

## **PERFORMANCE AGREEMENT**

This Performance Agreement (this "Agreement") is entered into by and between Pflugerville Community Development Corporation (the "PCDC"), a Section 4B corporation incorporated under the Development Corporation Act of 1979 (the "Act"), and LIGHTWATER HOSPITALITY NO. 1 LTD. & RamRan Holdings, L.L.C., DBA PFLUGERVILLE HOSPITALITY, both Texas Corporations ("Pflugerville Hospitality").

### **RECITALS**

PCDC has determined that it is in the best interests of PCDC and the City of Pflugerville, a Texas home rule municipal corporation in Travis County, Texas (the "City"), to facilitate PFLUGERVILLE HOSPITALITY in constructing a facility for their hospitality/hotel operation to be located within the City and generally described on Exhibit "A" attached hereto (the "PFLUGERVILLE HOSPITALITY Hotel"). PCDC has determined that the addition of the PFLUGERVILLE HOSPITALITY facility within the City will provide significant economic benefits and will further economic development in the City. The economic benefits of the PFLUGERVILLE HOSPITALITY site within the City will include, without limitation, the proceeds received by the City from the ad valorem taxes levied upon the premises and equipment of the PFLUGERVILLE HOSPITALITY site and the creation of full time jobs and part time jobs in the City.

PCDC and PFLUGERVILLE HOSPITALITY have agreed to enter into this Agreement in connection with PFLUGERVILLE HOSPITALITY's construction of PFLUGERVILLE HOSPITALITY's new hotel to provide for certain incentives to PFLUGERVILLE HOSPITALITY and to further define certain obligations of the parties to this Agreement with respect to the construction of PFLUGERVILLE HOSPITALITY's hotel and such incentives. This Agreement is required pursuant to Section 40 of the Act.

### **AGREEMENT**

#### **I.**

#### **Performance Agreement**

1. This Agreement serves as a performance agreement by the parties hereto.
2. PFLUGERVILLE HOSPITALITY hereby agrees that within 15 months of the execution of this Agreement, PFLUGERVILLE HOSPITALITY shall complete construction of PFLUGERVILLE HOSPITALITY's 70 plus room hotel in the Pflugerville, Texas and shall obtain a certificate of occupancy for same from the City of Pflugerville. The site shall be located in the One Thirty Commerce Center and further described in the attached Exhibit A for all

purpose as if written and copied herein. PFLUGERVILLE HOSPITALITY shall operate at this site for at least 5 years. The foregoing shall be considered PFLUGERVILLE HOSPITALITY's Facility Requirement".

3. PFLUGERVILLE HOSPITALITY agrees that the construction of the PFLUGERVILLE HOSPITALITY hotel shall follow all applicable City Codes and Regulations.
4. PFLUGERVILLE HOSPITALITY agrees to create 5 full time jobs and 10 part time jobs to support the hotel.

## II. Benefit

1. In consideration for PFLUGERVILLE HOSPITALITY's agreement to satisfy the above mentioned Agreement, PCDC hereby agrees to reimburse PFLUGERVILLE HOSPITALITY for city development fees up to \$100,000.00. PCDC will reimburse PFLUGERVILLE HOSPITALITY for the expense occurred in development of the PFLUGERVILLE HOSPITALITY Hotel. Reimbursement payments shall be paid within 30 days of PFLUGERVILLE HOSPITALITY presenting PCDC with a copy of the receipts for such expenses.
2. PCDC shall allocate \$25,000 a year for 4 years to market the hotel. PCDC and PFLUGERVILLE HOSPITALITY shall agree to all marketing campaigns prior to funding.
3. PCDC's total payments to PFLUGERVILLE HOSPITALITY shall not exceed \$200,000.
4. PCDC shall sell PFLUGERVILLE HOSPITALITY up to 3 acres of land at the 130 Commerce Center for its Hotel site for \$2.50 per foot reduced from \$4 per foot. The site is further described on the attached Exhibit A.
5. PCDC shall bring water, and sewer to the PFLUGERVILLE HOSPITALITY's lot line at no cost to PFLUGERVILLE HOSPITALITY.
6. PCDC shall build a monument sign at the entrance to the One Thirty Commerce Center and PFLUGERVILLE HOSPITALITY's hotel shall be displayed on the sign.
7. PCDC shall provide offsite detention for the hotel and PFLUGERVILLE HOSPITALITY shall execute a Drainage Facility Maintenance Agreement.
8. PCDC shall provide natural gas and chilled water to the site prior to the hotel receiving a certificate of occupancy.

### **III.**

#### **PENALTY**

In the event that (i) PFLUGERVILLE HOSPITALITY fails to fulfill the PFLUGERVILLE HOSPITALITY Hotel Requirement, or (ii) PFLUGERVILLE HOSPITALITY otherwise fails to comply with its obligations pursuant to this Agreement, and such failure is not cured within 30 days of written notice thereof from PCDC to PFLUGERVILLE HOSPITALITY, then in any such event, PFLUGERVILLE HOSPITALITY will immediately pay to PCDC the amount of the Benefit received by PFLUGERVILLE HOSPITALITY under Article II above to include repayment of any cash grants paid to PFLUGERVILLE HOSPITALITY and the real estate price difference of \$4 square per foot.

### **IV.**

#### **MICELLANEOUS**

*Representations and Warranties.* This Agreement is being entered into pursuant to Section 40 of the Act. PCDC hereby represents and warrants to PFLUGERVILLE HOSPITALITY that this Agreement is within its authority and that PCDC has been duly authorized and empowered to enter into this Agreement. PFLUGERVILLE HOSPITALITY hereby represents and warrants to PCDC that this Agreement is within its authority and that PFLUGERVILLE HOSPITALITY has been duly authorized and empowered to enter into this Agreement. PFLUGERVILLE HOSPITALITY acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

*Mutual Assistance.* PCDC and PFLUGERVILLE HOSPITALITY will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this Agreement.

*Successor and Assigns.* This Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. Neither party hereto may assign this Agreement without the prior written consent of the other party hereto.

*Representations and Warranties* by PFLUGERVILLE HOSPITALITY. PFLUGERVILLE HOSPITALITY warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of PFLUGERVILLE HOSPITALITY has been duly authorized to act for and bind PFLUGERVILLE HOSPITALITY . PFLUGERVILLE HOSPITALITY

acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

*Franchise Tax Certification.* PFLUGERVILLE HOSPITALITY certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that it is exempt from the payment of such taxes, or that it is an out-of-state entity that is not subject to the Texas Franchise Tax, whichever is applicable. PFLUGERVILLE HOSPITALITY acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

*Payment of Debt or Delinquency to the Local or State Government.* PFLUGERVILLE HOSPITALITY agrees that any payments owing to PFLUGERVILLE HOSPITALITY under this Agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that PFLUGERVILLE HOSPITALITY owes the State of Texas, Travis County, Williamson County the City of Pflugerville or any other political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

*Child Support Certification.* PFLUGERVILLE HOSPITALITY hereby certifies that none of the principals of the corporation is delinquent in their court ordered child support obligations and shall acknowledge that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

*Severability.* If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be given the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

*Governing Law.* This Agreement shall be governed, construed, applied, and enforced in accordance with the laws of the State of Texas, and shall be performable with venue in Travis County, Texas.

*Third Party Beneficiaries.* This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary.

*Amendments.* This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

*Time.* Time is of the essence in the performance of this Agreement.

*Attorneys Fees.* Should any party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay the

prevailing party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

*Notice and Payments.* All notices hereunder must be in writing and shall be deemed delivered on the day personally delivered on the third day from the day sent by registered mail or certified mail, return receipt requested with the U.S. Postal Service, or on the day after the day sent by national overnight courier, to the parties at the following addresses, or at such other addresses as shall be specified by notice.

If notice or payment to the PCDC:

Pflugerville Community Development Corporation  
Attention: Executive Director  
203 West Main Street, Suite C  
P.O. BOX 1160  
Pflugerville, Texas 78691

If notice or payment to PFLUGERVILLE HOSPITALITY:  
LIGHTWATER HOSPITALITY NO. 1 LTD.  
509 DAWN RIVER COVE  
AUSTIN, TX 78732

and

RamRan Holdings, LLC  
9619 Anchusa Trl.  
Austin, TX 78736

DBA PFLUGERVILLE HOSPITALITY

With copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Construction.* The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

*Counterpart Execution.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one Agreement.


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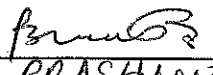
*Performance.* Performance by PCDC under the Agreement is dependent upon the approval of the City Council of the City of Pflugerville (Council). If the Council fails to approve this Agreement, then PCDC shall issue written notice to PFLUGERVILLE HOSPITALITY and PCDC may terminate the Agreement without further duty or obligation hereunder. PFLUGERVILLE HOSPITALITY acknowledges that the approval of this document is beyond the control of PCDC.

*Undocumented Workers.* Pursuant to Chapter 2264 of the Texas Government Code, PFLUGERVILLE HOSPITALITY certifies that they will not knowingly employ any undocumented workers. PFLUGERVILLE HOSPITALITY further agrees that if the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), PFLUGERVILLE HOSPITALITY shall repay the amount of the public subsidy with interest, at the rate of ten percent (10%) per annum from the date this agreement is entered into, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.

DATED this 30<sup>th</sup> day of May, 2014.

Pflugerville Hospitality:

By:   
Name: DILIP NAIR  
Title: PARTNER

By:   
Name: PRASHANT BHAKTA  
Title: PARTNER

Attested to: \_\_\_\_\_

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION  
A Texas Economic Development Corporation

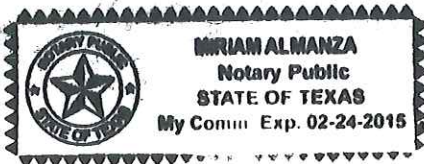
By:   
Name: Omar Pena  
Title: President

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared DILIP NAIK (PRESIDENT) of LIGHTWATER HOSPITALITY NO. 1 LTD. a Texas Corporation d/b/a Pflugerville Hospitality known to me to be the person whose name is subscribed to the foregoing instrument, and sworn and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of the corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 28<sup>th</sup> day of May, 2014.



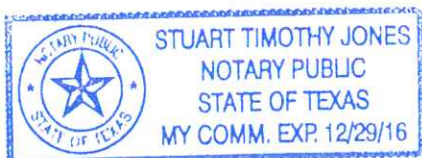
Miriam Almanza  
Notary Public in and for Travis County  
The State of Texas

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared PRASHANT BHAKTA (PRES.) of RamRan Holdings, LLC. a Texas Corporation d/b/a Pflugerville Hospitality known to me to be the person whose name is subscribed to the foregoing instrument, and sworn and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of the corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 30 day of MAY, 2014.



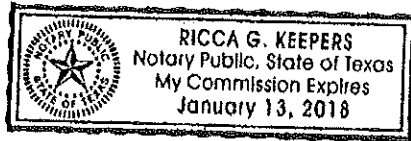
Stuart Timothy Jones  
Notary Public in and for  
The State of Texas

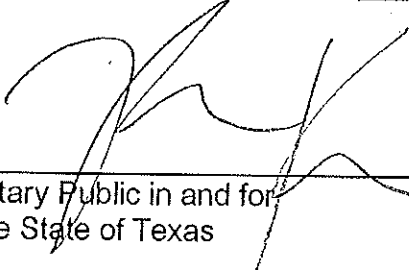
STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared Omar Pena, President of the Pflugerville Community Development Corporation, a Section 4B corporation incorporated under the Development Corporation Act of 1979, known to me to be the person whose name is subscribed to the foregoing instrument, and swore and acknowledged to me that he executed the same for the purpose and consideration therein expressed, and in the capacity therein stated and as the act and deed of the Pflugerville Community Development Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27 day of May, 2014.



  
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Notary Public in and for  
The State of Texas