

3485

PARTIES:

City of Newport
Newport Urban Renewal Agency
Hallmark Inns & Resorts, Inc.

AFTER RECORDING, RETURN TO:

Erik Glover, City Recorder
City of Newport
169 SW Coast Hwy
Newport, Oregon 97365

Lincoln County, Oregon
06/07/2023 12:11:42 PM
DOC-AM/CR
2023-03696
Cnt=1 Pgs=6 Stn=9
\$30.00 \$11.00 \$60.00 \$10.00 \$7.00 - Total =\$118.00



I, Amy A Southwell, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Amy A Southwell, Lincoln County Clerk



NO CHANGE IN TAX STATEMENTS

The true and actual consideration, stated in terms of dollars, is NONE, but there is other good and valuable consideration which is the whole thereof.

FIFTH AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS

THIS Fifth Amendment to Covenants, Conditions and Restrictions (this "Amendment") , made and dated this 6th day of June, 2023 by and between the City of Newport, a municipal corporation, ("City"), the Newport Urban Renewal Agency, an Urban Renewal Agency existing under the laws of the State of Oregon ("Agency"), and Hallmark Inns & Resorts, Inc., a Washington corporation ("Hallmark"),

WITNESSETH:

RECITALS:

1. On or about July 23, 1992, Whaler Motel, Inc., an Oregon corporation ("Whaler") purchased from Agency, and Agency conveyed to Whaler, real property as more particularly described in a certain deed of conveyance, dated July 23, 1992, and recorded July 24, 1992, at page 1920, book 247, Film Records of Lincoln County, Oregon (the "Property").

2. Attached to and made a part of said conveyance, was an Exhibit A, setting forth certain covenants, conditions and restrictions, to which the Property was thereby made subject, setting forth requirements for development of the Property.

3. About March 30, 2007, by instrument recorded April 2, 2007, as document 200704725, Lincoln County Book of Records, the parties entered into an amendment of the covenants, conditions and restrictions set forth in said Exhibit A.

4. On or about March 8, 2013, the parties entered into a second such amendment, recorded March 11, 2013, as document 2013-02474, Lincoln County Book of Records.

5. The covenants, conditions and restrictions, including the amendments, are referred to as the "Covenants." Whaler completed the first phase of development as provided for in the Covenants, and requested additional time in which to complete the second phase of the development requirements. Whaler entered into a purchase and sale agreement with Hallmark, which is actively engaged in the hotel-motel industry in the City of Newport and is developing plans for substantial development of the second Phase of the Property, which the parties recognize will be beneficial to the area and to the City of Newport. Additional time will be required to carry out the second phase of development as called for by the Covenants, and the parties elected to extend the time for completion of the second phase of development, with a third amendment of the Covenants, recorded October 5, 2018, as document 2018-09990, Lincoln County Book of Records.

6. Hallmark subsequently purchased the Property from the Whaler, subject to the third amendment of the Covenants, pursuant to a warranty deed recorded December 14, 2018, as document 2018-12391, Lincoln County Book of Records.

7. Hallmark made a good faith effort to commence the second phase of development, and is prepared to initiate the land use entitlement process in accordance with the timeline outlined in the Covenants. However, the financial impact that the COVID-19 pandemic had on Hallmark made it impractical for building permits to be pulled, construction commenced, and occupancy obtained as originally envisioned. Consequently, on August 19, 2021, the parties entered into that certain Fourth Amendment to Covenants, Conditions and Restrictions, recorded August 19, 2021 as Instrument #2021-10684, Lincoln County Book of Records, to provide Hallmark additional time to complete the second phase of development.

8. Hallmark is in the process of finalizing its financing for completion of the second phase of the development, and, as a condition thereto, the financing lender has required that the City and the Agency enter into this Amendment with Hallmark to extend the period to complete the improvements contemplated thereby, and to remove the covenant to operate the Property as a hotel, motel, or similar vacation, convention and tourist lodging and ancillary facilities and services.

NOW, THEREFORE, the parties enter into this Amendment to amend the above-described Covenants as follows:

A. Sections 2 and 3 of the above-described Covenants contained in Exhibit A (and including the later amendments) are hereby amended, replaced, and restated as follows:

2. The first phase of development has been completed and placed in service. The necessary permits for the commencement of the construction have been obtained from the City, the application for land use entitlements has been made, and the construction of the second phase of development has begun. The second phase of development shall be ready for occupancy no later than July 23, 2030. The City agrees that permit and approval applications submitted for authorization to carry out such development will be processed expeditiously.

3. In the event Grantee fails to comply with the requirements for completion of the second phase of the development of the Property, the Newport Urban Renewal Agency shall have the right and option to repurchase that part of the Property which has not been utilized in connection with Phase 1 of the development, for a price of \$9.77 per square foot, upon condition that written notice to the Grantee or the Grantee's successors is given no later than July 23, 2031. If the Agency is dissolved, City shall succeed to and may exercise this right and option in the same manner and to the same extent as would Agency have been able to so do.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Amendment to be effective as of the date first set forth above.

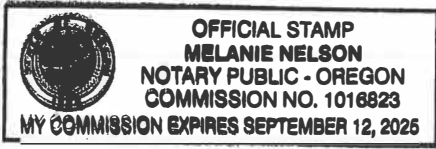
AGENCY

NEWPORT URBAN RENEWAL AGENCY

By: [Signature]
Name: Dietmar A. Goebel
Title: NURA CHAIR

STATE OF Oregon
COUNTY OF Lincoln

This record was acknowledged before me on June 6, 2023 by Dietmar Goebel, the Chair of Newport Urban Renewal Agency, and did say that s/he is the authorized representative of said Agency and the foregoing instrument was signed on behalf of said Agency as its voluntary act and deed.



Melanie Nelson
Notary

My commission expires: 9/12/25

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

CITY:

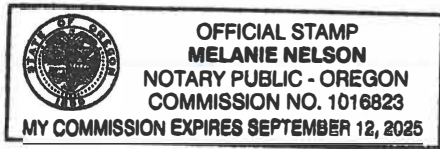
CITY OF NEWPORT

By: [Signature]
Name: Jan Kaplan
Title: Council President

Attest: [Signature]
Name: Erik Glover
Title: ASST. City Manager / City Recorder

STATE OF Oregon
COUNTY OF Lincoln

This record was acknowledged before me on June 7, 2023 by Jan Kaplan and Erik Glover, the former being the Commissioner and the latter being the ASST. City Manager of the City of Newport, a municipal corporation and political subdivision of the State of Oregon, and did say that they are authorized representatives of said City and the foregoing instrument was signed on behalf of said City as its voluntary act and deed.




Melanie Nelson
Notary

My commission expires: 9/12/25

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

HALLMARK

HALLMARK INNS & RESORTS, INC.

By: 
John R. Rabourn, President

STATE OF Oregon
COUNTY OF Lincoln

This record was acknowledged before me on June 6, 2023 by
JOHN R. RABOURN, as President of Hallmark Inns & Resorts, Inc.




Notary

My commission expires: 11/3/2024

