

ITEM # 18-1079

**LEASE AGREEMENT
BETWEEN THE CITY OF SANTA FE
AND HOTEL CHIMAYO**

This LEASE AGREEMENT (hereinafter "Lease") is made and entered into this 1st day of September, 2018, by and between the City of Santa Fe, a municipal corporation (hereinafter "Lessor") and Hotel Chimayo (hereinafter "Lessee").

WITNESSETH:

In consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. PREMISES.

Subject to the terms and conditions of this Lease Agreement, the Lessor allows the Lessee to use and occupy, subject to all of the terms and conditions hereinafter stated, that certain portion of the City public right-of-way within Washington Street, Santa Fe, NM. The leased property ("Premises") consists of approximately 120 square feet, all as more fully described and shown in Exhibit "A" attached hereto and made a part hereof. Lessee accepts the Premises in its present state and agrees that it is in good condition, without any representation or warranty by Lessor as to the condition of the Premises or as to the use, which may be made thereof.

2. USE OF PREMISES

Lessor agrees to allow Lessee the non-exclusive use of the Premises for the purpose of allowing Lessee to park and display a low-rider vehicle in the designated parking space within the street. City will place signage within public sidewalk designating this parking space as reserved for the Lessee as shown in Exhibit "B." No further use of the Premises shall be allowed except those actions necessary for the use, maintenance and control of the area at the sole and exclusive expense of the Lessee. The use of the Premises is also subject to the following conditions:

- (a) No other commercial use of the Premises, including but not limited to, outdoor seating, the sale or display of merchandise or installation of additional advertising signage shall be permitted;
- (b) No blocking of any existing emergency entrances and exits to other businesses;

- (c) Lessor reserves the right to allow the use of the leased premises for its employees, contractors, agents, utility companies or major special events by others at any time, and no compensation or deduction to Lessee for such use will be granted;
- (d) Lessee shall comply with all local codes including the Uniform Traffic Ordinance and other parking regulations; any violations shall be considered grounds for termination of this Agreement.
- (e) Lessee shall ensure that its low-rider vehicle(s) occupying the Premises are within no more than eighteen (18) inches from the City's curb. Failure to comply with this condition and all other Uniform Traffic Ordinance codes will result in the issuance of a parking violation.
- (f) All rental payments shall be made to the Lessor by means of cash, cashier's check, money order, or by credit card, no personal checks shall be accepted.

3. LEASE TERM

The term of this lease shall be for one (1) year, commencing September 1, 2018, through August 31, 2019, unless sooner terminated as provided herein. The term may be extended with two (2) one-year option extensions at City's sole discretion.

Upon written request by Lessee, within sixty (60) days prior to expiration of this agreement, an additional year may be granted by the City Manager at their discretion and based upon compliance with provisions of this agreement.

In the event Lessee shall remain in possession of the Premises after the expiration of the initial term of this Lease, without exercising its option to extend, or after the expiration of any extended term, such possession may, at the sole option of the Lessor, be continued as a month-to-month tenancy at a renegotiated rate.

4. RENT

Rent shall be paid as follows:

A. Base Rent. Lessee shall pay six thousand dollars (\$6,000.00) plus applicable New Mexico Gross Receipts Tax at the current rate per year as base rent, due upon signing of this

Agreement. Lessee shall make all payments of rent each year before anniversary date to the City of Santa Fe Parking Division Administrative Office, 500 Market Street, Suite 200, Santa Fe, NM, 87501.

B. Increases in Base Rent. Upon approval of a second year to the term of this Lease Agreement, or any subsequent renewal thereof, the annual rent shall be adjusted by multiplying the previous year's annual rent by the sum of one and the changeover the most recent 12 months in the Consumer Price Index ("CPI") seasonally adjusted U.S. City Average for All Urban Consumers published monthly in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor (hereinafter, the "CPI-U") as mutually agreed by both parties and not to exceed two (2) percent.

C. In no event shall there be a decline in the rent from year to year as a result of the adjustment provided for in Paragraph B hereof.

5. PENALTY FOR LATE PAYMENT OF RENT

In the event the yearly rent is not received by Lessor on or before the anniversary date of this Agreement each month due, Lessee shall pay a penalty of one and one half percent (1 ½ %) of the rent due for each thirty (30) day period or fraction thereof that the rent payment is outstanding.

6. CANCELLATION BY LESSOR

At any time upon Lessee's failure to comply with any provision of this Lease Agreement or otherwise without cause (but in no event for an arbitrary or capricious reason), Lessor may cancel this Lease Agreement. Prior to cancellation, Lessor shall hand-deliver or mail notice to Lessee via certified mail or email sent with delivery receipt specifying:

- A. In the event of breach prior to cancellation:
- (a) Lessor shall hand-deliver or mail notice to Lessee via certified or registered mail;
 - (b) The action required to cure the breach;
 - (c) Specify date, not less than fifteen (15) days from the date the notice is delivered to Lessee, by which such breach must be cured;

(d) That failure to cure such breach on or before the date specified in the notice will result in termination of the Agreement;

B. If otherwise without cause, specifying when Lease Agreement will terminate, not less than fifteen (15) days from date of notice. Upon termination of this Lease Agreement, Lessor shall provide Lessee with a reimbursement pro-rata of any portion of the base rent received by Lessor.

7. ASSIGNMENT OR SUBLEASE

Lessee shall not transfer or assign in whole or in part, its rights and obligations under this Lease Agreement. Any such actions taken by Lessee shall result in immediate termination of this Lease Agreement.

8. INSURANCE

The Lessee at its own cost and expense, shall carry and maintain in full force and effect during the term of this Lease Agreement comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the Lessor, with limits of coverage in the maximum amount which the Lessor could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the Lessor is named as an additional insured and that Lessor will be notified within ten (10) days of cancellation for any reason. The Lessee shall furnish the Lessor with a copy of a "Certificate of Insurance" as a condition of the Lease.

9. INDEMNIFICATION

The Lessee shall indemnify, hold harmless and defend the Lessor from all losses, damages, claims for judgments, including payment of all attorney's fees and costs, on account of any suit, judgement, execution, claim, action or demand whatsoever arising from Lessee's use of the premises hereunder, as well as that of any of Lessee's employees, agents, representatives, guests or invitees and subcontractors.

10. THIRD PARTY BENEFICIARIES

By entering into this Lease Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Lessor and the Lessee. No person shall

claim any right, title or interest under this Lease or seek to enforce this Lease Agreement as a third party beneficiary of this Lease Agreement.

11. REPAIR AND MAINTENANCE

Lessee shall not cause or permit any waste, damage or injury to the Premises. Lessee shall, at its sole expense keep and maintain the Premises in good condition and good working order (reasonable wear and tear excepted), and shall be responsible for payment of all necessary expenses of repairs and replacements that arise during Lessee's use of the Premises. Repairs and replacements required to be made by the Lessee shall be made promptly as and when necessary and shall be at least equal in quality of materials and workmanship to that originally existing in the Premises. In the event of a default by Lessee in making such repairs and replacements, Lessor may, but shall not be required to, make such repairs and replacements for Lessee's account, and the expense thereof shall constitute and be collectible as additional rent. Notwithstanding the foregoing, if Lessor is repairing or restriping the street in which the Premises is located, Lessor shall provide the Lessee with reasonable notification.

At all reasonable times during the term of this Lease, Lessor, or its duly authorized representatives, shall have the right to enter upon the Premises to inspect the Premises, perform any work under this Lease, or to make any improvements, alterations, and additions that Lessor may elect to make.

12. ALTERATIONS AND IMPROVEMENTS

Lessee shall make no alteration, addition or improvements to the Premises for the uses described in Article 2 herein without the prior written consent of the Lessor. Lessor shall have the right to require Lessee to remove any alterations, additions or improvements made, at Lessee's sole expense, upon termination of this Lease Agreement.

13. EASEMENTS

Lessor reserves the exclusive right to grant access, utility or other easements on or through the Premises.

14. NOTICE

Any required notice will be deemed delivered, given and received (i) when personally delivered or (ii) five days after the same are deposited in the United States mail, postage prepaid, certified, addressed to the applicable party at the address indicated below for such party, or at the email address

designated below or at such other address as may be designated by either party in a written notice to the other party:

Lessor:

City of Santa Fe

Sara Smith, Contracts Analyst

500 Market Street, Suite 200

Santa Fe, NM 87501

sjsmith@ci.santa-fe.nm.us

Lessee:

Hotel Chimayo

By: Union City Hotel, LLC

By: Alameda Hotel Investment, LLC, a NM
LLC, its managing member

By: James M. Long, its managing member
201 3rd Street, NW, Suite 1150

Albuquerque, NM 87102

with copy to:

Hotel Chimayo

Attn: General Manager

125 Washington Avenue

Santa Fe, NM 87501

15. NO WAIVER

No waiver of a breach of any of the covenants contained in this Lease Agreement shall be construed to be a waiver of any succeeding breach of the same or any other requirements.

16. SEVERABILITY

In the event that one or more of the provisions contained in this Lease Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

17. ENTIRE AGREEMENT

The foregoing constitutes the entire agreement between Lessor and Lessee, represents their entire understanding and defines all of their respective rights, title and interest as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the parties are merged herein. This Lease shall not be modified or amended except by a written document signed by the parties.

18. BINDING EFFECT

This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and is specifically enforceable.

19. LITIGATION EXPENSE

In the event of litigation between the parties, the Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which the Lessor shall incur in enforcing this Lease or in recovering any and all damages caused to the Premises by Lessee, or Lessee's agents, employees or permitted assigns. Similarly, Lessee shall be reimbursed its reasonable fees and expenses incurred by Lessee in the event the Lessor violates any terms as prescribed in this Agreement.

20. RECORDING

This Lease Agreement shall be recorded in its entirety. Lessee shall bear all costs for recording of the Lease Agreement and any other associated costs.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of this 1st day of September, 2018.

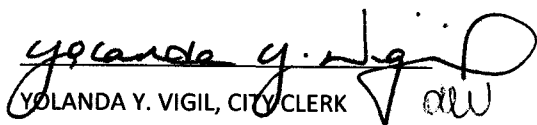
LESSOR:

CITY OF SANTA FE

A handwritten signature in black ink, appearing to read 'Erik Litzenberg', written over a horizontal line.

ERIK LITZENBERG, CITY MANAGER

ATTEST:

A handwritten signature in black ink, appearing to read 'Yolanda Y. Vigil', written over a horizontal line.

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

MDM 9/5
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

Mary McCoy 10/3 
MARY MCCOY, FINANCE DIRECTOR

51150.435900
Business Unit / Line Item
(Revenue)

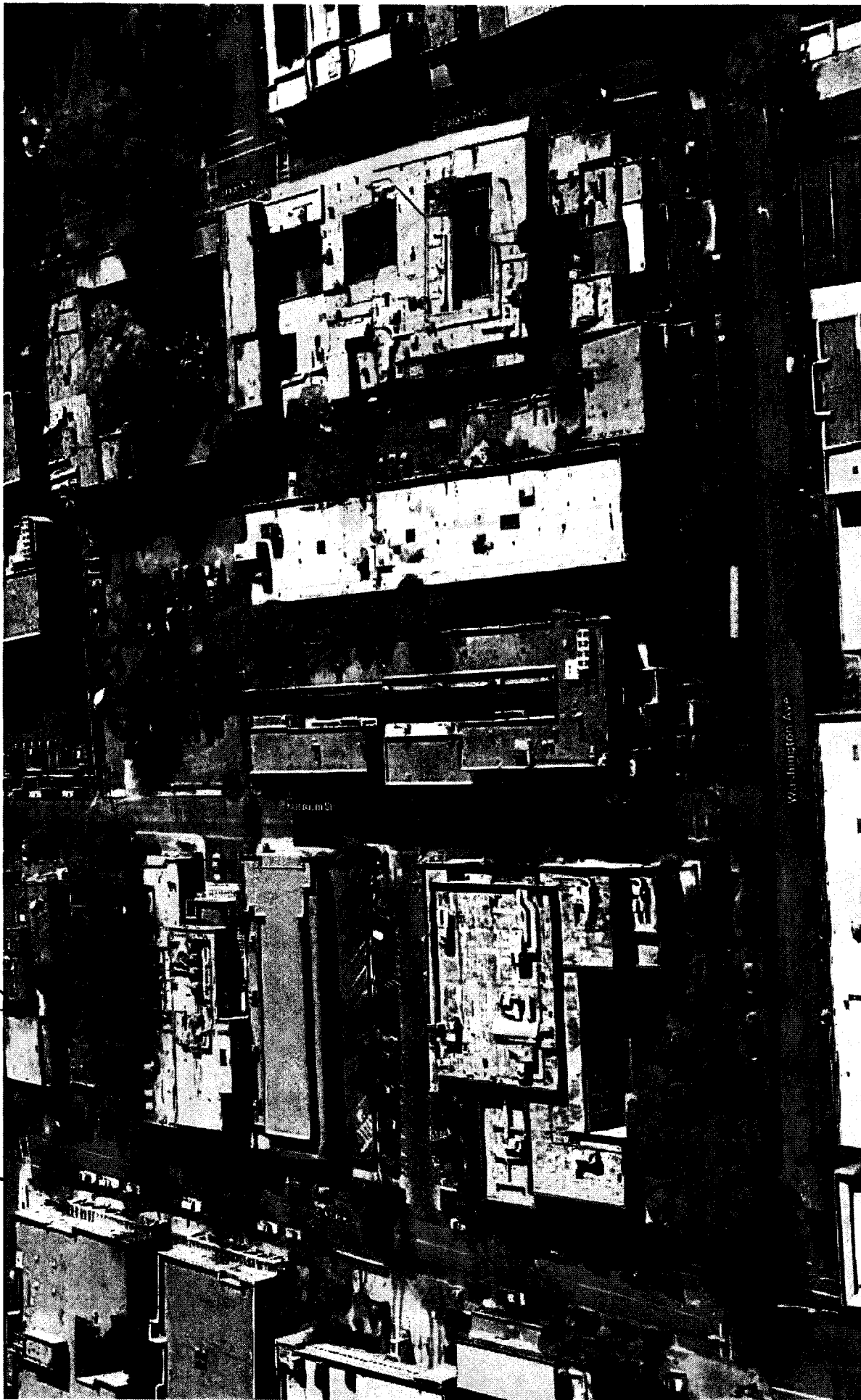
CRS # 02-317834-00-5
City of Santa Fe 2018
Business License # 18-00055711

LESSEE:

Hotel Chimayo

See attached signature page
BY: James M. Long, Managing Member


Hotel Chumayo Use Agreement Exhibit A



Hotel Chimayo

By: Union City Hotel, LLC,
a New Mexico limited liability company

By: Alameda Hotel Investment, LLC,
a New Mexico limited liability company
Its: Managing Member

By: 
James M. Long
Its: Managing Member