 West Boulevard
Rapid City, SD 57701

16. Relationship between the Parties. This Lease does not create an employment relationship between the City of Rapid City and the Lessee or its officers, directors, agents or employees. Nothing contained in this Lease is intended to create a partnership or joint venture between Lessee and the City of Rapid City. No agent of Lessee shall be the agent of the City, and Lessee covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City.

17. Non-Discrimination. Lessee shall not on the grounds of race, color, sex, creed, religion, ancestry, national origin or disability discriminate or permit discrimination against any person or group of persons, in any manner prohibited by local, state or federal laws. Lessee further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.

18. Time of Essence. Time is of the essence of this Lease.

19. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

20. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

21. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

22. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

23. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

24. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

26. Construction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

DATED this _____ day of _____, 2019.

CITY OF RAPID CITY

Mayor Steve Allender

ATTEST

Pauline Sumption, Finance Officer

(seal)

State of South Dakota)
) ss.
County of Pennington)

On this the ____ day of _____, 2019 before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal)

Notary Public - South Dakota
My Commission Expires _____

DATED this 16 day of AUGUST, 2019.

CORTEZ LLC

By [Signature]
Its MANAGING MEMBER

State of South Dakota)
) ss.
County of Pennington)

On this the 16 day of AUGUST, 2019 before me, the undersigned officer, personally appeared PAUL J. BRAOSKY, who acknowledged himself/herself to be the MANAGING MEMBER of Cortez LLC, and that he/she, as such MEMBER, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal)

[Signature]
Notary Public - South Dakota
My Commission Expires 6-10-2022

