

EXHIBIT "9" - Development Agreement

DEVELOPMENT AND ROAD DEDICATION AGREEMENT

This Development and Road Dedication Agreement ("Agreement") is made and entered into this ___ day of _____, 2018, by and between Trimark-Burlington Hospitality LLC, a Washington limited liability company ("Owner") and the City of Burlington, a Washington municipal corporation (the "City"). Owner and the City are each a Party and collectively the Parties to this Agreement.

For good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, including without limitation the representations, warranties, and promises set forth herein, Owner and the City hereby agree as follows:

1. Property. Owner holds an equal undivided interest to a portion of and a fee simple interest to other portions of that certain real property located in the City of Burlington and legally described and depicted in **Exhibit "A"** hereto and incorporated herein by this reference ("Property").

2. Development. Owner has applied to and received from the City permission to develop the Property in order to construct a hotel on the site in accordance with the City's adopted codes, standards, regulations and plans (the "Development"). On or about April 19, 2017, the City issued an administrative decision, conditionally approving the Development (the "Decision").

3. Future Road Dedication. Condition 4.a. of the SEPA Determination in the Decision requires, among other things, that Owner convey a strip of land to the City for the purpose of permitting the City to construct a new City street between the intersection of Costco Drive and Walnut Street as shown on the approved site plan (the "Site Plan") attached hereto as **Exhibit "B"**. The dedicated strip of land is legally described on **Exhibit "C"** attached hereto. The issuance of Owner's certificate of occupancy for its hotel on the Property shall be conditioned upon Owner dedicating the strip of land via quit claim deed in the form attached hereto as **Exhibit "D"**.

4. Temporary Access to the Property from Burlington Boulevard. Condition 35 of the Decision grants Owner and its invitees temporary access to the Property from Burlington Boulevard from the access points depicted on the Site Plan until the City constructs a new City street along the southern boundary of the Property. The Parties hereby agree that Owner and its invitees shall have unrestricted access to and from the Property onto Burlington Boulevard until the City completes construction of its new City Street in the location depicted on the Site Plan.

5. Additional City and Owner Obligations. Pursuant to Condition 4.b of the SEPA Determination in the Decision, the Parties hereby agree as follows: (a) the City shall terminate temporary access to the Property from Burlington Boulevard upon its completion of the City street contemplated by this Agreement; (b) in connection with terminating the temporary access to the Property, the City shall reconstruct the sidewalk, curbing and landscaping located on Burlington Boulevard to permanently block the temporary access points to the Property; and (c) the City shall complete any required connections between the driveways and sidewalks constructed by Owner

within the Development to ensure its access to the new City street.

6. Impact Fee Mitigation. In return for Owner agreeing to dedicate the strip of land identified on **Exhibit "C"**, the City shall provide Owner with an Impact Fee Mitigation Credit in the amount of \$240,000.00 to offset impact fees incurred by Owner in connection with the Development.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors, heirs, assigns, and personal representatives.

8. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Jurisdiction over and venue of any suit arising out of or related to this Agreement shall be exclusively in the state and federal courts of Skagit County, Washington.

9. Entire Agreement / Parties. This Agreement contains the entire agreement between the Parties with respect to this matter. It may not be modified except in a writing signed by the Parties. This Agreement is not intended to, nor shall it be construed to, benefit any person or entity except the Parties and shall not be enforced by or construed to give rights to any third-party.

10. Attorneys' Fees. In the event that any suit or other proceeding is instituted by either Party to this Agreement arising out of or pertaining to this Agreement, including but not limited to filing suit or requesting an arbitration or other binding non-judicial alternative dispute resolution process (collectively, "Proceedings"), and appeals and collateral actions relative to such a suit or Proceeding, the substantially prevailing party as determined by the court or in the Proceeding shall be entitled to recover its reasonable attorneys' fees and all costs and expenses incurred relative to such suit or Proceeding from the substantially non-prevailing party, in addition to such other relief as may be awarded; PROVIDED, however, that in the event of mediation, the Parties shall bear their own costs and attorney fees and shall share equally the cost of the mediator.

11. Waiver. The waiver by a Party of a breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent breach by that Party. No waiver shall be valid unless in writing and signed by the Party against whom enforcement of the waiver is sought.

12. Severability. If for any reason any portion of this Agreement shall be held to be invalid or unenforceable, the holding of invalidity or unenforceability of that portion shall not affect any other portion of this Agreement and the remaining portions of this Agreement shall remain in full force and effect.

13. Recording. Prior to the issuance of the Certificate of Occupancy for the Development, this Agreement shall be recorded with the Skagit County Auditor's office.

14. Authority. Owner represents and warrants that it is duly organized, validly existing

and in good standing in the State of Washington. Owner further represents and warrants that the person or persons executing this Agreement on Owner's behalf have the requisite authority to bind Owner.

Agreed to and executed by:

**[SIGNATURE PAGES AND ACKNOWLEDGEMENTS
ON SEPARATE, FOLLOWING PAGES.]**

Exhibit "A"

Legal Description of Property

Exhibit "B"

Site Plan

Exhibit "C"

Legal Description of Dedicated Strip of Land

Exhibit "D"
Quit Claim Deed