

**MEETING OF THE BOARD OF  
DIRECTORS OF THE  
ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**

**Agenda  
December 11, 2023 AT 9:30a.m.  
ARLINGTON CITY HALL  
COUNCIL BRIEFING ROOM  
3<sup>RD</sup> FLOOR  
101 W. ABRAM STREET  
ARLINGTON, TX 76010**

Members of the public who wish to speak on a listed agenda item for action will be asked for their comments at the appropriate time.

- I. Call to Order
  
- II. Consideration of Minutes
  - A. October 17, 2023 Meeting
  - B. October 20, 2023 Meeting
  
- III. Standing Reports
  - A. Financial Report
  - B. Real Estate Report
  - C. Industry Spotlight Report
  
- IV. Airport Master Plan Update
  
- V. Items for Action
  - A. Resolution

Approve a resolution authorizing the Interim Executive Director or her designee to execute a Performance Agreement with Urban Tree Merchants relative to the creation and retention of primary jobs as part of the Texas Manufacturing Assistance Center Incentive Project.

Following a public hearing held in accordance with Section 505.159 of the Texas Local Government Code, consider a resolution authorizing an Economic Development Performance Agreement with Go For Three, LLC, the Arlington Economic Development Corporation, and the City of Arlington relative to the redevelopment of fourteen acres in the Entertainment District.

- B. Resolution

Approve a resolution authorizing the President of the Board of Directors to

execute an Economic Development Performance Agreement by and among Go For Three, LLC, the Arlington Economic Development Corporation, and the City of Arlington relative to the redevelopment of fourteen acres in the Entertainment District.

VI. Executive Session

Discussion of matters permitted by the following sections of V.T.C.A, Government Code, Chapter 551:

A. Section 551.087, Deliberation Regarding Economic Development Negotiations

1. Offers of Incentives to Business Prospects

B. Section 551.072, Deliberation Regarding Real Property

1. Discussion regarding the possible purchase, exchange, lease, or value of real property for eligible projects of the Arlington Economic Development Corporation.

VII. Future Agenda Items

VIII. Adjourn

**MEETING OF THE BOARD OF DIRECTORS  
OF THE  
ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**

**MINUTES OF THE  
ARLINGTON ECONOMIC DEVELOPMENT CORPORATION  
BOARD OF DIRECTORS  
October 17, 2023**

The Board of Directors of the Arlington Economic Development Corporation convened in Regular Session on October 17, 2023, at 4:30 p.m., in Arlington City Hall, 3<sup>rd</sup> Floor, 101 W. Abram Street, Arlington, Texas, with the meeting being open to the public and notice of said meeting, giving the date, place and subject thereof, having been posted as prescribed by V.T.C.A., Government Code, Chapter 551, with the following members present, to-wit:

Board Members:

Michael Jacobson	§	President
Mojoy Haddad	§	Vice President
John Whiteley	§	Treasurer
Kate Miller	§	Board Member

Absent:

Jollyn Mwisongo	§	Secretary
Gerald Alley	§	Board Member
Carmenza Moreno	§	Board Member

And

Trey Yelverton	City Manager
Broderick Green	Executive Director
Molly Shortall	City Attorney
Jonathan Moss	Senior Attorney
Bruce Payne	Director of Economic Development
Lyndsay Mitchell	Strategic Initiatives Officer
Ethan Klos	Treasurer
Stephanie Dimas	Senior Public Funds Analyst
Kevin McGlaun	Real Estate Consultant
Raja Saravanan	Business Intelligence and Marketing Analyst
Erica Yingling	Coordinator

I. Call to Order

President M. Jacobson called the meeting to order at 4:35 p.m.

II. Consideration of Minutes

A. September 19, 2023 Meeting

Treasurer J. Whiteley made a motion to approve the minutes of the September 19, 2023 Board meeting. Seconded by Vice President M. Haddad, the motion carried with 4 ayes and 0 nays.

APPROVED

III. Financial Report

No questions or comments were stated.

IV. Real Estate Report

No questions or comments were stated.

V. Industry Spotlight Report

No questions or comments were stated.

VI. Executive Director's Report

A. Staff Update

B. Upcoming Events

C. Previous Event Reviews

1. Bell Vendor Day
2. Founder's Arena Demo Day
3. Y Texas Event
4. Texas Economic Development Annual Conference

Broderick Green, Executive Director, provided information relative to EDC Staff, upcoming events, Bell Vendor Day, Founder's Arena Demo Day, Y Texas Event and Texas Economic Development Annual Conference.

VII. Items for Action:

A. Resolution

Approve a resolution authorizing the Executive Director of the Arlington Economic Development Corporation to execute a Renewal and Modification of Contract for the Professional Services Contract for assistance with real estate matters with M4 Realty Advisors, LLC.

Broderick Green, Executive Director, presented the resolution for consideration.



Vice President M. Haddad made a motion to approve the resolution. Seconded by Treasurer J. Whiteley, the motion carried with 4 ayes and 0 nays.

AEDC RESOLUTION NO. 23-015

B. Resolution

Approve a resolution electing officers to the Board of Directors of the Arlington Economic Development Corporation.

Treasurer J. Whiteley made a motion to keep the slate of officers as is. Seconded by Board Member K. Miller, the motion carried with 4 ayes and 0 nays.

AEDC RESOLUTION NO. 23-016

C. Resolution

Approve a resolution authorizing the use of the Competitive Sealed Proposal (CSP) service delivery method of construction for the Choctaw Stadium Office Improvements, located at 1000 Ballpark Way, Arlington, Texas 76011.

Broderick Green, Executive Director, presented the resolution for consideration.

Vice President M. Haddad made a motion to approve the resolution. Seconded by Board Member K. Miller, the motion carried with 4 ayes and 0 nays.

AEDC RESOLUTION NO. 23-017

VIII. Executive Session

At 4:57 p.m., President M. Jacobson announced that the Board would convene in Executive Session.

Discussion of matters permitted by the following sections of V.T.C.A, Government Code, Chapter 551:

- A. Section 551.087, Deliberation Regarding Economic Development Negotiations
  - 1. Offers of Incentives to Business Prospects

At 5:27 p.m., President M. Jacobson announced the Executive Session was adjourned, and the Board immediately reconvened in Open Session.

IX. Future Agenda Items

A. Project Updates

B. UTA Update

X. Adjourn

There being no further business, the meeting was adjourned at 5:28 p.m.

**MEETING OF THE BOARD OF DIRECTORS  
OF THE  
ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**

**MINUTES OF THE  
ARLINGTON ECONOMIC DEVELOPMENT CORPORATION  
BOARD OF DIRECTORS  
October 20, 2023**

The Board of Directors of the Arlington Economic Development Corporation convened in Regular Session on October 20, 2023, at 11:00 a.m., in Arlington City Hall, 3<sup>rd</sup> Floor, 101 W. Abram Street, Arlington, Texas, with the meeting being open to the public and notice of said meeting, giving the date, place and subject thereof, having been posted as prescribed by V.T.C.A., Government Code, Chapter 551, with the following members present, to-wit:

Board Members:

Michael Jacobson	§	President
Mojoy Haddad	§	Vice President
Jollyn Mwisongo	§	Secretary
John Whiteley	§	Treasurer
Kate Miller	§	Board Member

Absent:

Gerald Alley	§	Board Member
Carmenza Moreno	§	Board Member

And

Trey Yelverton	City Manager
Broderick Green	Executive Director
Molly Shortall	City Attorney
Jonathan Moss	Senior Attorney
Lyndsay Mitchell	Strategic Initiatives Officer
Jasmine Amo	Specialist
Marcus Young	Economic Development Specialist
Erin Clark	Public Funds Administrator
Stephanie Dimas	Senior Public Funds Analyst
Kevin McGlaun	Real Estate Consultant
Raja Saravanan	Business Intelligence and Marketing Analyst
Teresa Burnett	Communications Coordinator
Erica Yingling	Coordinator

I. Call to Order

President M. Jacobson called the meeting to order at 11:04 a.m.

## II. Items for Action:

### A. Resolution

Approve a resolution authorizing the Executive Director or his designee to execute a Performance Agreement with Sportec Solutions, Inc. relative to the creation and retention of primary jobs.

The public hearing concerning a Performance Agreement with Sportec Solutions, Inc. relative to the creation and retention of primary jobs opened at 11:05 a.m. Broderick Green, Executive Director, presented the proposed resolution to the Economic Development Corporation Board.

Secretary J. Mwisongo arrived at 11:11 a.m.

With there being no speakers, the public hearing was closed at 11:12 a.m.

Vice President M. Haddad made a motion to amend the resolution date. Seconded by Treasurer J. Whiteley, the motion carried with 5 ayes and 0 nays.

Vice President M. Haddad made a motion to approve the resolution. Seconded by Board Member K. Miller, the motion carried with 5 ayes and 0 nays.

AEDC RESOLUTION NO. 23-018

## III. Adjourn

There being no further business, the meeting was adjourned at 11:18 a.m.

**COA Expenditures by Cost Center**

Budget Structure  
 Amount Type  
 Period  
 Cost Center Hierarchy  
 From Budget Date  
 To Budget Date

Non-Operating Budget  
 Activity  
 FY24 - Oct  
 Economic Development Corporation  
 10/1/2023  
 9/30/2024

Percentage of Year Complete 8%

Cost Center	Budget Appropriation	Current Monthly Expenditures	Expenditures to Date	Encumbrances	Actuals + Encumbrances	Unexpended Balance	%Exp
<b>CC973005 Economic Development Corporation Projects</b>	<b>69,016,963</b>	-	-	<b>17,100</b>	<b>17,100</b>	<b>68,999,863</b>	<b>0.02%</b>
61000:Purchase/Contract	69,016,963	-	-	17,100	17,100	68,999,863	0.02%
<b>CC973010 Economic Development Corporation Operations</b>	<b>3,918,114</b>	<b>82,450</b>	<b>82,450</b>	<b>41,296</b>	<b>123,746</b>	<b>3,794,368</b>	<b>3.16%</b>
50000:Salaries and Wages	674,492	39,946	39,946	-	<b>39,946</b>	634,546	5.92%
55000:Benefits	174,572	8,717	8,717	-	<b>8,717</b>	165,855	4.99%
60000:Supplies	150,000	1,608	1,608	2,880	<b>4,488</b>	145,512	2.99%
61000:Purchase/Contract	700,000	2,269	2,269	38,200	<b>40,469</b>	659,531	5.78%
62000:Utilities	20,000	-	-	-	-	20,000	0.00%
63000:Maintenance and Repair	1,000,000	3,286	3,286	216	<b>3,502</b>	996,498	0.35%
65000:Miscellaneous Expense	755,000	5,000	5,000	-	<b>5,000</b>	750,000	0.66%
66000:Travel and Training	438,050	21,624	21,624	-	<b>21,624</b>	416,426	4.94%
67000:Interdepartmental Expense	6,000	-	-	-	-	6,000	0.00%

**SALES TAX REVENUES**

TOTAL	2,121,335	Sales Month	Revenue Received
	2,121,335	October 2023	December 2023
		November 2023	January 2024
		December 2023	February 2024
		January 2024	March 2024
		February 2024	April 2024
		March 2024	May 2024
		April 2024	June 2024
		May 2024	July 2024
		June 2024	August 2024
		July 2024	September 2024
		August 2024	October 2024
		September 2024	November 2024

COA Expenditures by Cost Center

Budget Structure

Amount Type

Period

Cost Center Hierarchy

From Budget Date

To Budget Date

Non-Operating Budget

Activity

FY24 - Oct

Economic Development Corporation

10/1/2023

9/30/2024

Percentage of Year Complete 8%

Cost Center	Budget Appropriation	Current Monthly Expenditures	Expenditures to Date	Encumbrances	Actuals + Encumbrances	Unexpended Balance	%Exp
<b>CC973005 Economic Development Corporation Projects</b>	<b>69,016,963</b>	<b>-</b>	<b>-</b>	<b>17,100</b>	<b>17,100</b>	<b>68,999,863</b>	<b>0.02%</b>
61000:Purchase/Contract	69,016,963	-	-	17,100	17,100	68,999,863	0.02%
SC0574 - Professional Services	69,016,963	-	-	17,100	17,100	68,999,863	0.02%
<b>CC973010 Economic Development Corporation Operations</b>	<b>3,918,114</b>	<b>82,450</b>	<b>82,450</b>	<b>41,296</b>	<b>123,746</b>	<b>3,794,368</b>	<b>3.16%</b>
50000:Salaries and Wages	674,492	39,946	39,946	-	39,946	634,546	5.92%
SC50002 - Salaries: Operations	674,492	38,707	38,707	-	38,707	635,785	5.74%
SC50010 - Salaries: Terminal Pay	-	1,239	1,239	-	1,239	(1,239)	0.00%
55000:Benefits	174,572	8,717	8,717	-	8,717	165,855	4.99%
SC50004 - Benefits: Longevity/Stability	210	-	-	-	-	210	0.00%
SC55000 - Benefits : Worker's Comp	763	52	52	-	52	711	6.83%
SC55001 - Benefits : Employee Retirement	72,626	3,674	3,674	-	3,674	68,952	5.06%
SC55002 - Benefits : Disability Income Plan	1,484	79	79	-	79	1,405	5.32%
SC55003 - Benefits : Employee Insurance	64,022	2,346	2,346	-	2,346	61,676	3.66%
SC55005 - Benefits : Medicare	9,779	583	583	-	583	9,196	5.96%
SC55008 - Benefits : Thrift Plan	18,096	1,536	1,536	-	1,536	16,560	8.49%
SC55009 - Benefits : Car Allowance	5,200	400	400	-	400	4,800	7.69%
SC55010 - Benefits : Phone Allowance	2,392	46	46	-	46	2,346	1.93%
60000:Supplies	150,000	1,608	1,608	2,880	4,488	145,512	2.99%
SC0500 - Office Supplies less than \$5,000	10,000	437	437	-	437	9,563	4.37%
SC0514 - Other Supplies	3,000	-	-	-	-	3,000	0.00%
SC0516 - Supplies/Computer Hardware	22,000	1,171	1,171	2,880	4,051	17,949	18.41%
SC0517 - Office Furniture less than \$5,000	60,000	-	-	-	-	60,000	0.00%
SC0521 - Cost Of Food & Beverage	25,000	-	-	-	-	25,000	0.00%
SC0531 - Rental	30,000	-	-	-	-	30,000	0.00%
61000:Purchase/Contract	700,000	2,269	2,269	38,200	40,469	659,531	5.78%
SC0533 - Special Services	500,000	2,269	2,269	-	2,269	497,731	0.45%
SC0574 - Professional Services	200,000	-	-	38,200	38,200	161,800	19.10%
62000:Utilities	20,000	-	-	-	-	20,000	0.00%
SC0578 - Electric Service	20,000	-	-	-	-	20,000	0.00%
63000:Maintenance and Repair	1,000,000	3,286	3,286	216	3,502	996,498	0.35%
SC0583 - Maintenance of Buildings	1,000,000	3,286	3,286	216	3,502	996,498	0.35%
65000:Miscellaneous Expense	755,000	5,000	5,000	-	5,000	750,000	0.66%
SC0658 - Advertising	750,000	5,000	5,000	-	5,000	745,000	0.67%
SC0735 - Employee Reimbursement - non travel/training	5,000	-	-	-	-	5,000	0.00%
66000:Travel and Training	438,050	21,624	21,624	-	21,624	416,426	4.94%
SC0668 - Membership	50,000	15,000	15,000	-	15,000	35,000	30.00%
SC0669 - Training	10,000	-	-	-	-	10,000	0.00%
SC0670 - Registration	78,050	1,200	1,200	-	1,200	76,850	1.54%
SC0671 - Travel	50,000	5,424	5,424	-	5,424	44,576	10.85%
SC0675 - Supplies/Computer Software	250,000	-	-	-	-	250,000	0.00%
67000:Interdepartmental Expense	6,000	-	-	-	-	6,000	0.00%
SC0633 - General Services Charges	6,000	-	-	-	-	6,000	0.00%

**Economic Development Corporation**

**Pro Forma**

Report Date: 12.08.2023

FD 8050 CC 973010 (Operations) and CC 973005 (Projects)

	ACTUALS			PROJECTIONS						
	1 FY21	2 FY22	3 FY23	4 FY24	5 FY25	6 FY26	7 FY27	8 FY28	9 FY29	10 FY30
<b>Beginning Balance</b>	-	<b>10,853,564</b>	<b>33,352,739</b>	<b>49,183,947</b>	<b>3,068,584</b>	<b>3,068,584</b>	<b>3,068,584</b>	<b>3,068,584</b>	<b>3,068,584</b>	<b>3,068,584</b>
<b>Revenues</b>										
Sales Tax Revenue	11,164,714	24,115,528	23,849,011	26,161,473	26,946,317	27,754,706	28,587,347	29,444,968	30,328,317	31,238,166
Interest	-	137,745	1,161,268	1,967,358	76,715	76,715	76,715	76,715	18,412	18,412
Miscellaneous Revenue	-	2	24,750	-	-	-	-	-	-	-
Reserve for Incr/Decr in FMV of Investments	-	(877,675)	(37,239)	(37,239)	(37,239)	(37,239)	(37,239)	(37,239)	(37,239)	(37,239)
Reserve for Accrued Comp Absences	-	(10,666)	-	-	-	-	-	-	-	-
<b>Total Revenues</b>	<b>11,164,714</b>	<b>23,364,934</b>	<b>24,997,790</b>	<b>28,091,591</b>	<b>26,985,792</b>	<b>27,794,182</b>	<b>28,626,823</b>	<b>29,484,443</b>	<b>30,309,489</b>	<b>31,219,339</b>
<b>Interfund Transfers</b>										
Transfer to General Fund	-	(227,363)	(254,250)	(261,878)	(269,734)	(277,826)	(286,161)	(294,745)	(303,588)	(312,695)
<b>Total Transfers</b>	<b>-</b>	<b>(227,363)</b>	<b>(254,250)</b>	<b>(261,878)</b>	<b>(269,734)</b>	<b>(277,826)</b>	<b>(286,161)</b>	<b>(294,745)</b>	<b>(303,588)</b>	<b>(312,695)</b>
<b>Expenditures</b>										
	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29	FY30
<b>EDC Operations</b>										
YTD Actuals (see monthly budget report)	(311,151)	(638,396)	(1,280,982)	(123,746)	-	-	-	-	-	-
Remaining current year budget for EDC Operations	-	-	-	(3,794,368)	-	-	-	-	-	-
Projected future budget	-	-	-	-	(3,035,657)	(3,126,727)	(3,220,529)	(3,317,145)	(3,416,659)	(3,519,159)
<b>Total Operations</b>	<b>(311,151)</b>	<b>(638,396)</b>	<b>(1,280,982)</b>	<b>(3,918,114)</b>	<b>(3,035,657)</b>	<b>(3,126,727)</b>	<b>(3,220,529)</b>	<b>(3,317,145)</b>	<b>(3,416,659)</b>	<b>(3,519,159)</b>
<b>Projects - Active Incentive Agreements</b>										
Bell Textron Inc.	-	-	(1,000,000)	(1,500,000)	-	-	-	-	-	-
Six Flags Southeast Project / Intercon Environmental	-	-	(286,316)	-	-	-	-	-	-	-
Center Street Gateway Project	-	-	(5,845,034)	-	-	-	-	-	-	-
First Rate	-	-	(500,000)	(500,000)	(500,000)	-	-	-	-	-
TMAC	-	-	-	(50,000)	(50,000)	-	-	-	-	-
Small Business Initiatives	-	-	-	(550,000)	-	-	-	-	-	-
Sportec (startup incentive)	-	-	-	-	(750,000)	(250,000)	-	-	-	-
Sportec (hiring grant)	-	-	-	-	(10,000)	(10,000)	(12,500)	-	-	-
Town North Redevelopment	-	-	-	-	-	-	-	(2,361,600)	-	-
<b>Total Active Incentive Projects</b>	<b>-</b>	<b>-</b>	<b>(7,631,350)</b>	<b>(2,600,000)</b>	<b>(1,310,000)</b>	<b>(260,000)</b>	<b>(12,500)</b>	<b>(2,361,600)</b>	<b>-</b>	<b>-</b>
<b>Projects - Proposed and Potential</b>										
* prior year * funding available for new projects	-	-	-	(45,000,000)	-	-	-	-	-	-
* current year * funding available for new projects	-	-	-	(22,426,964)	(22,370,401)	(24,129,629)	(25,107,633)	(23,510,953)	(26,589,242)	(27,387,485)
<b>Total Available for Projects</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(67,426,964)</b>	<b>(22,370,401)</b>	<b>(24,129,629)</b>	<b>(25,107,633)</b>	<b>(23,510,953)</b>	<b>(26,589,242)</b>	<b>(27,387,485)</b>
<b>TOTAL EXPENDITURES</b>	<b>(311,151)</b>	<b>(638,396)</b>	<b>(8,912,332)</b>	<b>(73,945,078)</b>	<b>(26,716,059)</b>	<b>(27,516,356)</b>	<b>(28,340,662)</b>	<b>(29,189,698)</b>	<b>(30,005,902)</b>	<b>(30,906,643)</b>
<b>Ending Balance</b>	<b>10,853,564</b>	<b>33,352,739</b>	<b>49,183,947</b>	<b>3,068,584</b>	<b>3,068,584</b>	<b>3,068,584</b>	<b>3,068,584</b>	<b>3,068,584</b>	<b>3,068,584</b>	<b>3,068,584</b>

Italics indicate projections

**REVENUE Assumptions:**

Sales Tax Revenue projections based on City's Street Maintenance assumptions (it and EDC are both quarter-cent sales tax) and out years beginning FY25 assume 3% growth  
Interest projections based on the prior year ending balance multiplied by 4%

**Operations EXPENDITURE Assumptions:**

FY23 EDC Operations & Interfund Transfers based on actuals through September, but fund has not yet been closed and is subject to change  
FY24 operations expenditure projections based on proposed budget, which includes one-time expenditure of \$1m for tenant improvement expenses at Choctaw Stadium  
FY25 shows 3% growth minus \$1m for the one-time construction costs at Choctaw Stadium in FY24  
FY26 and beyond operations expenditure projections assume 3% growth

**Projects EXPENDITURE Assumptions:**

Bell Textron payment years based on project commencement/completion deadlines per the agreement  
Town North payment projected in FY28 based on 12/31/2027 project completion deadlines; timing subject to change  
Six Flags Southeast Project: actual expenditure includes purchase price and closing costs  
Center Street Gateway Project: projection includes purchase price, attorneys fees and commissions; additional closing costs to be determined  
First Rate will be paid \$500k per year for three years for a total of \$1.5m  
Partnership with Texas Manufacturing Assistance Center (TMAC) are estimated expenditures per year for a total of \$150k total  
Current year funding available for new projects = current year revenue estimate minus operations and all known project expenses

# City of Arlington Industrial Overview





INVENTORY SF

**47.4M** +2.0%

Prior Period 46.5M

UNDER CONSTRUCTION SF

**0** -100.0%

Prior Period 936K

12 MO NET ABSORPTION SF

**484K** -49.1%

Prior Period 952K

VACANCY RATE

**4.5%** +0.8%

Prior Period 3.7%

MARKET RENT/SF

**\$8.65** +8.1%

Prior Period \$8.00

MARKET SALE PRICE/SF

**\$104** +3.2%

Prior Period \$101

MARKET CAP RATE

**6.3%** +0.4%

Prior Period 5.9%

## Availability

Vacant SF	2.2M <span style="font-size: small;">↑</span>
Sublet SF	285K <span style="font-size: small;">↓</span>
Availability Rate	5.0% <span style="font-size: small;">↑</span>
Available SF Total	2.4M <span style="font-size: small;">↑</span>
Available Asking Rent/SF	\$10.00 <span style="font-size: small;">↑</span>
Occupancy Rate	95.5% <span style="font-size: small;">↓</span>
Percent Leased Rate	96.8% <span style="font-size: small;">↓</span>

## Inventory

Existing Buildings	776 <span style="font-size: small;">↑</span>
Under Construction Avg SF	-
12 Mo Demolished SF	0 <span style="font-size: small;">↓</span>
12 Mo Occupancy % at Delivery	45.4% <span style="font-size: small;">↑</span>
12 Mo Construction Starts SF	0 <span style="font-size: small;">↓</span>
12 Mo Delivered SF	936K <span style="font-size: small;">↑</span>
12 Mo Avg Delivered SF	156K <span style="font-size: small;">↑</span>

## Sales Past Year

Asking Price Per SF	\$202 <span style="font-size: small;">↑</span>
Sale to Asking Price Differential	-
Sales Volume	\$10.1M <span style="font-size: small;">↓</span>
Properties Sold	39 <span style="font-size: small;">↓</span>
Months to Sale	9.4 <span style="font-size: small;">↑</span>
For Sale Listings	16 <span style="font-size: small;">↑</span>
Total For Sale SF	319K <span style="font-size: small;">↓</span>

## Demand

12 Mo Net Absorp % of Inventory	1.0% <span style="font-size: small;">↓</span>
12 Mo Leased SF	1.8M <span style="font-size: small;">↓</span>
Months on Market	4.1 <span style="font-size: small;">↓</span>
Months to Lease	2.6 <span style="font-size: small;">↓</span>
Months Vacant	6.0 <span style="font-size: small;">↑</span>
24 Mo Lease Renewal Rate	72.2%
Population Growth 5 Yrs	0.6%

# Overview

Arlington Industrial

12 Mo Deliveries in SF

**905K**

12 Mo Net Absorption in SF

**790K**

Vacancy Rate

**4.3%**

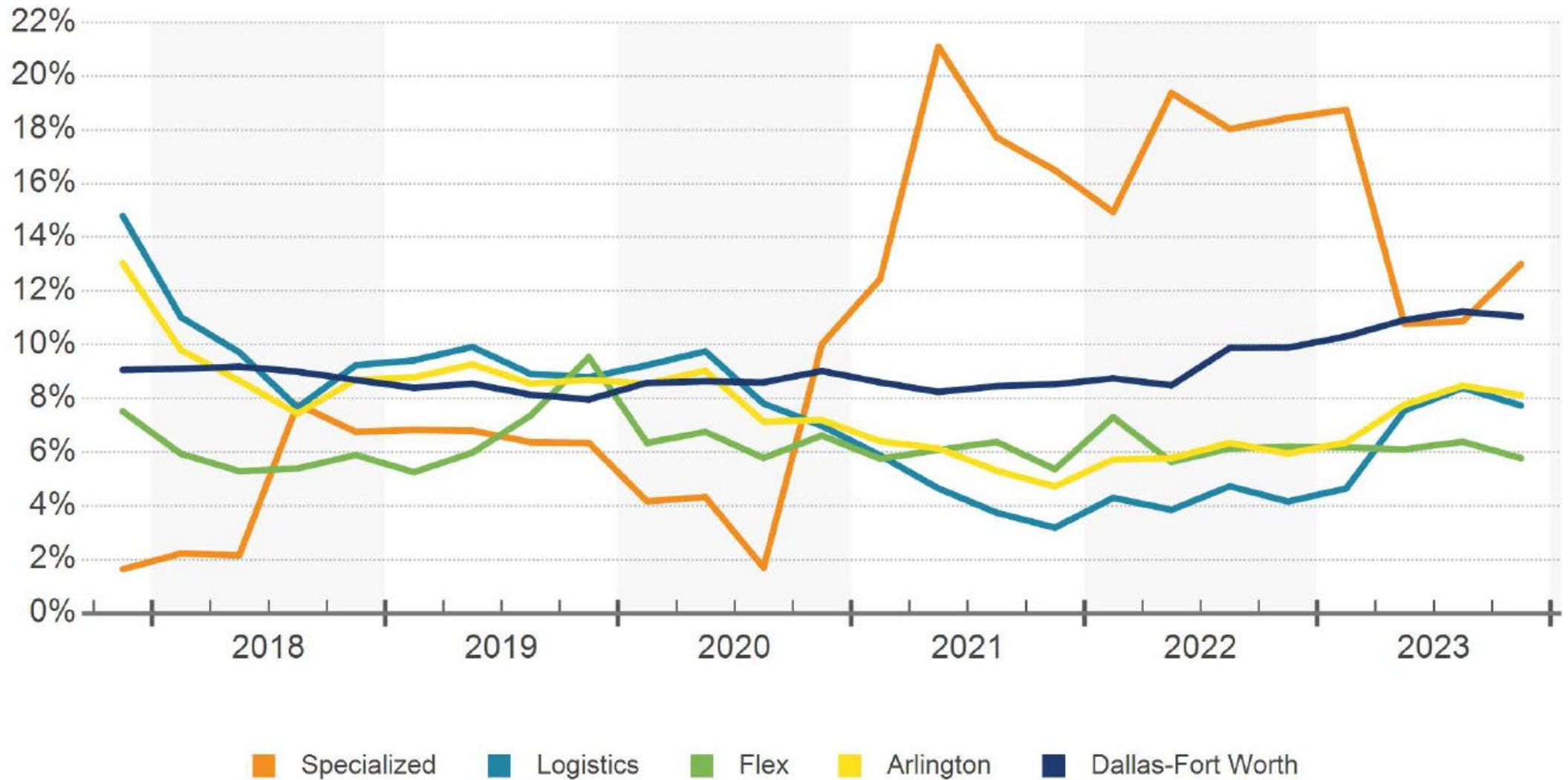
12 Mo Rent Growth

**8.1%**

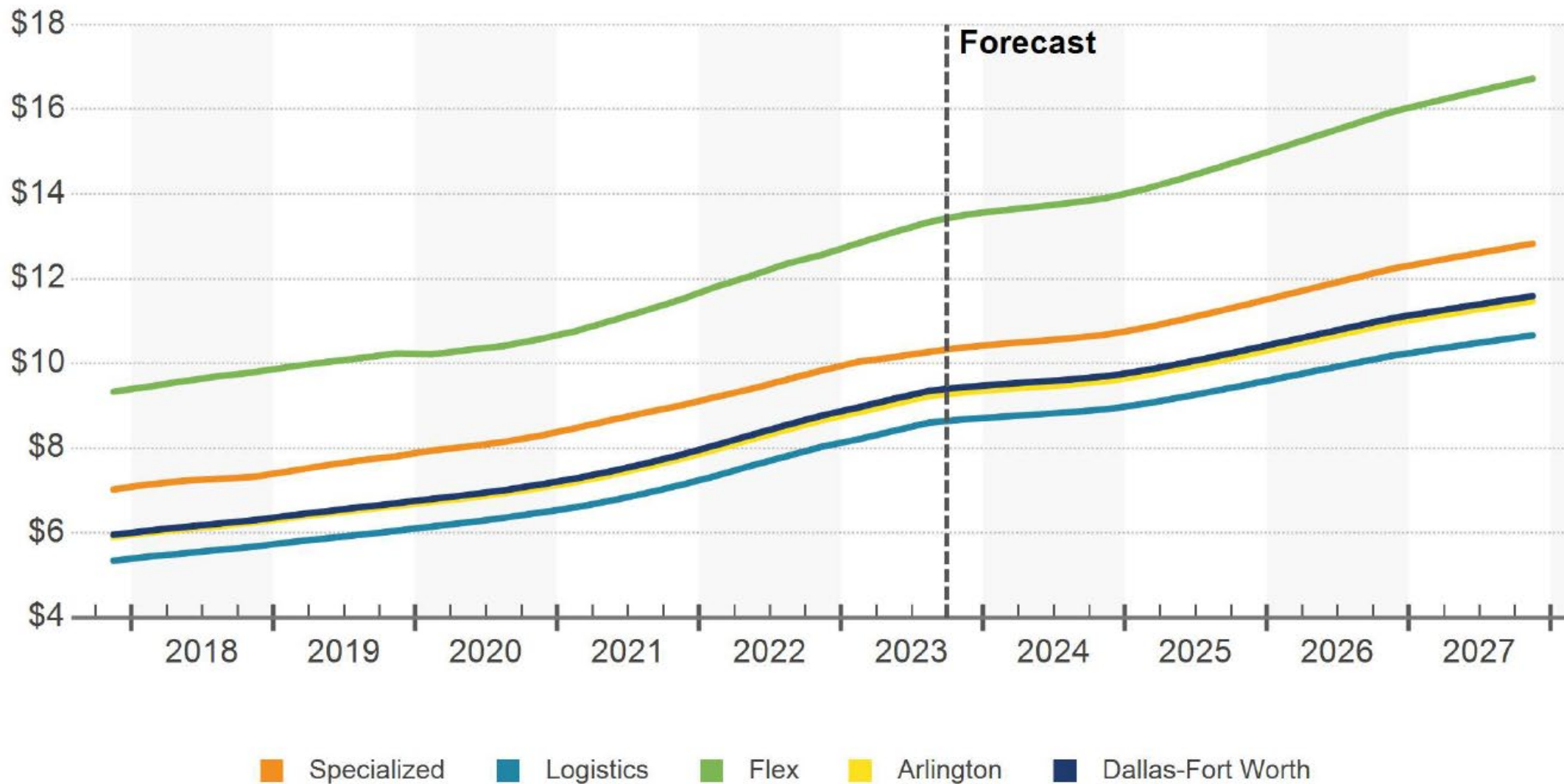
## KEY INDICATORS

Current Quarter	RBA	Vacancy Rate	Market Rent	Availability Rate	Net Absorption SF	Deliveries SF	Under Construction
Logistics	22,578,007	3.0%	\$8.66	7.7%	68,293	0	977,390
Specialized Industrial	3,215,468	12.5%	\$10.35	13.0%	339,869	394,477	0
Flex	2,783,645	6.0%	\$13.46	5.8%	(1,131)	0	0
<b>Submarket</b>	<b>28,577,120</b>	<b>4.3%</b>	<b>\$9.30</b>	<b>8.1%</b>	<b>407,031</b>	<b>394,477</b>	<b>977,390</b>

### AVAILABILITY RATE



### MARKET RENT PER SQUARE FEET





All-Time Annual Avg. Square Feet

617,100

Delivered Square Feet Past 8 Qtrs

1,993,946

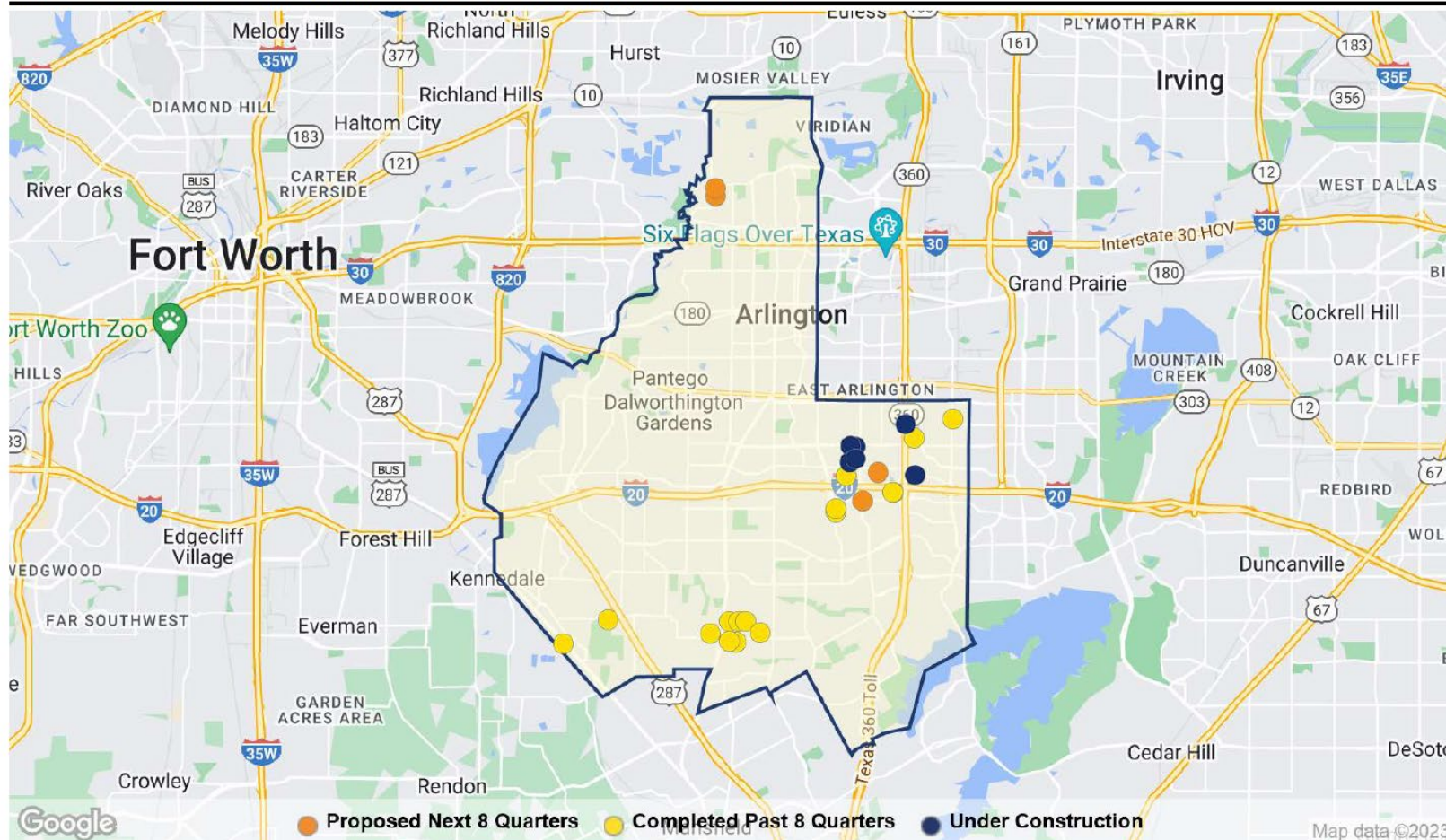
Delivered Square Feet Next 8 Qtrs

977,390

Proposed Square Feet Next 8 Qtrs

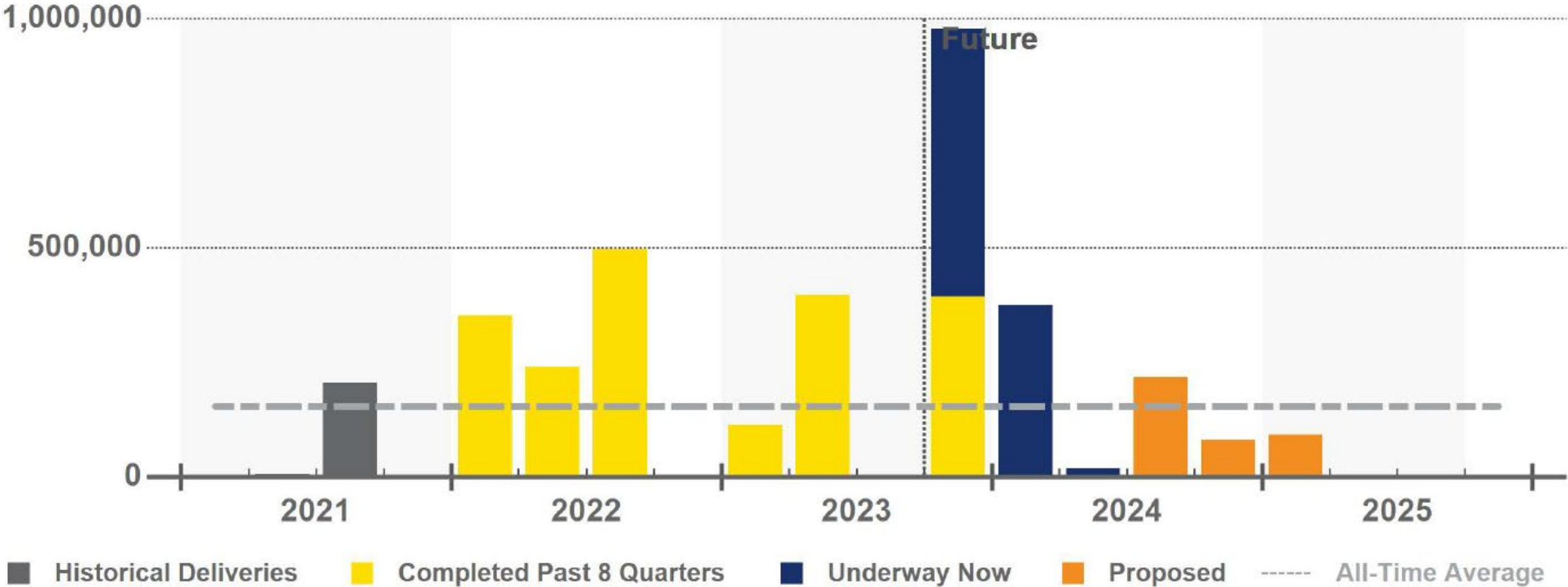
390,350

PAST 8 QUARTERS DELIVERIES, UNDER CONSTRUCTION, & PROPOSED

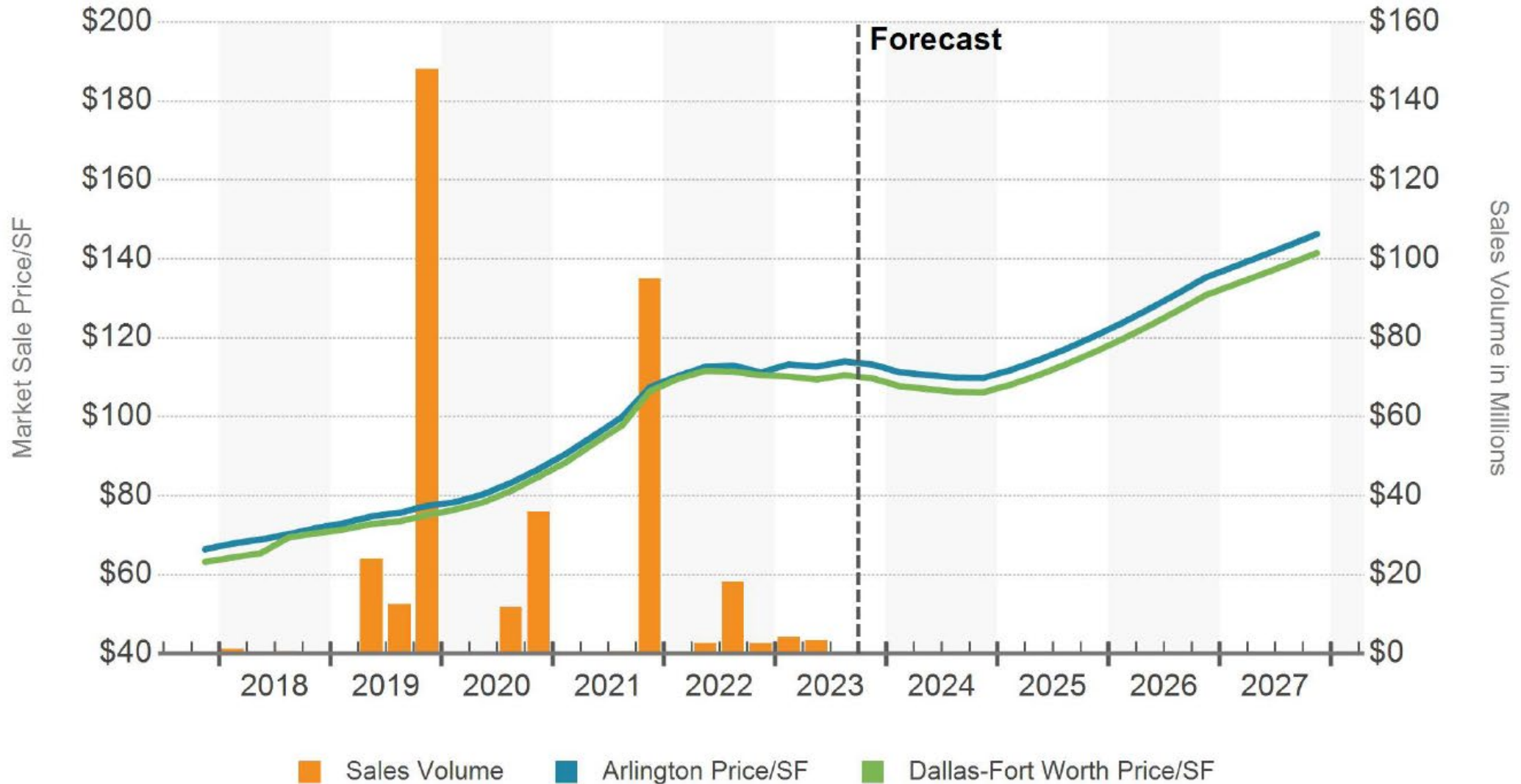


# Construction

PAST & FUTURE DELIVERIES IN SQUARE FEET



### SALES VOLUME & MARKET SALE PRICE PER SF





# Sales Past 12 Months

Arlington Industrial

Sale Comparables

31

Avg. Cap Rate

-

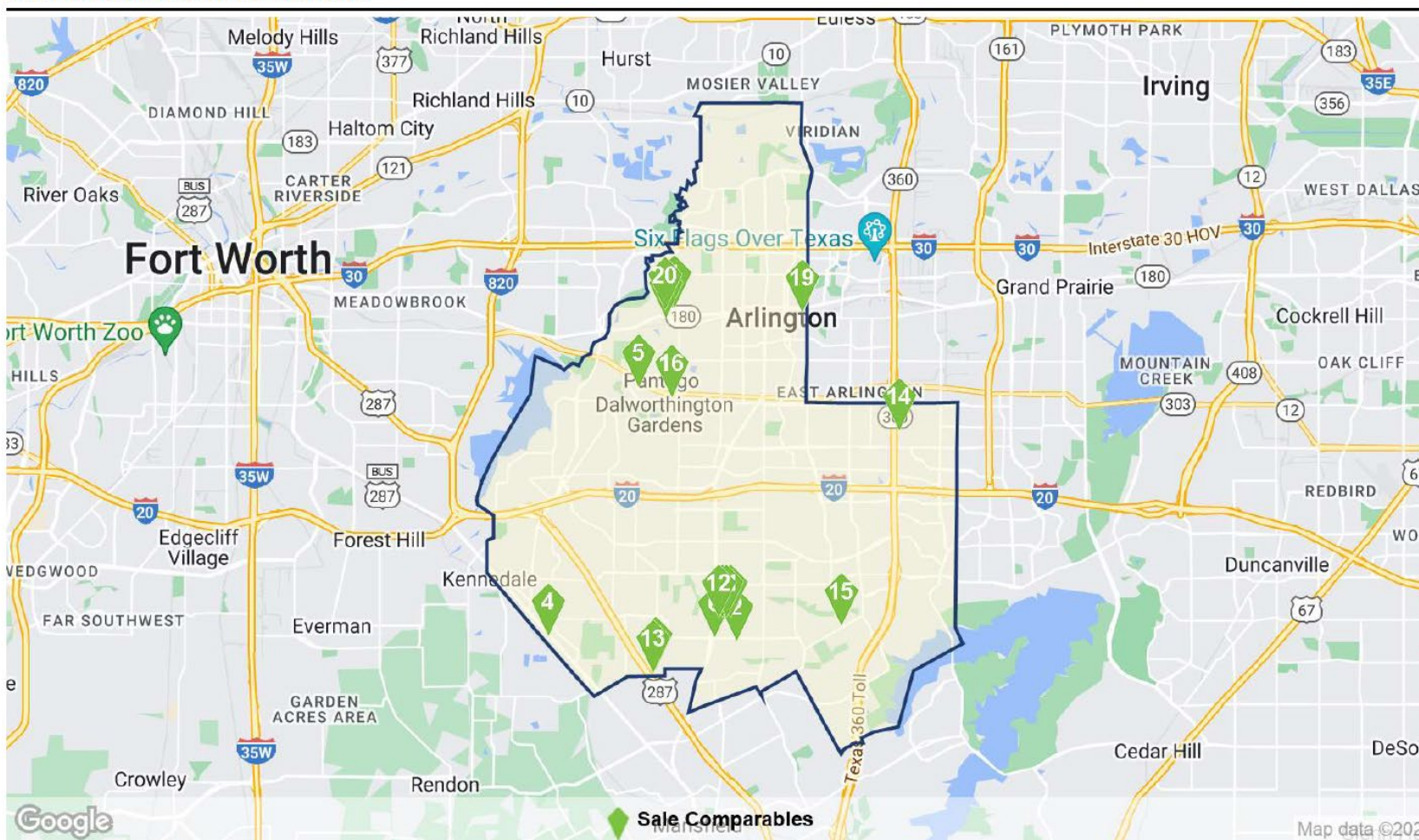
Avg. Price/SF

\$73

Avg. Vacancy At Sale

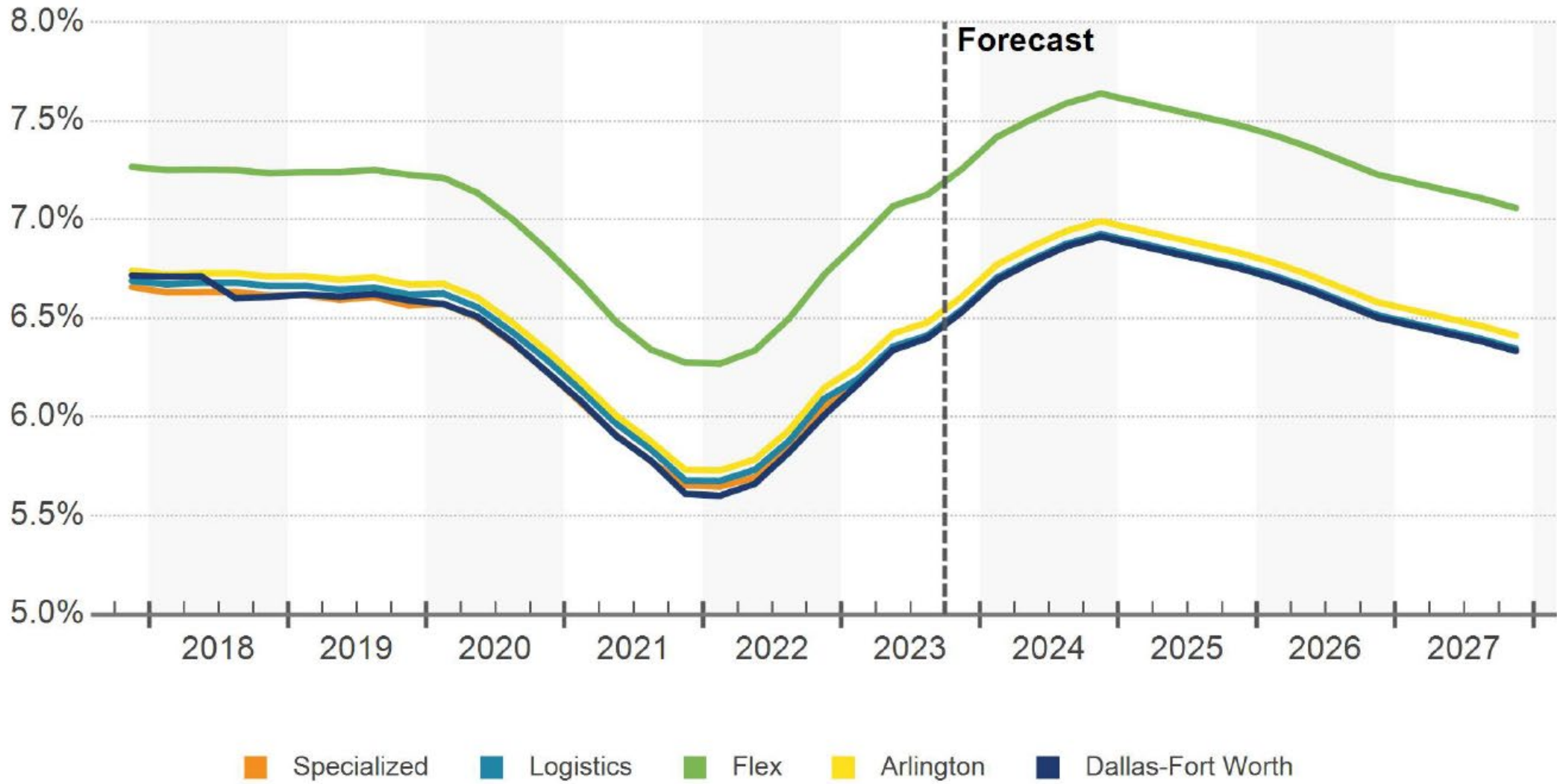
0.3%

## SALE COMPARABLE LOCATIONS





### MARKET CAP RATE





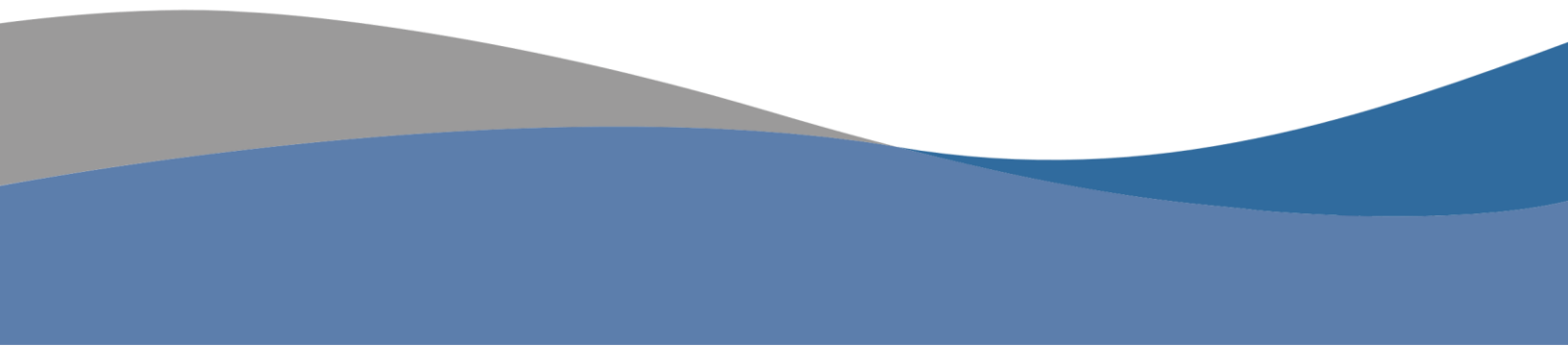
## Industry Spotlight

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# Aerospace Product and Parts Manufacturing

Dallas-Fort Worth-Arlington, TX MSA

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Industry Snapshot ..... 4

Staffing Pattern ..... 5

Geographic Distribution ..... 6

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# Aerospace Product and Parts Manufacturing Dallas-Fort Worth-Arlington, TX MSA – 2023Q2

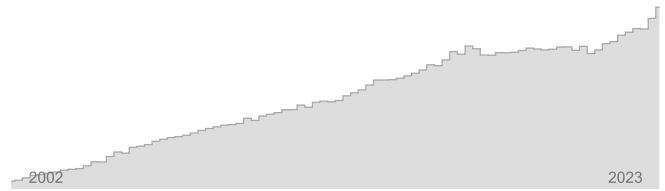
## EMPLOYMENT



**32,093**

Regional employment / 519,333 in the nation

## WAGES



**\$137,988**

Avg Wages per Worker / \$118,546 in the nation

**-0.9%** ↓

Avg Ann % Change Last 10 Years / **+0.3%** in the US



**0.8%**

% of Total Employment / **0.3%** in the US

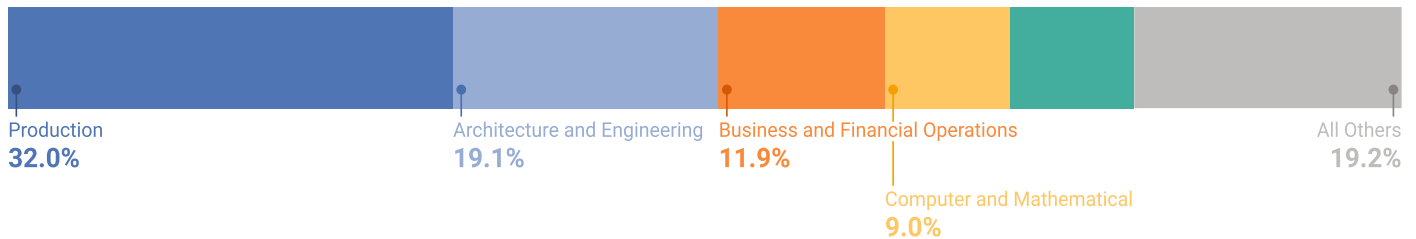


**2.9%** ↑

Avg Ann % Change Last 10 Years / **+2.8%** in the US

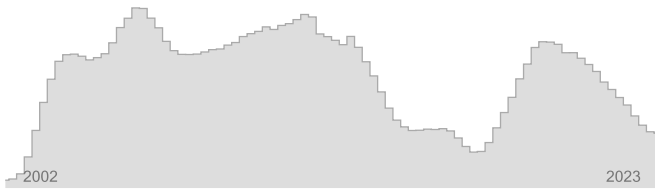


## TOP OCCUPATION GROUPS

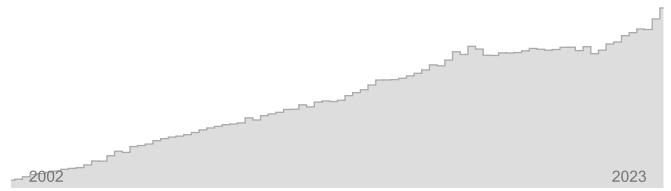


# Industry Snapshot

## EMPLOYMENT



## WAGES

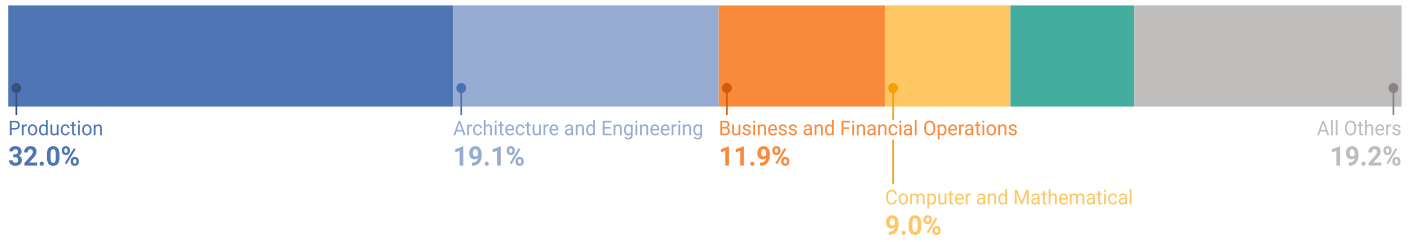


4-Digit Industry	Empl	Avg Ann Wages	LQ	5yr History	Annual Demand	Forecast Ann Growth
Aerospace Product and Parts Manufacturing	32,093	\$137,988	2.38		3,371	1.3%


Employment is one of the broadest and most timely measures of a region's economy. Fluctuations in the number of jobs shed light on the health of an industry. A growing employment base creates more opportunities for regional residents and helps a region grow its population.

Since wages and salaries generally compose the majority of a household's income, the annual average wages of a region affect its average household income, housing market, quality of life, and other socioeconomic indicators.

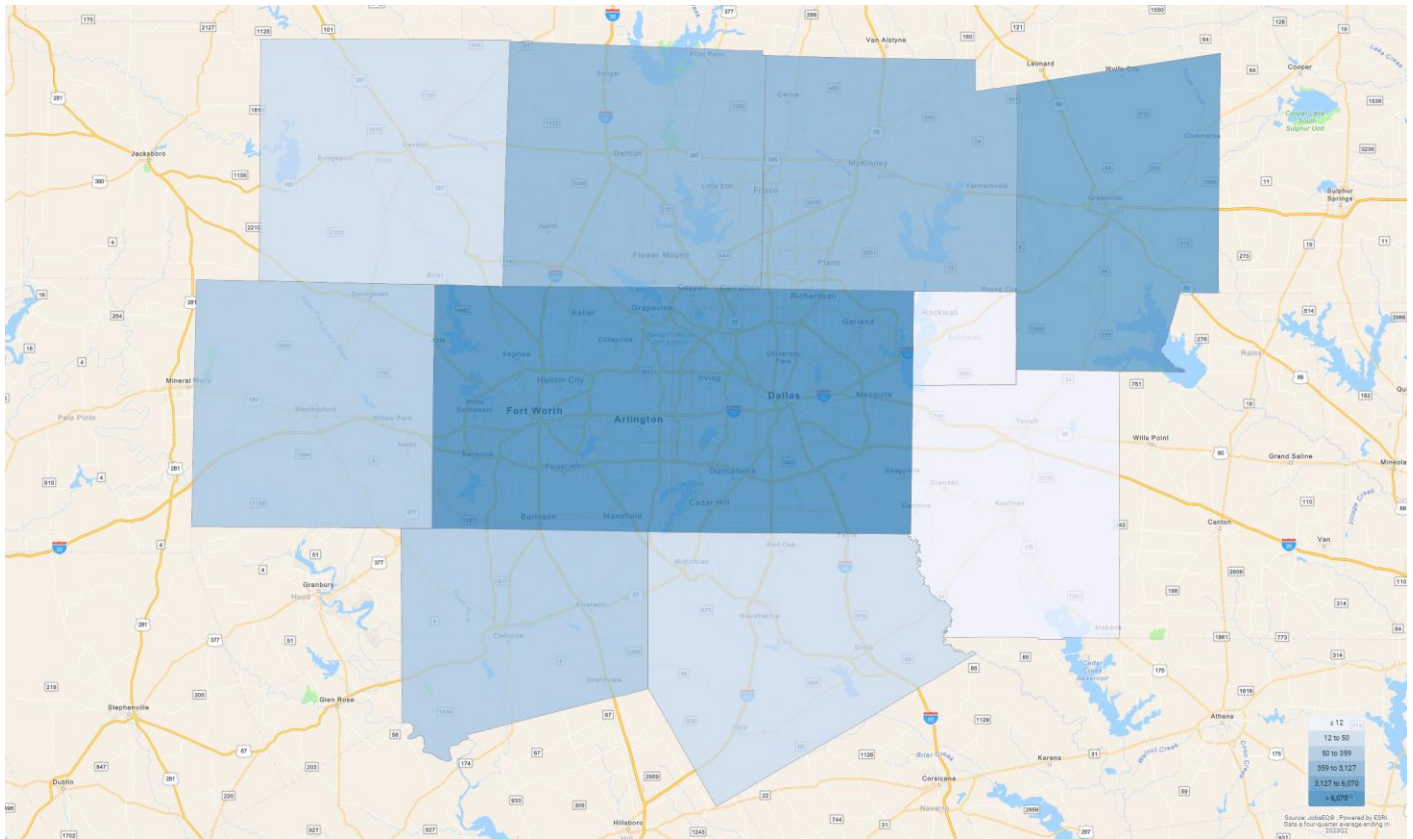
# Staffing Pattern



6-digit Occupation	Empl	Avg Ann Wages	Annual Demand
Aircraft Structure, Surfaces, Rigging, and Systems Assemblers	1,781	\$73,100	192
Inspectors, Testers, Sorters, Samplers, and Weighers	1,609	\$65,400	231
Aircraft Mechanics and Service Technicians	1,541	\$80,500	148
Industrial Engineers	1,533	\$113,300	137
Aerospace Engineers	1,395	\$128,200	101
Software Developers	1,381	\$136,300	142
Machinists	1,099	\$64,200	138
Team Assemblers	868	\$50,400	94
Computer Numerically Controlled Tool Operators	855	\$55,100	94
Purchasing Agents, Except Wholesale, Retail, and Farm Products	831	\$91,700	92
Remaining Component Occupations	19,191	\$81,400	2,121
<b>Total</b>	<b>32,085</b>		

 The mix of occupations points to the ability of a region to support an industry and its flexibility to adapt to future demand. Industry wages are a component of the cost of labor for regional employers.

# Geographic Distribution



Region	Empl	Region	Empl
Tarrant County, Texas	21,712	Johnson County, Texas	203
Dallas County, Texas	6,071	Parker County, Texas	50
Hunt County, Texas	3,128	Wise County, Texas	28
Denton County, Texas	528	Ellis County, Texas	13
Collin County, Texas	359	Kaufman County, Texas	2
		All Others	1

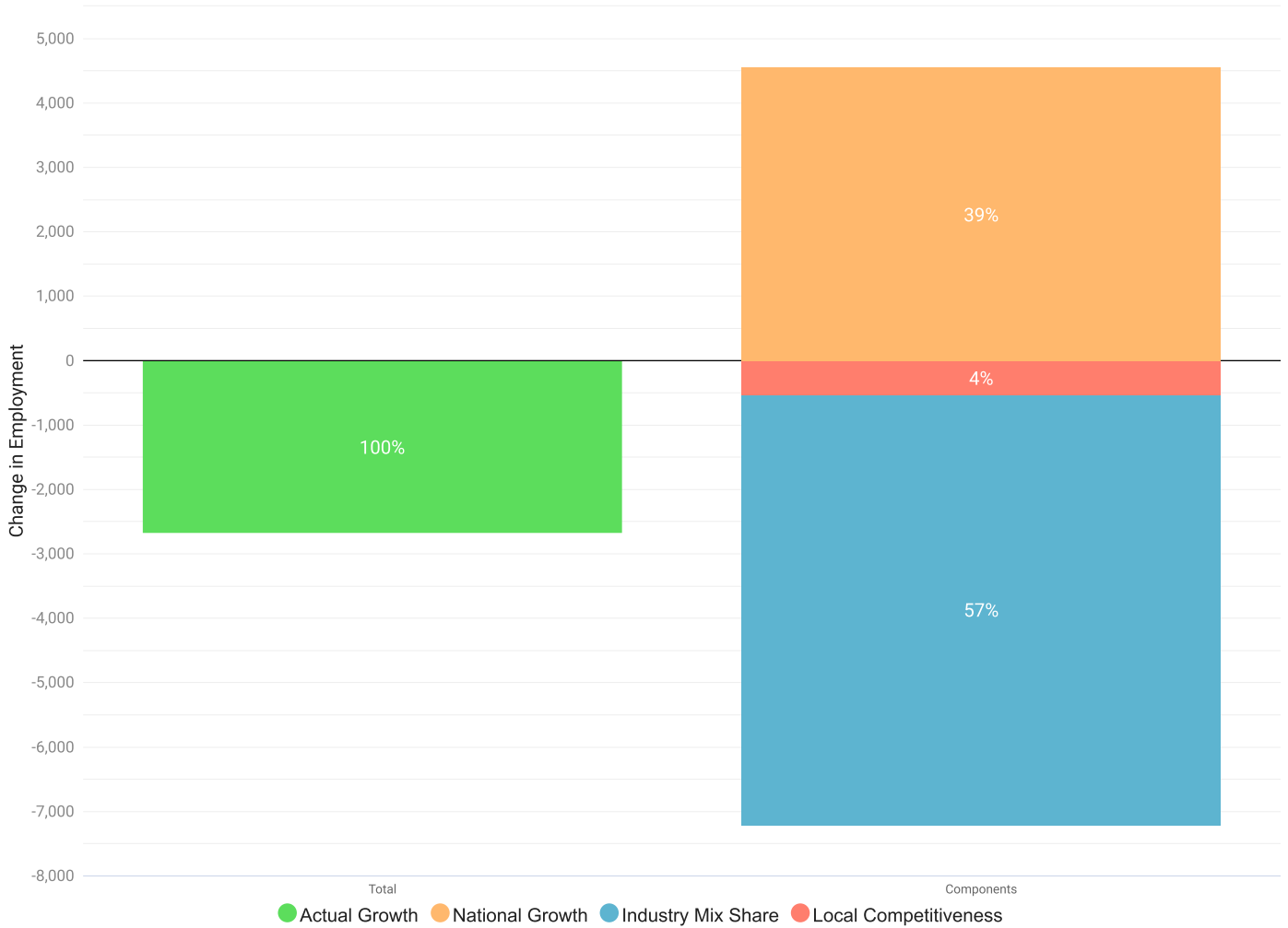
Source: JobsEQ®

 The geographic distribution of industry employment by place of work illustrates the impact on labor force demand and commuting patterns.

# Drivers of Employment Growth

Over the ten years ending 2022, employment in Aerospace Product and Parts Manufacturing for the Dallas-Fort Worth-Arlington, TX MSA shed 2,667 jobs. After adjusting for national growth during this period and industry mix share, the part of this employment change due to local competitiveness was a loss of 527 jobs—meaning this industry was less competitive than its national counterpart during this period.

Drivers of Employment Growth for Dallas-Fort Worth-Arlington, TX MSA



Source: JobsEQ®, Data as of 2022Q4

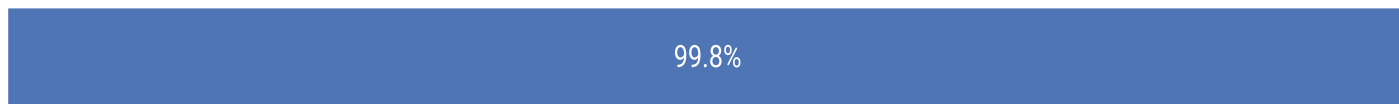
- Shift-share analysis sheds light on the factors that drive regional employment growth in an industry. A positive change in local competitiveness indicates advantages that may be due to factors such as superior technology, management, and labor pool, etc.
- National growth is due to the overall growth or contraction in the national economy. Industry mix share is the growth attributable to the specific industries examined (based on national industry growth patterns and the industry mix of the region).






# Employment Distribution by Type

The table below shows the employment mix by ownership type for Aerospace Product and Parts Manufacturing for the Dallas-Fort Worth-Arlington, TX MSA. Four of these ownership types — federal, state, and local government and the private sector — together constitute “Covered Employment” (employment covered by the Unemployment Insurance programs of the United States and reported via the Quarterly Census of Employment and Wages).

“Self-Employment” refers to unincorporated self-employment and represents workers whose primary job is self-employment (that is, these data do not include workers whose primary job is a wage-and-salary position that is supplemented with self-employment).



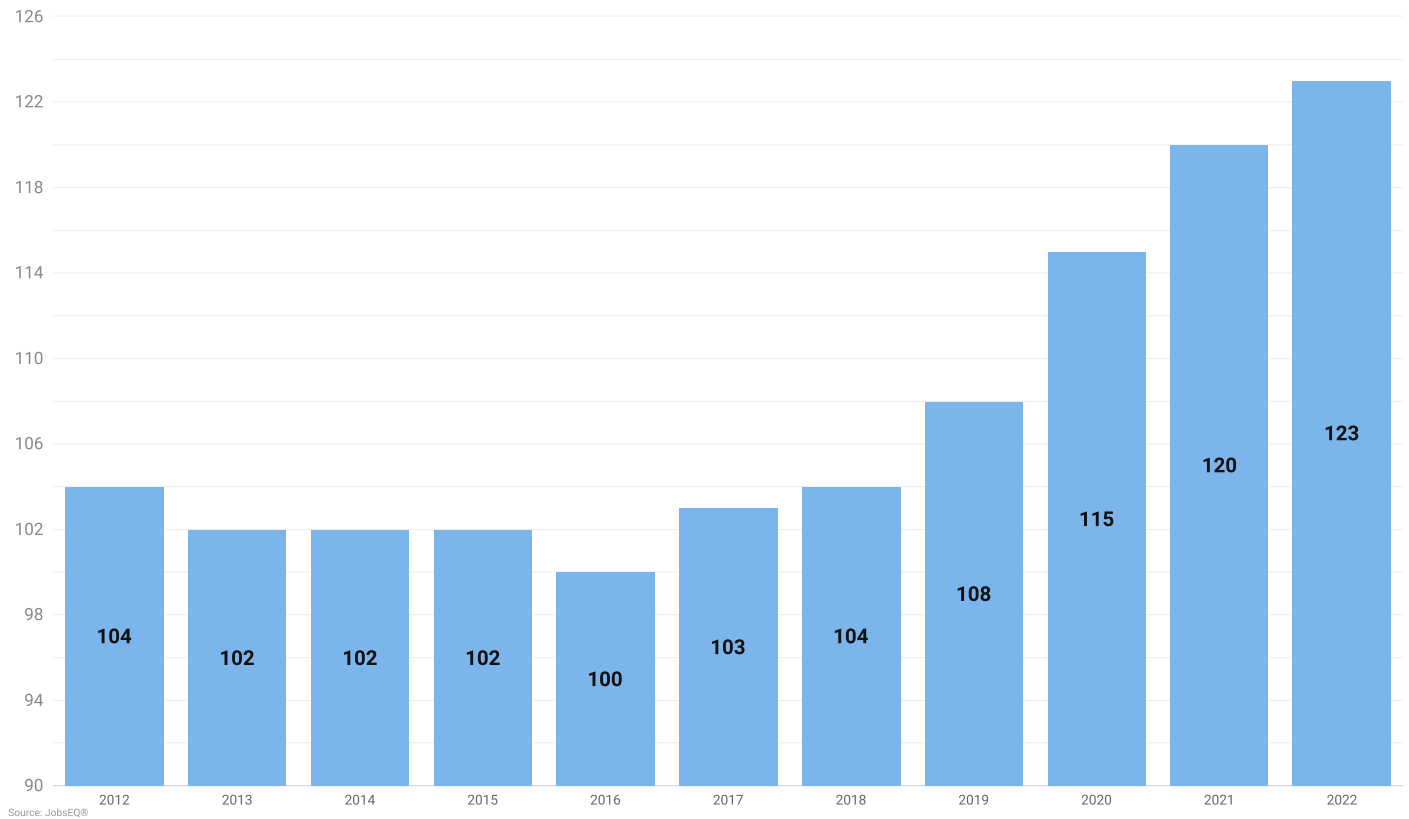
	<b>Empl</b>	<b>%</b>
 Private	32,022	99.8%
 Self-Employment	71	0.2%
 Local Government	0	0.0%


Source: JobsEQ®

 Strong entrepreneurial activity is indicative of growing industries. Using self-employment as a proxy for entrepreneurs, a higher share of self-employed individuals within a regional industry points to future growth.

# Establishments

In 2022, there were 123 Aerospace Product and Parts Manufacturing establishments in the Dallas-Fort Worth-Arlington, TX MSA (per covered employment establishment counts), an increase from 104 establishments ten years earlier in 2012.

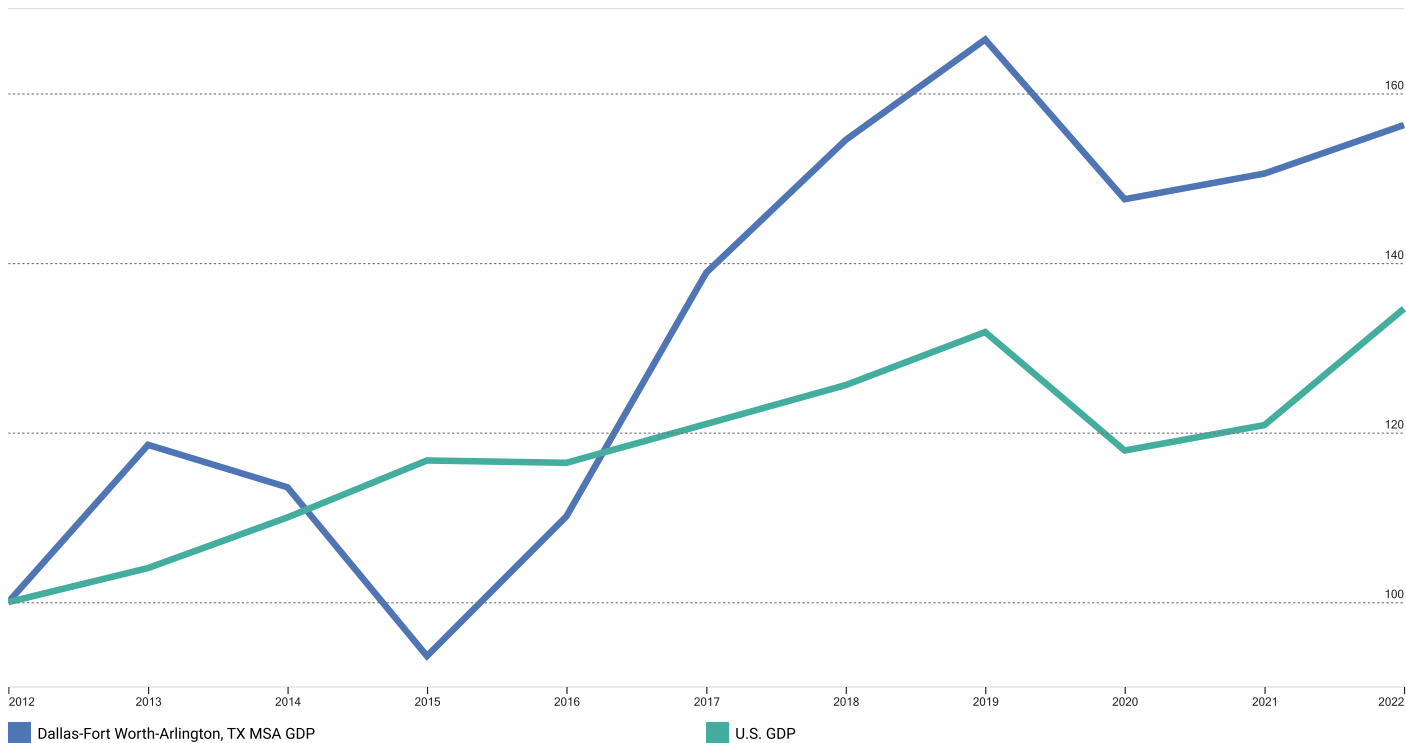


 New business formations are an important source of job creation in a regional economy, spurring innovation and competition, and driving productivity growth. Establishment data can provide an indicator of growth in businesses by counting each single location (such as a factory or a store) where business activity takes place, and with at least one employee.

# GDP & Productivity

In 2022, Aerospace Product and Parts Manufacturing produced \$13 billion in GDP for the Dallas-Fort Worth-Arlington, TX MSA.

GDP: Indexed 2012 = 100



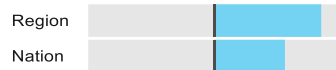
## 1.8 %

Industry Share of Total GDP /  
**0.6 %** in the nation



## 4.6 % ↑

Avg Ann % Change Last 10 Yrs /  
**3.0 %** in the nation



## \$495k

Output per Worker /  
**\$454k** in the nation



💡 Gross domestic product (GDP) is the most comprehensive measure of regional economic activity, and an industry's contribution to GDP is an important indicator of regional industry strength. It is a measure of total value-added to a regional economy in the form of labor income, proprietor's income, and business profits, among others. GDP values shown on this page are nominal GDP data.

💡 Growth in productivity (output per worker) leads to increases in wealth and higher average standards of living in a region.

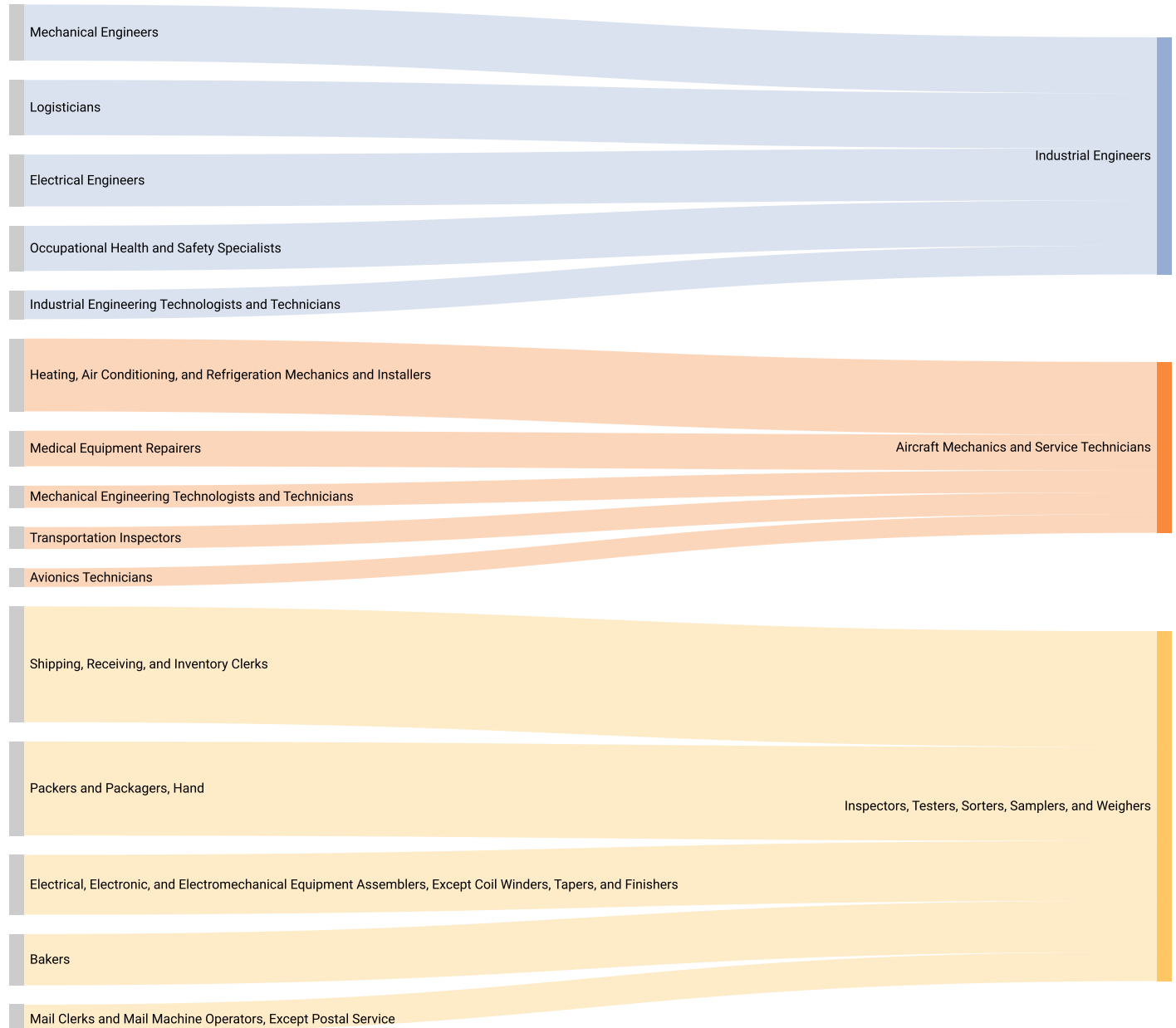
# Supply Chain: Top Suppliers


As of 2023Q2, Aerospace Product and Parts Manufacturing in the Dallas-Fort Worth-Arlington, TX MSA are estimated to make \$6.9 billion in annual purchases from suppliers in the United States with about 39% or \$2.7 billion of these purchases being made from businesses located in the Dallas-Fort Worth-Arlington, TX MSA.

<b>4-digit Supplier Industries</b>	<b>Purchases from In-Region (\$M)</b>	<b>Purchases from Out-of-Region (\$M)</b>
Aerospace Product and Parts Manufacturing	\$1,349.6	\$1,832.5
Navigational, Measuring, Electromedical, and Control Instruments Manufacturing	\$87.2	\$232.2
Semiconductor and Other Electronic Component Manufacturing	\$283.8	\$14.1
Management of Companies and Enterprises	\$99.0	\$115.6
Motor Vehicle Parts Manufacturing	\$75.1	\$91.9
Remaining Supplier Industries	\$787.0	\$1,919.1
<b>Total</b>	<b>\$2,681.6</b>	<b>\$4,205.3</b>

 Supplier-buyer networks can indicate local linkages between industries, regional capacity to support growth in an industry, and potential leakage of sales out of the region.

# Sector Strategy Pathways



 The graphics on this page illustrate relationships and potential movement (from left to right) between occupations that share similar skill sets. Developing career pathways as a strategy promotes industry employment growth and workforce engagement.

# Postsecondary Programs Linked to Aerospace Product and Parts Manufacturing

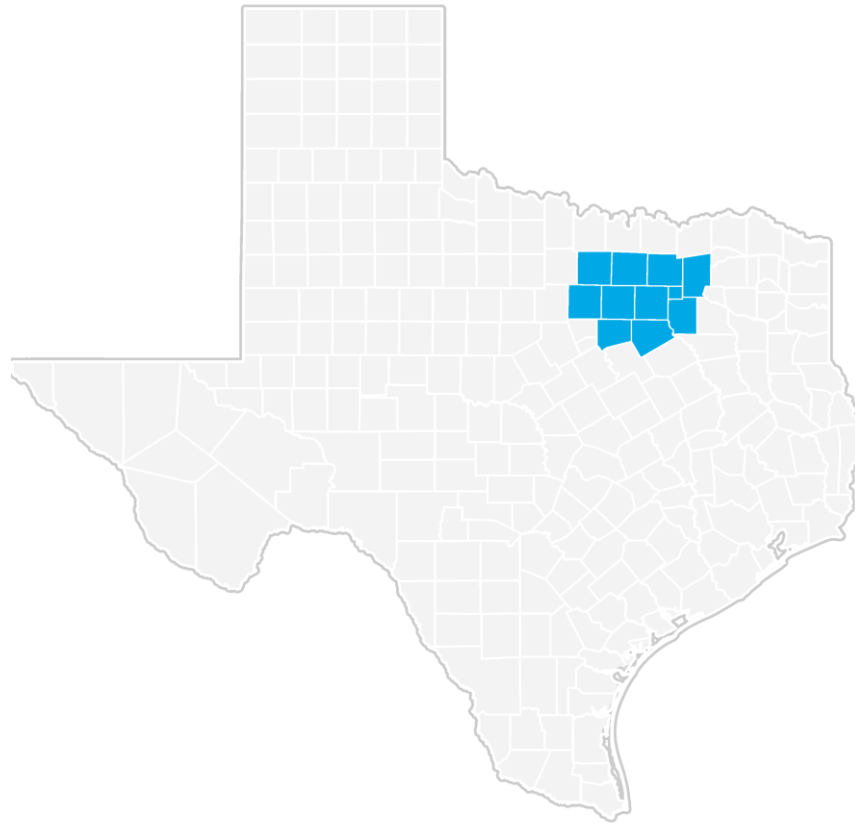
Program	Awards
<b>Aviation Institute of Maintenance-Dallas</b>	
Aircraft Powerplant Technology/Technician	23
Airframe Mechanics and Aircraft Maintenance Technology/Technician	185
<b>Collin County Community College District</b>	
Heating, Ventilation, Air Conditioning and Refrigeration Engineering Technology/Technician	171
<b>Lincoln College of Technology-Grand Prairie</b>	
Computer Numerically Controlled (CNC) Machinist Technology/CNC Machinist	54
<b>Tarrant County College District</b>	
Aircraft Powerplant Technology/Technician	111
Airframe Mechanics and Aircraft Maintenance Technology/Technician	125
<b>The University of Texas at Arlington</b>	
Industrial Engineering	97
Mechanical Engineering	209
<b>The University of Texas at Dallas</b>	
Electrical and Electronics Engineering	212
Mechanical Engineering	288

Source: [JobsEQ®](#)

 The number of graduates from postsecondary programs in the region identifies the pipeline of future workers as well as the training capacity to support industry demand.

 Among postsecondary programs at schools located in the Dallas-Fort Worth-Arlington, TX MSA, the sampling above identifies those most linked to occupations relevant to Aerospace Product and Parts Manufacturing. For a complete list see JobsEQ®, <http://www.chmuraecon.com/jobseq>

# Dallas-Fort Worth-Arlington, TX MSA Regional Map



# Data Notes

- Industry employment and wages (including total regional employment and wages) are as of 2023Q2 and are based upon BLS QCEW data, imputed by Chmura where necessary, and supplemented by additional sources including Census ZBP data. Employment forecasts are modeled by Chmura and are consistent with BLS national-level 10-year forecasts.
- Occupation employment is as of 2023Q2 and is based on industry employment and local staffing patterns calculated by Chmura and utilizing BLS OEWS data. Wages by occupation are as of 2023, utilizing BLS OEWS data and imputed by Chmura.
- GDP is derived from BEA data and imputations by Chmura. Productivity (output per worker) is calculated by Chmura using industry employment and wages as well as GDP and BLS output data. Supply chain modeling including purchases by industry are developed by Chmura.
- Postsecondary awards are per the NCES and are for the 2021-2022 academic year.
- Establishment counts are per the BLS QCEW data.
- Figures may not sum due to rounding.



# Region Definition

**Dallas-Fort Worth-Arlington, TX MSA is defined as the following counties:**

Collin County, Texas

---

Dallas County, Texas

---

Denton County, Texas

---

Ellis County, Texas

---

Hunt County, Texas

---

Johnson County, Texas

---

Kaufman County, Texas

---

Parker County, Texas

---

Rockwall County, Texas

---

Tarrant County, Texas

---

Wise County, Texas

---

# FAQ

## **What is (LQ) location quotient?**

Location quotient is a measurement of concentration in comparison to the nation. An LQ of 1.00 indicates a region has the same concentration of an industry (or occupation) as the nation. An LQ of 2.00 would mean the region has twice the expected employment compared to the nation and an LQ of 0.50 would mean the region has half the expected employment in comparison to the nation.

## **What is annual demand?**

Annual demand is a of the sum of the annual projected growth demand and separation demand. Separation demand is the number of jobs required due to separations—labor force exits (including retirements) and turnover resulting from workers moving from one occupation into another. Note that separation demand does not include all turnover—it does not include when workers stay in the same occupation but switch employers. Growth demand is the increase or decrease of jobs expected due to expansion or contraction of the overall number of jobs.

## **What is the difference between industry wages and occupation wages?**

Industry wages and occupation wages are estimated via separate data sets, often the time periods being reported do not align, and wages are defined slightly differently in the two systems (for example, certain bonuses are included in the industry wages but not the occupation wages). It is therefore common that estimates of the average industry wages and average occupation wages in a region do not match exactly.

# Staff Report



<b>Arlington Economic Development Corporation Performance Agreement – Urban Tree Merchants</b>	
Arlington Economic Development Corporation Meeting Date: 12-11-2023	Document Being Considered: Resolution

## **RECOMMENDATION**

Approve a resolution authorizing the Executive Director or his designee to execute a Performance Agreement with Urban Tree Merchants relative to the creation and retention of primary jobs as part of the Texas Manufacturing Assistance Center Incentive Project.

## **PRIOR BOARD OR COUNCIL ACTION**

The Texas Manufacturing Assistance Center Incentive Project was approved by the Economic Development Corporation Board on May 30, 2023 after a public hearing. The Texas Manufacturing Assistance Center Incentive Project was approved by the City Council on June 13, 2023.

## **ANALYSIS**

Urban Tree Merchants is a sawmill, slab retailer, and custom woodworking company based currently in Arlington, Texas.

Urban Tree Merchants has requested funding from the Arlington Economic Development Corporation to execute an agreement with the Texas Manufacturing Assistance Center (TMAC) for improving the efficiencies and workflow of the woodshop, developing a system for tracking time spent on projects to better understand company inefficiencies, to update company inventory and to switch to a new inventory management system.

Under the proposed Performance Agreement, Urban Tree Merchants would be required to utilize the business transformation to retain 4 full-time employees and hire 2 employees after the assessment is performed.

The AEDC would provide a performance grant of up to \$5,000 as reimbursement for the scope of work TMAC has provided to Urban Tree Merchants and will be completed by December 1, 2023.

## **FINANCIAL IMPACT**

The total financial impact of this agreement is \$5,000.  
Funding is available in the AEDC account no. 973005.

## **ADDITIONAL INFORMATION**

Attached:	Resolution with Performance Agreement attached
Under separate cover:	None
Available in the City Secretary's office:	None

**STAFF CONTACTS**

Jasmine Amo  
Economic Development Specialist  
Arlington EDC  
817-459-6450  
[Jasmine.Amo@arlingtontx.gov](mailto:Jasmine.Amo@arlingtontx.gov)

Lyndsay Mitchell  
Interim Executive Director  
Arlington EDC  
817-459-6432  
[Lyndsay.mitchell@arlingtontx.gov](mailto:Lyndsay.mitchell@arlingtontx.gov)

**ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**  
**Resolution No. \_\_\_\_\_**

**A resolution approving a performance agreement with Urban Tree Merchants, an Arlington business, as part of the Texas Manufacturing Assistance Center Incentive Project, a project found by the Board of Directors to be necessary for the creation or retention of primary jobs.**

- WHEREAS, the Arlington Economic Development Corporation is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and
- WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term “project” to include “land, buildings, equipment, facilities, expenditures, targeted infrastructure and improvements that are: (1) for the creation and retention of primary jobs; and (2) found by the board to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities.”; and
- WHEREAS, the Texas Manufacturing Assistance Center (TMAC) provides a wide array of business management, technology, and operational services, designed to accelerate the growth, retention, and competitiveness for primary job creators; and
- WHEREAS, the Arlington Economic Development Corporation approved the TMAC Incentive Project to fund the provision of TMAC trainings and services for eligible Arlington firms with the following NAICS Codes: 311-339, 42, 48-49, 5413, and 5417, after a public hearing on May 30, 2023; and
- WHEREAS, Geer Heart, LLC, dba Urban Tree Merchants (“Urban Tree Merchants”) is an Arlington-based business with a qualifying NAICS Code that is seeking to expand its operations and desires to use TMAC services to aid in its growth;
- WHEREAS Urban Tree Merchants has requested assistance as part of the TMAC Incentive Project to engage TMAC services to further the growth of its business in Arlington;
- WHEREAS, the Board of Directors for the Arlington Economic Development Corporation have determined that entering into a performance agreement with Urban Tree Merchants is consistent with the purposes and goals of the TMAC Incentive Project and will result in the retention and creation of primary jobs in Arlington; NOW THEREFORE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ARLINGTON ECONOMIC DEVELOPMENT CORPORATION:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this body and as part of its official record.

II.

That the Executive Director of the Arlington Economic Development Corporation and his designees are hereby authorized to execute a Performance Agreement with Urban Tree Merchants as part of the TMAC Incentive Project.

III.

A substantial copy of the Performance Agreement is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 11th day of December 2023, by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ nays at a regular meeting of the Board of Directors of the Arlington Economic Development Corporation.

\_\_\_\_\_  
Michael Jacobson, President

ATTEST:

\_\_\_\_\_  
Alex Busken, Assistant Secretary

APPROVED AS TO FORM:  
MOLLY SHORTALL, Counsel for the  
Arlington Economic Development  
Corporation

BY \_\_\_\_\_

**Exhibit "A"**  
**Performance Agreement**





NOW THEREFORE, for and in consideration of the mutual premises and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the AEDC and OWNER do hereby agree, covenant, and contract as set forth below:

**I.**  
**Definitions**

- A. “Business Operations” is defined as headquarters and primary workshop for Urban Tree Merchants, a business that designs and creates wood furniture and decorative items.
- B. “Job” is defined as a permanent, full-time employment position that results in actual paid employment of an employee, not independent contractor, at the Premises of at least 1,820 hours per position in a year. It shall not include part time employees.
- C. “Premises” are defined as the real property, land and improvements, located at 2205 West Division Street, Suite C-3, Arlington, TX 76012.
- D. “TMAC Services” are defined as industrial engineering consulting services to be provided by TMAC, including all reasonable labor and material costs associated with the services.

**II.**  
**Term**

This Agreement shall be effective on the date of execution and shall expire on April 1, 2024 (the “Term”), unless otherwise sooner terminated in accordance with the terms of this Agreement.

**III.**  
**Conditions and Requirements**

- A. OWNER shall engage the TMAC services by no later than February 28, 2024.
- B. OWNER shall maintain its Business Operations at the Premises for the Term of this Agreement.
- C. OWNER shall retain no less than -two (2) existing Jobs throughout the Term of this Agreement. Any new jobs created during the term will be retained throughout the remaining Term of this Agreement. All Jobs created and retained shall be salaried exempt positions with average annual wage that exceeds the median wage for Tarrant County (determined by the Median Earnings for Workers as reported by the most recent American Community Survey).

- E. During the Term of the Agreement, OWNER agrees to use diligent efforts to purchase goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. Should OWNER improve or expand the existing facilities located at the Premises OWNER also agrees to develop a policy that establishes a goal of thirty percent (30%) use by OWNER of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for design and construction of any such improvements or expansions.
- F. Throughout the Term, OWNER shall not fail to render for taxation any property owned by OWNER and located within the City of Arlington.
- G. Throughout the Term, OWNER shall not allow the ad valorem taxes owed on any property owned by OWNER and located within the City of Arlington to become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.

**IV.**  
**AEDC Funding**

- A. In exchange for OWNER's timely satisfaction of the Conditions and Requirements set forth in Article III, AEDC agrees to provide the following funding:
  - 1. Provided OWNER is not in breach of the Agreement, AEDC shall provide a grant to OWNER in the amount equal to that invoiced by TMAC to OWNER for the TMAC Services within thirty (30) days of the AEDC receiving proof of said invoices..
  - 2. Under no circumstances will the total amount of grant payments made by AEDC to OWNER exceed Five Thousand and 00/100 Dollars (\$5,000.00).
- B. At the end of the term of this agreement OWNER shall certify, on a form provided by the AEDC, compliance with all Conditions and Requirements set forth in Article III by no later than April 1, 2024. Failure to timely submit the annual certification after notice and opportunity to cure as provided in Article VII below may waive OWNER's right to the grants.

**V.**  
**Records, Audits, and Inspections**

- A. Additional Records and Information – Throughout the Term of this Agreement, OWNER shall furnish AEDC any additional records and information

reasonably requested to support compliance with the Conditions and Requirements set forth in Article III of this Agreement.

- B. Right to Audit Books and Records – AEDC shall have the right to audit the books and records of OWNER related to the Conditions and Requirements. AEDC shall notify OWNER in advance in writing of their intent to audit to allow OWNER adequate time to make such books and records available.
- C. Inspection – At all times throughout the Term of this Agreement, AEDC shall have reasonable access to the Premises for the purpose of inspecting the Premises to ensure compliance with the Conditions and Requirements. All inspections shall be conducted in a manner as to not unreasonably interfere with the operation of the Premises. The inspections shall be conducted within a reasonable time after notice by AEDC.

## **VI.** **Use of Premises**

The Premises shall always be used in a manner that is consistent with City of Arlington's Unified Development Code and all other applicable federal, state, and local laws.

## **VII.** **Breach and Recapture**

- A. Breach – Subject to Section VII.B. below, a breach of this Agreement by OWNER may result in termination or modification of this Agreement and recapture by AEDC of grant payments made as set forth in Section VII.C below. OWNER's failure to satisfy any of the Conditions and Requirements as specified in Article III or OWNER's failure to provide records and information necessary to support the Improvement Conditions and Requirements, as specified in Article V, shall constitute a breach of this Agreement.
- B. Notice of Breach – If AEDC makes a reasonable determination that OWNER has breached this Agreement, then AEDC shall give OWNER written notice of such. OWNER has 60 days following receipt of said written notice to cure such breach or this Agreement may be terminated by AEDC, and recapture of grant payments made may occur pursuant to Section VII.C. below. Notice of breach and opportunity to cure shall be in writing and shall be delivered by personal delivery or certified mail to OWNER at its address provided in Article X of this Agreement.
- C. Recapture – During the Term of this Agreement, should OWNER fail to timely cure a breach of this Agreement, AEDC may terminate this Agreement, cease any further payments to OWNER and recapture all grant payments made under this Agreement. It shall be the duty of AEDC to determine whether to require

recapture and to demand payment of such. Repayment of grant payments shall become due 60 days following receipt of such demand. The rights of AEDC to require recapture and demand repayment of grants made and the obligation of OWNER to pay such, shall survive termination of this Agreement. The City Attorney has the authority, on behalf of the AEDC, to initiate any litigation necessary to pursue payment of recaptured grants pursuant to this Agreement.

**VIII.**  
**Undocumented Workers**

OWNER covenants and certifies that OWNER does not and will not knowingly employ an undocumented worker at the Project as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if OWNER is convicted of a violation under 8 U.S.D. Section 132a(f), OWNER shall repay to the AEDC all grant payments provided under this Agreement, plus 10% per annum from the date such grant payments were made. Repayment shall be paid within 120 days after the date following such conviction that OWNER receives notice of violation from the AEDC as provided by 2264.101© of the Texas Government Code.

**IX.**  
**Effect of Sale or Lease of Property**

The incentive program authorized by this Agreement shall not be assignable to any new owner or lessee of all or a portion of the Premises unless such assignment is approved in writing by the AEDC with approval of the AEDC Board of Directors and Arlington City Council, which approval shall not be unreasonably withheld.

**X.**  
**Notice**

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand delivery:

OWNER: Kelly Geer  
Director of Communications and Business Development  
2205 W Division St, Suite C-3,  
Arlington, TX 76012

AEDC: Arlington Economic Development Corporation  
Attention: Interim Executive Director  
Post Office Box 90231  
Arlington, Texas 76004-3231

cc: Arlington Economic Development Corporation

Attention: City Attorney's Office  
Post Office Box 90231  
Arlington, Texas 76004-3231

**XI.**  
**City Council Authorization**

This Agreement was authorized by resolution of the AEDC Board of Directors and Arlington City Council authorizing the President of the AEDC to execute this Agreement on behalf of the AEDC.

**XII.**  
**Severability**

In the event any section, subsection, paragraph, sentence, phrase, or word is held invalid, illegal, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word.

**XIII.**  
**Estoppel Certificate**

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of OWNER, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the grant payments in effect, and such other matters reasonably requested by the party(ies) to receive the certificates.

**XIV.**  
**Owner's Standing**

OWNER, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, AEDC Board of Directors or City Council actions authorizing same, and OWNER shall be entitled to intervene in said litigation.

**XV.**  
**Applicable Law**

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

**XVI.**  
**Indemnification**

It is understood and agreed between the parties that the OWNER, in performing its obligations hereunder, is acting independently, and AEDC assumes no responsibility or liability to third parties in connection therewith, and OWNER agrees to indemnify and hold harmless AEDC from any such responsibility or liability. It is further understood and agreed among the parties that AEDC, in performing its obligations hereunder, is acting independently, and the OWNER assumes no responsibility or liability to third parties in connection therewith.

**XVII.**  
**Force Majeure**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

**XVIII.**  
**No Other Agreement**

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by the parties.

**XIX.**  
**Headings**

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XX.**  
**Successors and Assigns**

The parties to this Agreement each bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this

Agreement. No successor, executor, administrator, or assign is valid in the place of the OWNER without the written consent of AEDC and such consent shall not be unreasonably withheld.

**XXI.**  
**Petition for Election**

OWNER acknowledges that this Agreement is an economic development project as defined by Section 501.103 of the Texas Local Government Code. Pursuant to Section 505.160 of the Texas Local Government Code, if a petition from more than ten (10) percent of the registered voters in the City of Arlington is filed within sixty (60) days of the publication notice of this project, which was published on April 14, 2023, an election shall be held before this project is undertaken or any expenditures are made. If an election is held the AEDC shall have no obligation to make the expenditures provided for in this Agreement unless and until the project has been successful approved by the voters. If a valid petition is filed, OWNER may request that this Agreement be terminated prior to any such election.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

**OWNER.**

BY \_\_\_\_\_  
Kelly Geer  
Director of Communications and Business  
Development  
Date \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**ARLINGTON ECONOMIC  
DEVELOPMENT CORPORATION**

BY \_\_\_\_\_  
LYNDSAY MITCHELL  
Interim Executive Director  
Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_, AEDC Secretary

APPROVED AS TO FORM:  
MOLLY SHORTALL, Counsel for the  
Arlington Economic Development  
Corporation

BY \_\_\_\_\_



THE STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

**GEER HEART LLC dba  
URBAN TREE MERCHANTS  
Acknowledgment**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared [NAME], known to me (or proved to me on the oath of \_\_\_\_\_ or through \_\_\_\_\_ (*description of identity card or other document*)) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **GEER HEART LLC dba URBAN TREE MERCHANTS**, an entity duly authorized to do business in the State of Texas, and as the **President** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Notary's Printed Name

THE STATE OF TEXAS §  
§  
COUNTY OF TARRANT §

**ARLINGTON ECONOMIC DEVELOPMENT  
CORPORATION  
Acknowledgment**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **LYNDSAY MITCHELL**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**, a non-profit corporation of Tarrant County, Texas, and as the **Interim Executive Director** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Notary's Printed Name



# **Sheraton Redevelopment Plan**

Arlington Economic Development Corporation

December 11, 2023

# ..... Project Overview



- Minimum 500-key, new-build upper upscale hotel replacing current Sheraton
- \$410M total projected capital investment
- Minimum 735-stall parking garage
- Minimum 25,000 square feet of convention & meeting space
- Existing Sheraton to be demolished before September 30, 2026
- Construction required to be completed three years after work commences
- 250 net new permanent jobs estimated; 1,200 construction jobs estimated
- Potential future development phases include retail, F&B, residential, and parking
- \$3.1 billion in economic output over 30 years, \$711 million in net benefits for City, County, and AISD

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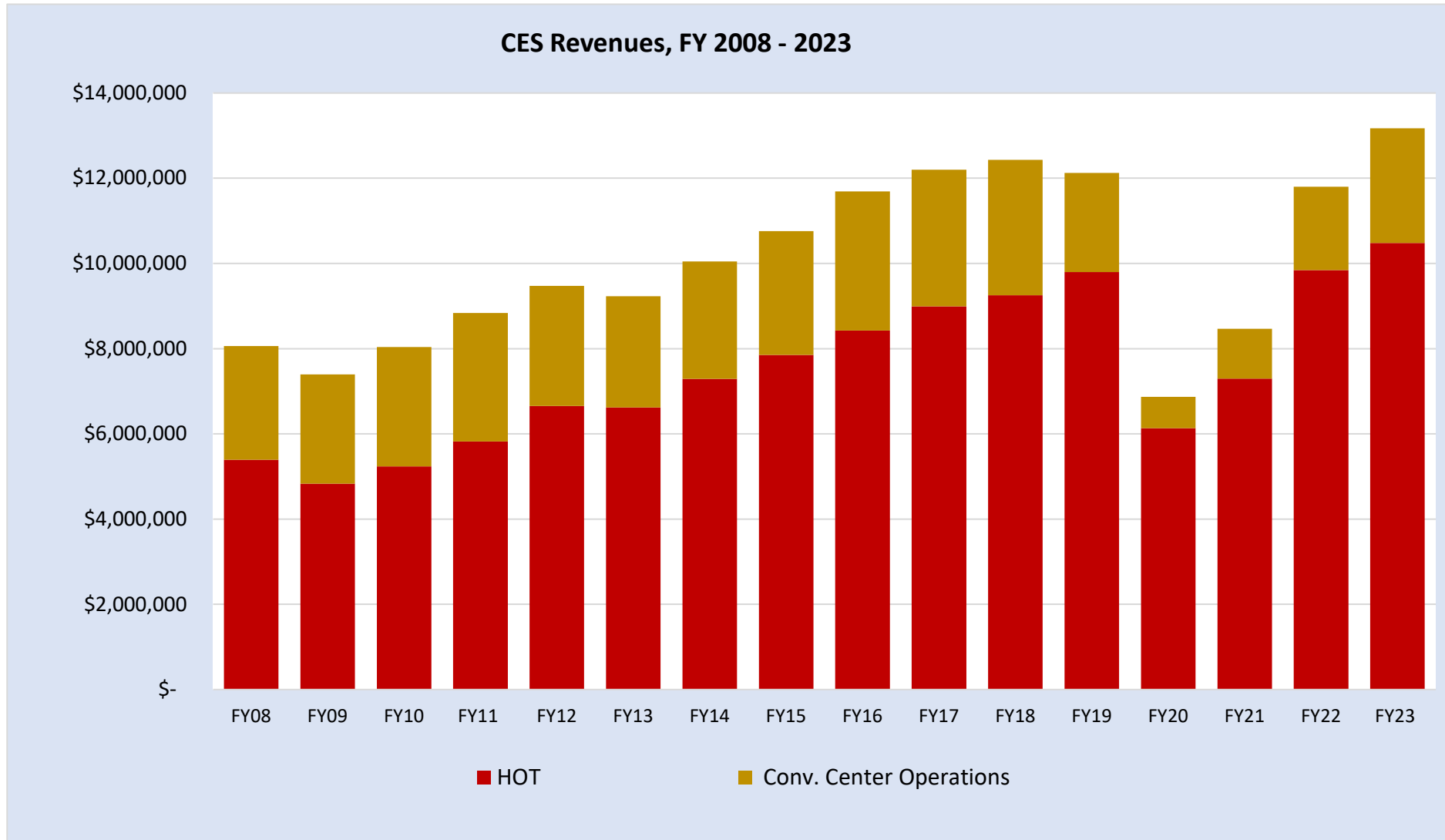
# Current Sheraton Development



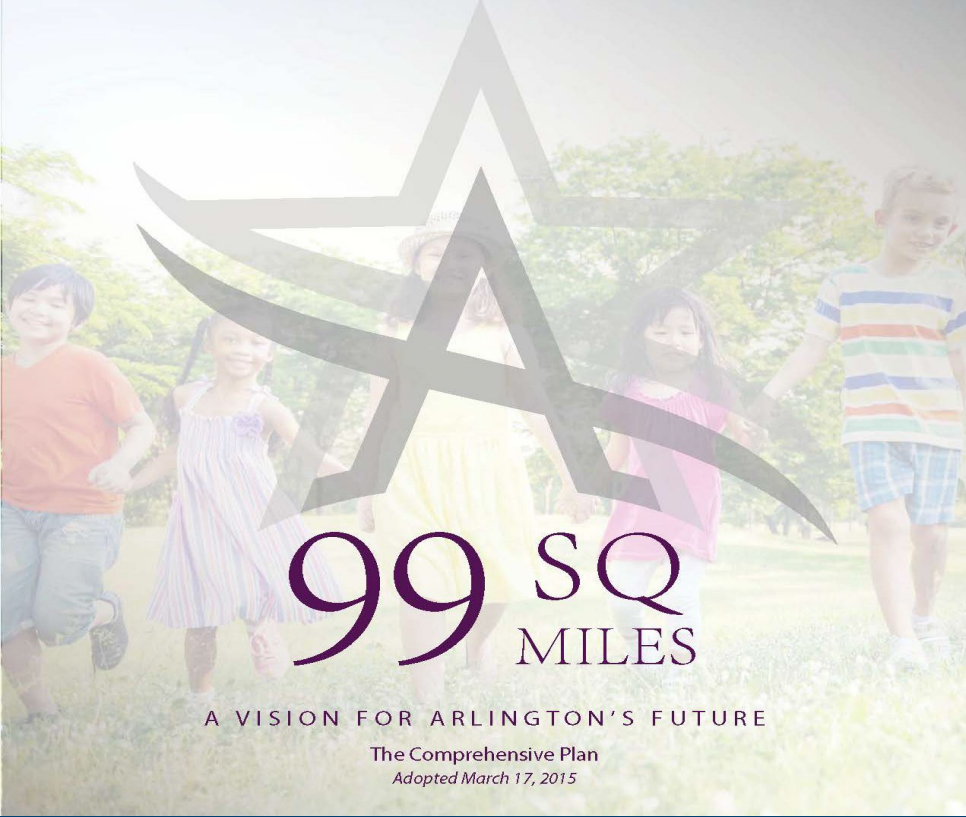
- 311 rooms
- 19 stories
- Built 1984
- 26,000 sq ft of meeting/event space
- Current jobs estimate: 150
- 14.5 acres



# Convention and Event Services Fund Revenue History







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# Adopted Policy Connections: Comprehensive Plan

.....

## Goal: Grow our Businesses

“Rejuvenate and transform key economic centers into vibrant destinations.”

“Participate in and promote redevelopment projects that meet economic development priorities.”

.....

## Goal: Value our Neighborhoods

“Identify and pursue opportunities for the redevelopment and re-use of aging and high vacancy commercial areas and structures.”



# ECONOMIC DEVELOPMENT STRATEGIC PLAN

CITY OF ARLINGTON, TEXAS

.....

## Adopted Policy

### Connections:

### Economic Development Strategic Plan

.....

## Goal: Transformational Redevelopment

“Rejuvenate and transform key economic centers into vibrant destinations.”

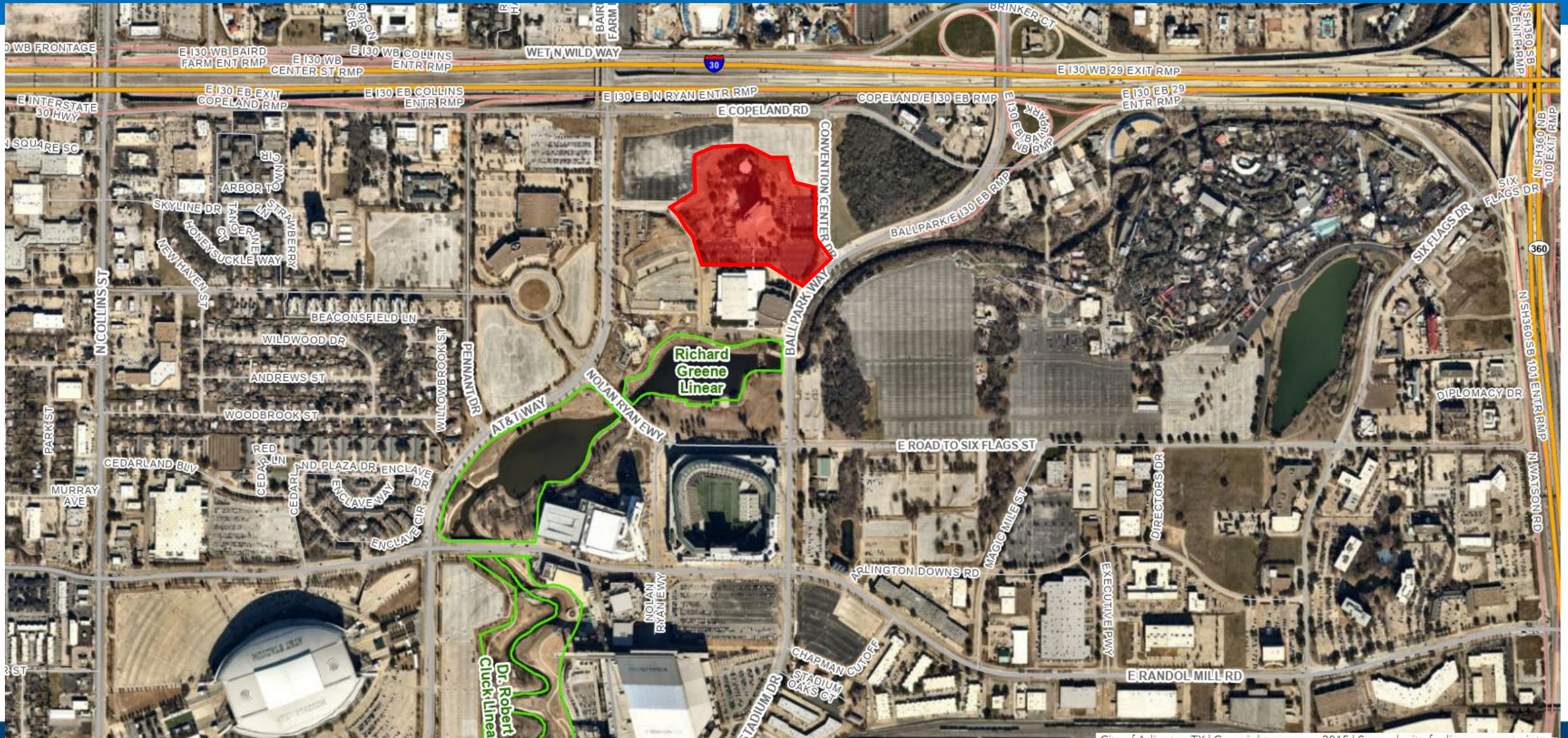
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## Goal: High-Impact Community Development

“Create amenities and assets that will secure Arlington’s position as a major activity hub in the Metroplex.”

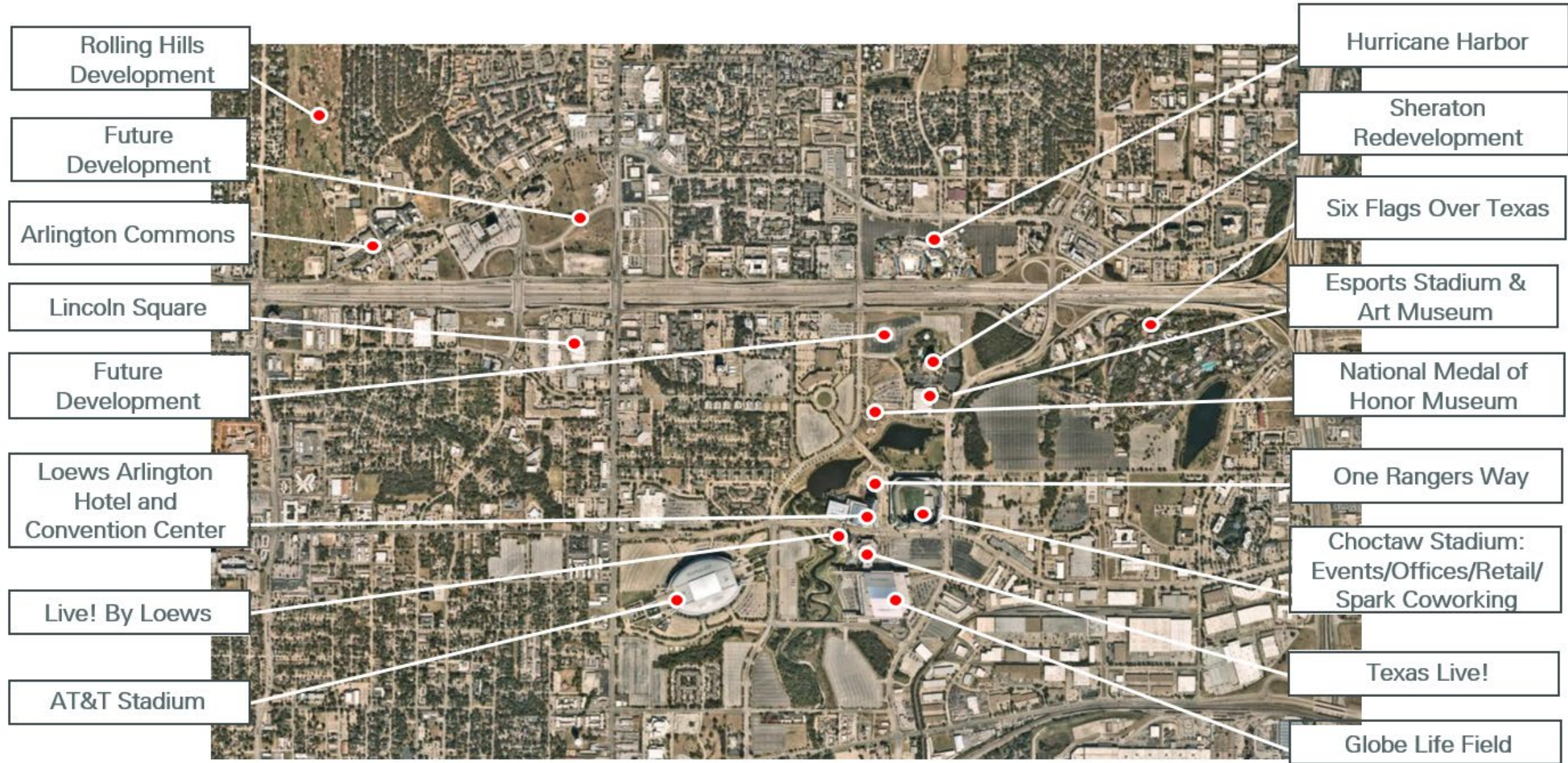


# Project Site





# Project/Site Context





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# Development Phases



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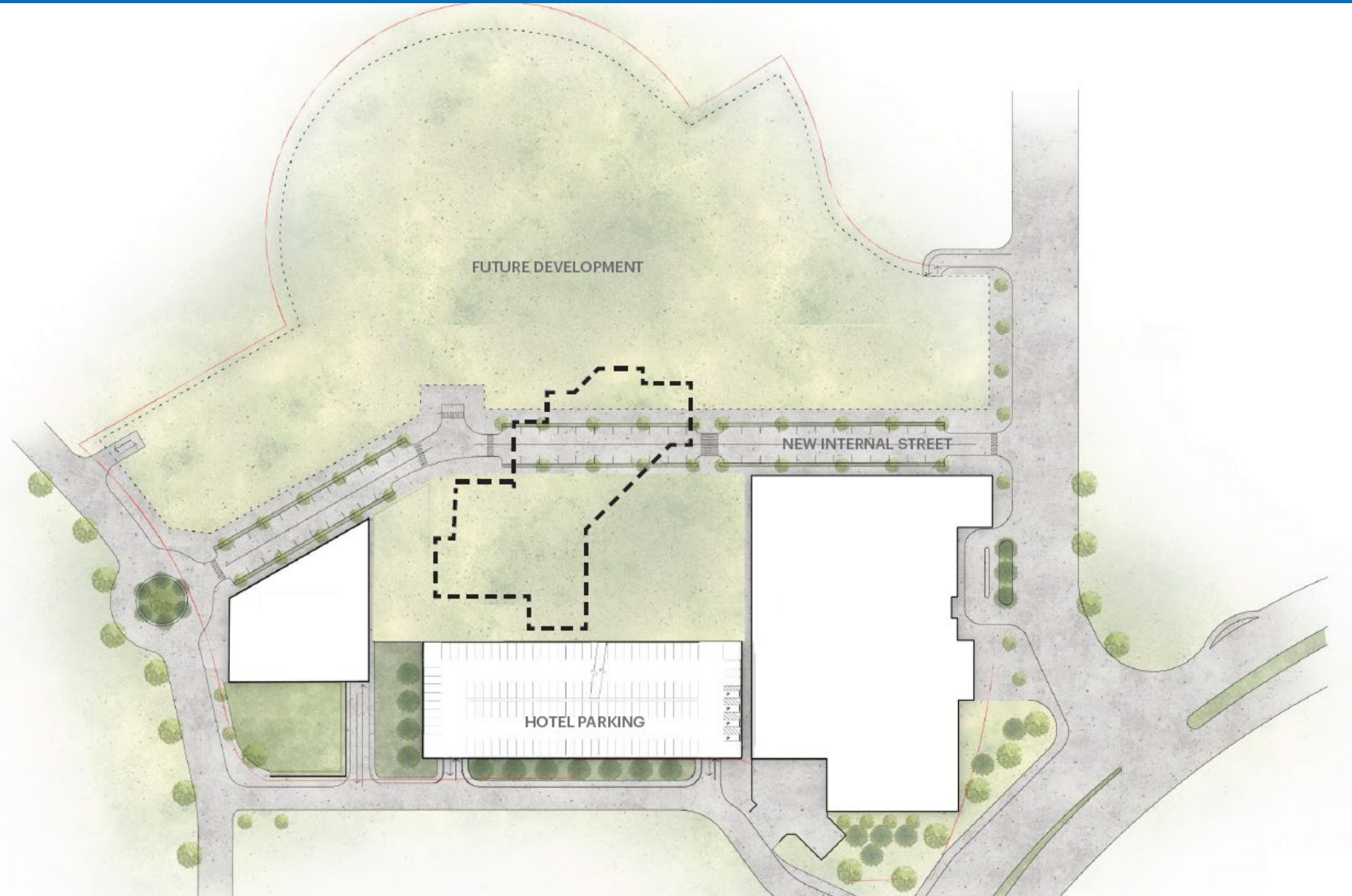
# Development Phases





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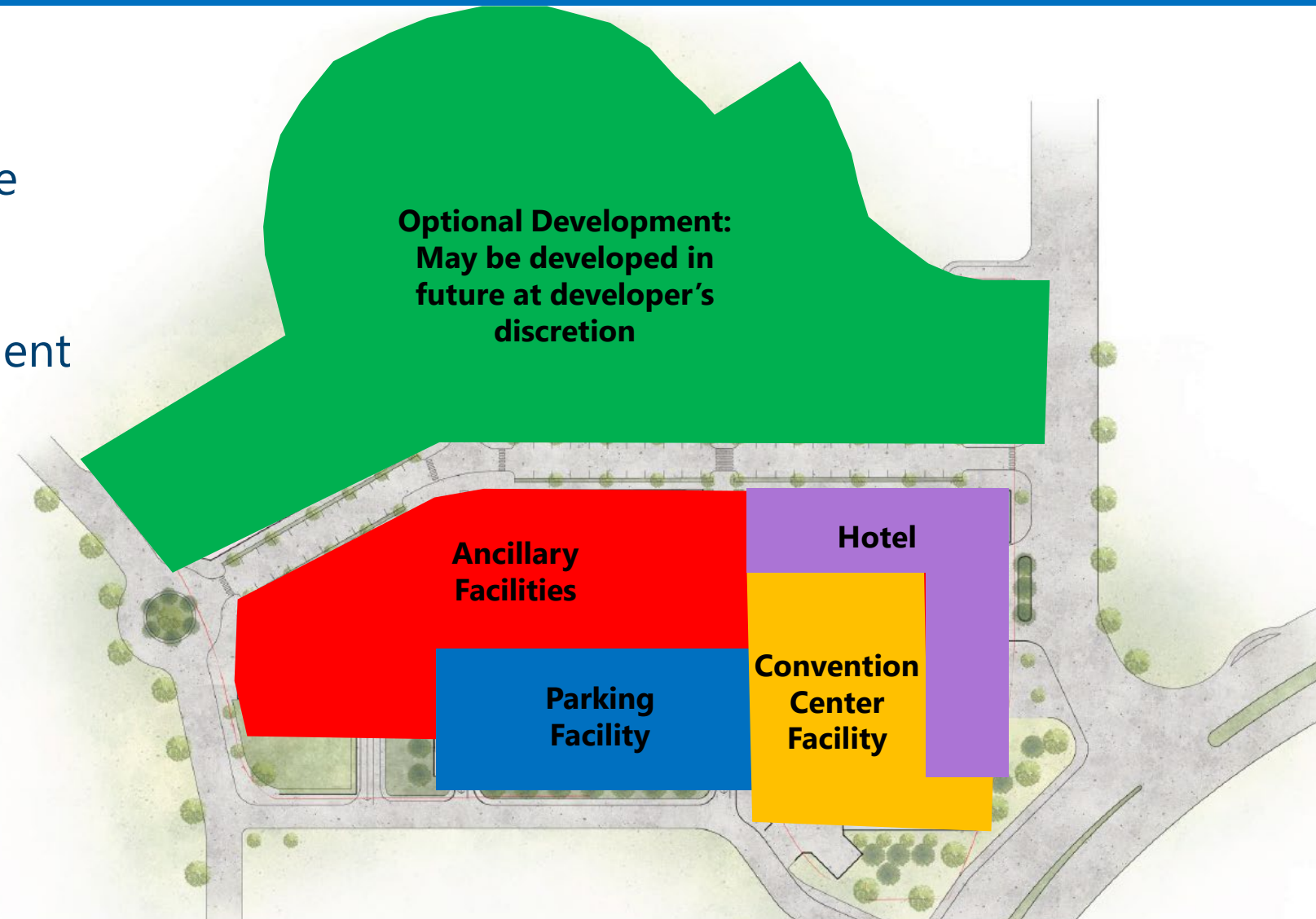
# Development Phases



# ..... Project Components



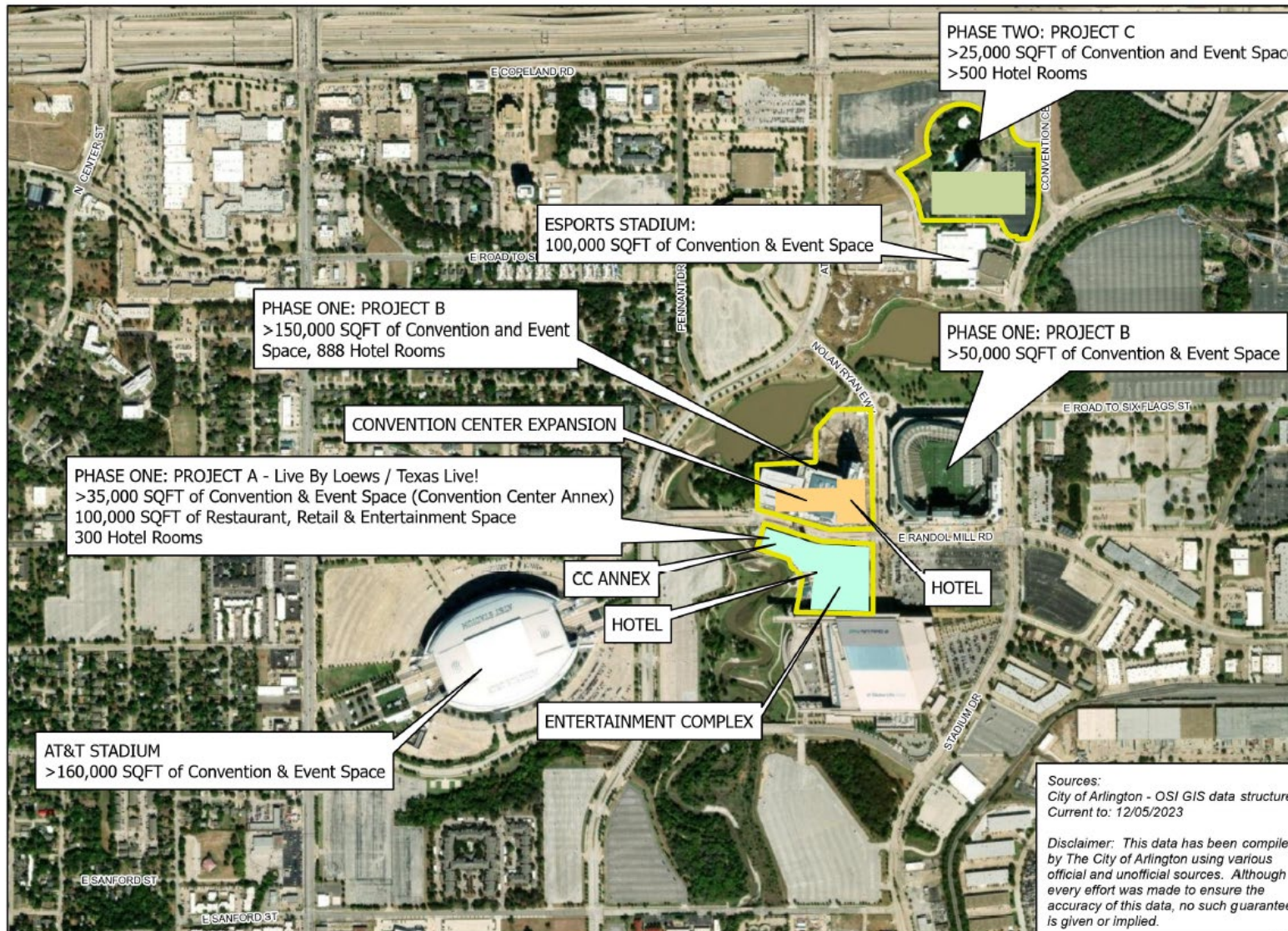
- Capital Improvement Plan Amendment for the Arlington Convention Center Facilities
- Economic Development Performance Agreement
  - Included as attachments:
    - Hotel Ground Lease
    - Parking Facility Lease
    - Convention Center Lease





# Capital Improvement Plan Amendment

## For Arlington Convention Center Facilities



Facility	Hotel Rooms	Convention and Event Space
Loew's Arlington Hotel and Convention Center	888	250,000 sq ft
AT&T Stadium	N/A	> 160,000 sq ft
Globe Life Field	N/A	> 150,000 sq ft
Esports Stadium/Arlington Museum of Art	N/A	100,000 sq ft
Live by Loews/Texas Live!	300	> 35,000 sq ft 100,000 sq ft of restaurant, retail, and entertainment space
Choctaw Stadium	N/A	> 50,000 sq ft
Sheraton Redevelopment	> 500	25,000 sq ft
<b>TOTALS</b>	<b>&gt; 1,688 rooms</b>	<b>&gt; 770,000 sq ft of convention and event space</b> <b>100,000 sq ft of restaurant, retail, and entertainment space</b>

Sources:  
City of Arlington - OSI GIS data structure.  
Current to: 12/05/2023

Disclaimer: This data has been compiled by The City of Arlington using various official and unofficial sources. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied.



PHASE II CAPITAL IMPROVEMENT PLAN

0 250 500 1,000 1,500 2,000 Feet



# Ownership and Funding Components



Project Component	Hotel	Convention Center Facility	Parking Facility	Potential Ancillary Facilities	Potential Optional Development
Land Ownership	City	City	City	City	City
Improvements Ownership	Private	City	City	Private	Private
Private Funding	\$410M				Specific private funding not contemplated in this agreement
Public Incentives	<ul style="list-style-type: none"> <li>• \$5M site improvements contribution from AEDC</li> <li>• \$15M contribution, paid over 7 years, for parking facility from AEDC</li> <li>• \$20M contribution, paid over 8 years, for parking facility from City</li> <li>• Annual grant of \$3.8M in years 1-10, annual grant of \$1.3M in years 11-25</li> <li>• 10-year grant of State sales and hotel occupancy taxes generated from site</li> <li>• 30-year grant of City hotel occupancy, sales, property, and mixed beverage taxes generated from site</li> <li>• Potential waiver of permit fees (if 3<sup>rd</sup> party services used)</li> <li>• Offset provision if other public funds become available for project</li> </ul>				Specific public incentives not contemplated in this agreement

# ..... Developer Requirements



- Hotel: minimum 500 rooms, upper-upscale
- Convention Center Facility: 25,000 sq. ft
- Parking Facility: minimum 735 spaces, weather-protected walkway to Esports Stadium/Art Museum
- Must provide funding assurances for Hotel, Convention Center Facility, and Parking Facility
- Must provide completion guaranty for Hotel, Convention Center Facility, and Parking Facility
- Must commence construction of Parking Facility by May 15, 2024 and Hotel and Convention Center Facility by December 31, 2025
- Must complete construction of Hotel and Convention Center Facility no later than three years after commencement of construction
- City must review and approve design of Convention Center Facility relative to eventual maintenance obligations



# ..... Developer Requirements, contd.



- Hotel must initially be operated by an affiliate of Loews Corp and must remain upper-upscale until there is a compliant disposition event
- Hotel must participate in bids for Major Special Events
- “Arlington” must be in the Hotel name or used as a geographic identifier (e.g., “X Hotel at Arlington”)
- Developer must establish a meaningful community benefits plan, to include a 30% goal of MWBE participation in procurement opportunities
- No Loews-branded hotel with 500 or more rooms at the same or higher quality may be developed in Collin, Dallas, Denton, or Tarrant counties during the term of the agreement
- Developer must provide a quarterly update of charitable participation within Tarrant County
- Sheraton demolition must be completed by September 30, 2026

# ..... Incentives



- Proposed incentives come from both the City and the Arlington Economic Development Corporation (AEDC)
  - AEDC contributions include funding for the parking facility, sidewalks, hardscape, intersections, and landscaping along public streets, and associated demolition
- Incentive Summary:
  - \$5M site improvements contribution from AEDC
  - \$15M contribution, paid over 7 years, for parking facility from AEDC
  - \$20M contribution, paid over 8 years, for parking facility from City
  - Annual grant of \$3.8M in years 1-10, annual grant of \$1.3M in years 11-25
  - 10-year grant of State sales and hotel occupancy taxes generated from site
  - 30-year grant of City hotel occupancy, sales, property, and mixed beverage taxes generated from site
  - Potential waiver of permit fees (if 3<sup>rd</sup> party services used)
  - Offset provision if other public funds become available for project

# ..... Exclusivity and Disposition Conditions



## **Exclusivity:**

- After agreement execution until 3 years after date of initial occupancy, City may not negotiate with or incentivize another hotel or meeting space project of any size anywhere in the City, unless agreed to by developer
- From 3 – 9 years after initial occupancy, City may not negotiate with or incentivize a hotel or meeting space project containing more than 300 rooms or 15,000 sq. ft. of meeting space within a defined area (ROFO zone) without allowing Developer opportunity to invest in or operate the potential project, unless agreed to by developer
- If Developer declines to participate in a project in the ROFO zone, City may proceed, but only once during the 9 years after initial occupancy, unless agreed to by developer

## **Disposition:**

- Developer can dispose of Hotel and the leases for the Convention Center Facility and Parking Facility to a qualified Alternative Hotel Developer (at least \$50M net worth) at any time without the City's consent
- Prior to the 15<sup>th</sup> anniversary of initial occupancy, developer must obtain permission from City to dispose of components to a non-qualified entity
- Developer may dispose of Ancillary Facilities and Optional Development to any entity at any time without City consent

# National Hotel Project Comparisons



Hotel Project	Location	Rooms	Meeting Space	Public Partner(s)	Public Incentives	Total Project Cost
<b>Signia Atlanta (Hilton)</b>	Atlanta, GA	976	100,000 sq ft	Georgia World Congress Center Authority	\$450M in revenue bonds \$55M cash incentive	\$500M
<b>Signia Indianapolis (Hilton)</b>	Indianapolis, IN	800	235,000 sq ft	City of Indianapolis and Marion County	\$625M in revenue bonds for hotel and infrastructure (\$470M for hotel alone)  City stepped in after original financing plan fell through due to inflation and rising rates	\$510M for hotel alone
<b>Omni PGA Frisco Resort</b>	Frisco, TX	500	127,000 sq ft	City of Frisco, State of Texas	\$160M: \$35M cash incentive, \$63M in City performance-based tax rebates over 20 years, \$62M in State performance-based tax rebates over 10 years	\$520M
<b>Gaylord Pacific Resort and Convention Center</b>	Chula Vista, CA	1,600	275,000 sq ft	City of Chula Vista	\$275M in revenue bonds	\$1.35B
<b>Gaylord Rockies Resort and Convention Center</b>	Aurora, CO	1,501	486,000 sq ft	City of Aurora, Aurora Urban Renewal Authority, State of Colorado	Performance based tax rebates: 100% of property tax, 96% of sales tax, 96% of lodging tax, 93% of use tax for 25 years	\$800M
<b>Omni Louisville Hotel</b>	Louisville, KY	612	70,000 sq ft	City of Louisville	\$112M in revenue bonds	\$300M

# ..... Summary



- Opportunity to redevelop the aging Sheraton into an upper-upscale, 500-room hotel with 25,000 sq. ft. of meeting space and parking facilities to support a growing District
- Major industry leaders continue to make substantial investment in Arlington
- Continues to build out the vision of the Entertainment District and leverages more opportunities for convention business
- Achieves objectives in the Comprehensive Plan and Economic Development Strategic Plan
- Mix of performance-based incentives and economic development grants from the City and the Arlington Economic Development Corporation
- Provides at least 250 net new direct, permanent jobs
- \$3.1 billion in economic output over 30 years, \$711 million in net benefits for City, County, and AISD



# Discussion



# Staff Report



<b>Arlington Economic Development Corporation- Sheraton Redevelopment Project</b>	
Arlington Economic Development Corporation Meeting Date: 12-11-2023	Document Being Considered: Resolution

## **RECOMMENDATION**

Approve a resolution authorizing the President of the Board of Directors to execute an Economic Development Performance Agreement by and among Go For Three, LLC, the Arlington Economic Development Corporation, and the City of Arlington relative to the redevelopment of fourteen acres in the Entertainment District.

## **PRIOR BOARD OR COUNCIL ACTION**

On December 15, 2015, by Resolution No. 15-312, City Council adopted a Phase I Capital Improvement Plan for the Arlington Convention Center Facilities; and

On December 17, 2019, by Resolution No. 19-353, City Council adopted an amendment to the Phase I Capital Improvement Plan for the Arlington Convention Center Facilities to modify the scope of Project B.

## **ANALYSIS**

In a public-private partnership with Loews Hotels and Company, the City of Arlington seeks to continue to build on its economic momentum and leverage assets in the Entertainment District through the redevelopment of fourteen acres containing an aging hotel product. The redevelopment will include a new 500 room upper-upscale hotel to replace the existing 311 room Sheraton, a minimum of 25,000 square feet of City-owned convention and meeting space, and a City-owned parking garage containing a minimum of 735 parking spaces. The parking garage will be connected to the existing Esports Stadium through a weather protected walkway and will provide parking for not only the new hotel and convention center but also the Esports Stadium, Arlington Museum of Art, and National Medal of Honor Museum. The redevelopment project aligns with various public policy objectives of the City, including the City's Comprehensive Plan, Economic Development Strategic Plan, and City Council priority to invest in Arlington's economy.

The total project cost is estimated at \$410 million. The developer is advance funding all components of the project using private equity and debt. The City and Arlington Economic Development Corporation (AEDC) will provide the following incentives for the project:

- \$5 million from the AEDC towards the costs of necessary site improvements;
- \$15 million contribution from the AEDC, paid over 7 years, towards the cost of the parking garage;
- \$20 million contribution from the City, paid over 8 years, towards the cost of the parking garage;
- Annual grant payments of \$3.8 million from the City in years 1-10 following initial occupancy of the hotel, annual grant payments of \$1.3 million from the City in years 11-25 following initial occupancy of the hotel;
- Performance-based rebates equal to the amount of taxes generated by the project in the following areas for 30 years- City hotel occupancy tax, City mixed-beverage tax, City sales tax, and City property tax;

- Performance-based rebates equal to the amount of taxes generated by the project in the following areas for 10 years- state sales tax and state hotel occupancy tax;

The developer will ground lease the land under the hotel from the City and own the improvements that comprise the hotel. The City will own the convention center and meeting space as well as the parking garage and will lease both to the developer for operation. The project is expected to produce \$3.1 billion in economic output over 30 years, with \$711 million in net benefits for the City, Tarrant County, and Arlington Independent School District. If approved the project is expected to commence with construction of the parking garage in 2024.

**FINANCIAL IMPACT**

The AEDC will provide \$15 million dollars, paid out over 7 years, to reimburse the developer for the cost of the parking garage. In addition, the AEDC will provide \$5 million dollars towards necessary site improvements for the project. The total financial impact of this agreement for the AEDC is \$20 million dollars over a period of 7 years.

**ADDITIONAL INFORMATION**

Attached:	Resolution with agreement attached
Under separate cover:	None
Available in the City Secretary's Office:	None

**STAFF CONTACT(S)**

Trey Yelverton  
City Manager  
817-459-6101  
[Trey.Yelverton@arlingtontx.gov](mailto:Trey.Yelverton@arlingtontx.gov)



**ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**  
**Resolution No. \_\_\_\_\_**

**A resolution of the Board of Directors authorizing the Executive Director to execute an Economic Development Performance Agreement by and among the City of Arlington, the Arlington Economic Development Corporation, and Go For Three, LLC relative to the redevelopment of 14 acres in the Entertainment District**

- WHEREAS, the Arlington Economic Development Corporation is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and
- WHEREAS, in a public-private partnership with Loews Hotels and Company, the City of Arlington (the “City”) seeks to continue to build on its economic momentum and leverage assets in its Entertainment District through the redevelopment of 14 acres in the Entertainment District into a 500-room hotel and a publicly-owned convention center with over 25,000 square feet of meeting and conference space, and a 735-space parking garage (collectively the “Project”); and
- WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent parts, defines the term “project” to include expenditures on improvements found by the board to be required or suitable for infrastructure necessary to promote new or expanded business enterprises; and
- WHEREAS, Section 505.152 of the Texas Local Government Code, in pertinent parts, defines the term “project” to include expenditures on improvements found by the board to be required or suitable for entertainment, tourist, and convention purposes and events; and
- WHEREAS, the Board of Directors for the Arlington Economic Development Corporation (the “Board”) has determined that that the financial assistance provided to Go For Three, LLC pursuant to the Economic Development Performance Agreement is consistent with and meets the definition of “project” as that term is defined in Chapter 501-505 of the Texas Local Government Code; and
- WHEREAS, the Board has determined that the assistance provided in the Economic Development Performance Agreement is suitable and necessary to promote new and expanded business enterprises and for entertainment, tourist, and convention purposes and events and serves to further the City’s and Board’s desires to further leverage its assets in the Entertainment District; and

WHEREAS, pursuant to Section 505.159 of the Texas Local Government Code a public hearing on the proposed project was held on December 11, 2023; NOW THEREFORE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ARLINGTON ECONOMIC DEVELOPMENT CORPORATION:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this body and as part of its official record.

II.

That the President of the Board of Directors of the Arlington Economic Development Corporation is hereby authorized to execute an Economic Development Performance Agreement by and among the City of Arlington, the Arlington Economic Development Corporation, and Go For Three, LLC to provide performance grants for the Project in an amount not to exceed \$20,000,000.

III.

A substantial copy of the Economic Development Performance Agreement is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the \_\_\_\_ day of \_\_\_\_\_, 2023, by a vote of \_\_\_\_ ayes and \_\_\_\_ nays at a regular meeting of the Board of Directors of the Arlington Economic Development Corporation.

\_\_\_\_\_  
Michael Jacobson, President

ATTEST:

\_\_\_\_\_  
Alex Busken, Assistant Secretary

APPROVED AS TO FORM:  
MOLLY SHORTALL, Counsel for the  
Arlington Economic Development  
Corporation

BY Molly Shortall

## **Economic Development Performance Agreement**

## ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT

**THIS ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT** (this "Agreement") by and among the **CITY OF ARLINGTON, TEXAS** a home-rule city and municipal corporation of Tarrant County, Texas (the "City"), the **ARLINGTON ECONOMIC DEVELOPMENT CORPORATION** (the "AEDC"), and **GO FOR THREE, LLC**, a Delaware limited liability company ("**Developer**") is executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the "**Execution Date**").

### WITNESSETH:

**WHEREAS**, the City is a municipality with a population of 394,266 according to the most recent federal decennial census, in which two professional sports stadiums are located each of which has a seating capacity of at least 40,000 people and was approved by the voters of the municipality as a sports and community venue project under Chapter 334, Local Government Code, and which has adopted a capital improvement plan for the expansion of its convention center facilities; and

**WHEREAS**, Developer, subject to the terms of this Agreement and the other Project Documents (as defined herein), desires to develop, construct and operate the Project (as defined herein); and

**WHEREAS**, the City currently owns in fee the Hotel Site (which is inclusive of the Ancillary Facilities Site), the Convention Center Site, the Parking Facility Site and the Optional Development Site and leases such sites to Developer pursuant to the Existing Lease Agreement (as defined herein); and

**WHEREAS**, the City has found that providing grants of funds to Developer in exchange for Developer planning, designing, developing, constructing, completing and operating the Hotel, the Convention Center, the Parking Facility (each as defined herein) and, at Developer's election, any Ancillary Facilities and Optional Development (as defined herein) that Developer elects to undertake in its sole and absolute discretion, will promote local economic development and stimulate business and commercial activity and create jobs within the City (the "**Program**"); and

**WHEREAS**, the City has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the Program contain controls likely to ensure that public purpose is accomplished; and

**WHEREAS**, Article III, Section 52-a of the Texas Constitution and Chapter 380 of Texas Local Government Code provide constitutional and statutory authority for establishing and administering the Program to provide grants or incentives of public money to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, Section 501.103 of the Texas Local Government Code, in pertinent parts, defines the term “project” to include expenditures that are found by the board to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises; and

**WHEREAS**, Section 505.152 of the Texas Local Government Code, in pertinent parts, defines the term “project” to include expenditures on improvements found by the board to be required or suitable for entertainment, tourist, and convention purposes and events; and

**WHEREAS**, the AEDC’s Board of Directors have determined that the Site Improvements Contribution (defined herein) and Parking Facility Contributions (defined herein) provided to Developer pursuant to this Agreement are consistent with and meets the definition of “project” as that term is defined in Chapters 501-505 of the Texas Local Government Code; and the definition of “cost” as that term is defined in Section 501.152 of the Texas Local Government Code; and

**WHEREAS**, the City and AEDC, in order to induce Developer to develop the Hotel, the Convention Center, the Parking Facility, and, at Developer’s election, any Ancillary Facilities and Optional Development is willing to provide Developer with the Economic Development Grants and the Parking Facility Contributions pursuant to the terms of this Agreement and but for the Program and payment of such Economic Development Grants and the Parking Facility Contributions to Developer, Developer would not be willing to develop the Hotel, the Convention Center, the Parking Facility, as applicable, and, at Developer’s election, any Ancillary Facilities and Optional Development, as same would not likely be economically viable; and

**NOW THEREFORE**, in consideration of the foregoing and the mutual agreements, covenants, and payments authorized herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.**

“Affiliate” means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, controlled by, or is under common control with the specified Person. For the purpose of this definition, “**control**” means the ability to directly or indirectly, by voting securities, partnership or member interests, contract or otherwise, direct or cause the direction of the policies or management of the specified Person. Two persons may be Affiliates even if such Persons have different minority equity owners that each have the right to approve certain actions of such Person, such as the sale, financing or leasing of an asset of such Person.

“Alternative Hotel Developer” means a Person (and/or a direct or indirect Affiliate of such Person) that, as of the effective date of any Disposition, (i) owns or operates, or has engaged a manager or operator that owns or operates, on a full-service basis, either directly or through subsidiaries or Affiliates hotel properties comparable to the Hotel, and (ii) has a net worth equal to at least Fifty Million Dollars (\$50,000,000).

“Ancillary Facilities” means restaurants, bars, and retail establishments that Developer elects, in its sole and absolute discretion, to build on the Hotel Site and are connected to the Hotel or Convention Center, including by a covered walkway.

“Ancillary Facilities Site” means the land described in Exhibit “A” attached hereto and made a part hereof, which such Ancillary Facilities Site is a part of the Hotel Site. The parties acknowledge that the legal description of the Ancillary Facilities Site will be updated by Developer prior to the Hotel and Convention Center Closing.

“Area Reports” means reports from the Comptroller to the City as provided in Section 321.3022 of the Texas Tax Code that identify amounts paid from the Comptroller to the City, by period, of City Sales Taxes and City Mixed Beverage Taxes. If during the Term due to a change in law or policy the Comptroller ceases providing such reports, then "Area Reports" means such alternative documentation that is acceptable to the City and Developer that establishes the amounts of City Sales Taxes and City Mixed Beverage Taxes received by the City for Grant Periods.

"Business Day" means any day except Saturday, Sunday, or any other day on which banking institutions are legally authorized to close in the City of New York or Tarrant County, Texas.

"City Chapter 351 HOT Grant" means the economic development grant described in Section 4(a)(v) of this Agreement.

“City Default” has the meaning defined in Section 9(c) of this Agreement.

"City HOT" means the City’s seven percent (7%) municipal hotel occupancy tax received by the City pursuant to Chapter 351 of Texas Tax Code, that is generated by the Hotel.

"City HOT Returns" means City of Arlington Hotel/Motel Occupancy Tax Reports on which Developer or other Persons report and remit City of Arlington hotel occupancy taxes imposed under Chapter 351 of Texas Tax Code on amounts paid for rooms in the Hotel.

"City Manager" means the City Manager of the City.

“City Mixed Beverage Taxes” means payments or allocations made to the City, pursuant Subchapter C, Chapter 183 of the Texas Tax Code, from the Comptroller of mixed beverage taxes (mixed beverage gross receipts tax and the mixed beverage sales tax) imposed by Chapter 183 of the Texas Tax Code, paid by any mixed beverage permittee, and attributable to mixed beverages sold at the Hotel, Convention Center, Parking Facility, and Ancillary Facilities.

"City Representative" is defined in Section 14(o) of this Agreement.

"City Sales/Beverage Tax Chapter 351 Grant" means the economic development grant described in Section 4(c)(iv) of this Agreement.

"City Sales Taxes" means the City's one percent (1%) general municipal sales and use taxes imposed pursuant to Section 321.103(a) of Texas Tax Code arising (i) from any Person's collection of City Sales Taxes as a result of sales of Taxable Items Consummated at the Hotel, Convention Center, Parking Facility, and Ancillary Facilities during a Grant Computation Period, and (ii) from any Person's payments to vendors or directly to the Comptroller of City Sales Taxes on purchases of Taxable Items Consummated at the Hotel, Convention Center, Parking Facility, and Ancillary Facilities during a Grant Computation Period.

"Closing" means the Parking Facility Closing or the Hotel and Convention Center Closing, as the case may be.

"Comptroller" means the Office of the Texas Comptroller of Public Accounts or any successor governmental agency that administers functions relevant to this Agreement.

"Consummated" shall have the meaning assigned by Section 321.203 of Texas Tax Code, or its successor, including after a change of law the applicable principles for determining the incidence of local sales and use taxes.

"Convention Center" means the improvements to real property, and any related personal property, to be constructed on the Convention Center Site by Developer and owned by the City in accordance with the terms of this Agreement and the Convention Center Lease, containing a minimum of twenty-five thousand (25,000) net square feet of convention and meeting space, exclusive of back of house space.

"Convention Center Lease" means that lease agreement for the Convention Center Site and the improvements comprising the Convention Center, collectively defined in the lease agreement as the leased premises, between the City, as lessor, and Developer or an Affiliate of Developer (as designated by Developer), as lessee, substantially in the form attached hereto as Exhibit "B."

"Convention Center Site" means the land described in Exhibit "C" attached hereto and made a part hereof. The parties acknowledge that the legal description of the Convention Center Site will be updated by Developer prior to the Hotel and Convention Center Closing.

"Developer Default" has the meaning assigned in Section 9(a) of this Agreement.

"Developer's Financial Closing" means the closing on all construction financing necessary for the Hotel and the Convention Center on terms and conditions satisfactory to Developer in its sole and absolute discretion.

"Developer's Financial Closing Deadline" means December 31, 2025, provided that if Developer is using good faith efforts to achieve Developer's Financial Closing, the Developer may request that the City Manager extend the Developer's Financial Closing Deadline.

"Disposition" means a sale, lease, assignment, or other transaction by which all or a part of Developer's interest in the Project (or any portion thereof) is passed on to another Person; but such term shall not include Operation Agreements, Leases, Mortgages or transfers from a foreclosure or deed in lieu of foreclosure of a Mortgage.

"Economic Development Grants" means any and all of the grants to be paid from City to Developer as provided for in Section 4, and as set forth in Exhibit "I" attached hereto and made a part hereof.

"Esports Stadium and Expo Hall" means the convention center facility owned by the City and located at 1200 Ballpark Way, Arlington, TX 76011.

"Event Trust Funds Program" means the trust fund program managed by the Office of the Texas Governor used to help pay costs related to preparing for or conducting certain events which are competitively bid and which communities are competing with cities outside of Texas to host.

"Existing Lease Agreement" means that certain lease agreement, dated September 1, 1983, by and between The City of Arlington Texas, and Centrepark Hotel, Ltd., a Texas limited partnership, a memorandum of which was recorded at Volume 7650, Page 1159 of the Real Property Records of Tarrant County, Texas, covering certain real property located in the City of Arlington, Tarrant County, Texas, amended by that certain (i) Amendment to Lease Agreement, dated December 10, 1986, by and between City and Centrepark Hotel, Ltd., recorded as Instrument No. D205041250, (ii) Amendment, Modification and Ratification of Lease Agreement, dated October 10, 2001, by and between City and IHC Realty Corporation, as general partner for IHC Realty Partnership, L.P., recorded as Instrument No. D205019126, (iii) Amendment, Modification and Ratification of Lease Agreement, dated April 3, 2007, by and between City and W2005 WYN Hotels, L.P. and City, (iv) Amendment, Modification and Ratification of Lease Agreement, dated December 4, 2007, by and between City and W2005 WYN Hotels, L.P., (v) Amendment, Modification and Ratification of Lease Agreement, dated August 7, 2008, by and between City and W2005 WYN Hotels, L.P., (vi) Amendment, Modification and Ratification of Lease Agreement, dated February 2, 2009, by and between City and W2005 WYN Hotels, L.P., (vii) Amendment, Modification and Ratification of Lease Agreement, dated June 23, 2009, by and between City and W2005 WYN Hotels, L.P., as assigned to Developer pursuant to that certain Assignment of Ground Lease, dated June 16, 2022, under which City leases to Developer the Project Site.

"Force Majeure" is defined in Section 13(i) of this Agreement.

"Grant Computation Period" means the specified period of time for computing an Economic Development Grant amount.

"Grant Period" means the total period during which tax receipts are used to compute Economic Development Grant payment amounts due. Solely by way of example, the City Sales/Beverage Tax Chapter 351 Grant is for a Grant Period of thirty (30) years following



Initial Occupancy and is computed with reference to City Sales Taxes and City Mixed Beverage Taxes. The total City Sales/Beverage Tax Chapter 351 Grant will be an amount equal to all City Sales Taxes plus all City Mixed Beverage Taxes reported on all tax returns for tax periods occurring during the period that commences with the date of Initial Occupancy and that ends with the date that is the thirtieth (30<sup>th</sup>) anniversary of the Initial Occupancy date. Tax amounts reported for tax reporting periods that are partially in and partially out of a Grant Period shall be prorated for purposes of computing Hotel Grant amounts due, based on the number of days in the tax reporting period that fall within a Grant Computation Period divided by the total number of days in the tax reporting period.

"Hotel" means the improvements to real property, and any related personal property, to be constructed on the Hotel Site by Developer and owned by Developer in accordance with the terms of this Agreement and the Hotel Ground Lease, containing a minimum of 500 guest rooms and amenities commensurate with a full-service convention-class hotel.

"Hotel and Convention Center Closing Date" means December 31, 2025, as such date may be extended in accordance with Section 7(f) of this Agreement.

"Hotel Ground Lease" means the lease agreement for the Hotel Site between City, as lessor, and Developer or an Affiliate of Developer (as designated by Developer), as lessee, substantially in the form attached here to as Exhibit "D".

"Hotel Site" means the land described in Exhibit "E" attached hereto and made a part hereof, which also includes the Ancillary Facilities Site and the Optional Development Site. The parties acknowledge that the legal description of the Hotel Site will be updated by Developer prior to the Hotel and Convention Center Closing.

"Initial Occupancy" means the first night a person pays for the use or possession of or for the right to the use or possession of a room or space at the Hotel.

"Initial Restricted Period" is defined in Section 14(a) of this Agreement.

"Lease" means a lease, license or other occupancy agreement for all or part of the Hotel.

"LHHC" means Loews Hotels Holding Corporation, a Delaware corporation.

"Major Special Event" means events that qualify as an event for purposes of the State of Texas' Event Trust Funds Program including but not limited to: NFL Super Bowl, NCAA Final Four Tournament, NBA All-Star Game, American Country Music Award Show, and national political conventions.

"Meeting Space" means a facility that is primarily used to host conventions and gatherings of people that enhance and promote tourism and the convention and hotel industry. Meeting Space does not include a facility designed for a specific use or user so long as it is not adjoined to a facility for overnight lodging.

"Mortgage" is defined in Section 12 of this Agreement.

"Mortgagee" is defined in Section 12 of this Agreement.

"Operation Agreements" means an operation or management agreement between Developer and an operator for operation of all or any part of the Project.

"Optional Development" means such improvements that Developer may elect, in its sole and absolute discretion, to develop on the Optional Development Site.

"Optional Development Site" means the land described in Exhibit "J" attached hereto and made a part hereof, which such Optional Development Site is a part of the Hotel Site. The parties acknowledge that the legal description of the Optional Development Site will be updated by Developer prior to the Hotel and Convention Center Closing.

"Parking Facility" means a minimum of 735 parking spaces in a parking structure, located on the Parking Facility Site, to be constructed and owned by Developer and which shall include a weather protected walkway connecting the Parking Facility to the Esports Stadium and Expo Hall.

"Parking Facility Closing" is defined in Section 7(a) of this Agreement.

"Parking Facility Closing Date" means May 15, 2024, as such date may be extended in accordance with Section 7(e) of this Agreement.

"Parking Facility Contributions" means any or all of the payments to be paid from AEDC and City to Developer for development of the Parking Facility, as provided for in Section 6, and as set forth in Exhibit "I" attached hereto and made a part hereof.

"Parking Facility Lease" means that lease agreement for the Parking Facility Site and the improvements comprising the Parking Facility, collectively defined in the lease agreement as the leased premises, between the City, as lessor, and Developer or an Affiliate of Developer (as designated by Developer), as lessee, substantially in the form attached hereto as Exhibit "G".

"Parking Facility Site" means the land described in Exhibit "F" attached hereto and made a part hereof. The parties acknowledge that the legal description of the Parking Facility Site will be updated by Developer prior to the Parking Facility Closing.

"Party" or "Parties" means Developer, City, or AEDC.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, unincorporated organization or other entity or any government or any agency or political subdivision thereof.

“Project” means the Hotel, the Convention Center, the Parking Facility and, if Developer elects, in its sole and absolute discretion, to develop any Ancillary Facilities and/or Optional Development, such Ancillary Facilities and/or Optional Development.

“Project Budget” means the written preliminary budget setting forth the aggregate amount of the Project Costs and identifying to the extent practicable and in reasonable detail each material cost item for the construction of the Hotel, the Convention Center, the Parking Facility and the general timeframe for the inclusion of such expenses. The Project Budget may be presented on development-by-development project basis, as a comprehensive budget for the all of the Hotel, the Convention Center, the Parking Facility, or as a combination thereof.

“Project Costs” means the actual cost to acquire, design, develop, and construct the Hotel, the Convention Center and the Parking Facility, including but not limited to: acquisition and preparation costs of the Hotel Site, the Convention Center Site and the Parking Facility Site; land planning, design, architectural and engineering costs; costs to construct, equip, and furnish the Hotel, the Convention Center and the Parking Facility, including the Site Improvements; costs of water, sewer, drainage, and street improvements necessary to serve the Hotel, the Convention Center, and the Parking Facility; permits, license, and inspections fees; and fees and expenses of the architect, general contractor, subcontractors, consultants and similar persons.

"Project Documents" means the Convention Center Lease, the Hotel Ground Lease and the Parking Facility Lease.

“Project Site” means the site encompassing the Hotel Site, Convention Center Site and Parking Facility Site.

“Site Improvements” means the creation of, improvements to and/or landscaping of the public streets, sidewalks, intersections and hardscape, along with any demolition required in connection with such improvements, and other improvements located at or adjacent to the Project Site and serving the Project Site.

“Site Improvements Contribution” means the payment described in Section 5 of this Agreement.

"State HOT" means hotel occupancy taxes, at a rate of six percent (6%) as of the Execution Date, received by the Comptroller pursuant to Chapter 156 of the Texas Tax Code attributable to amounts paid for rooms in the Hotel.

"State Refund Grant" means the economic development grant described in Section 4(a)(iii) of this Agreement.

"State Sales Taxes" means limited sales and use taxes, at a rate of six and one-fourth percent (6.25%) as of the Execution Date, imposed pursuant to Chapter 151 of Texas Tax Code and arising (i) from any Person’s collection of State Sales Tax as a result of sales of Taxable

Items Consummated at the Hotel, Convention Center, Parking Facility, and Ancillary Facilities, and (ii) from any Person's payments to vendors or directly to the Comptroller of State Sales Tax on purchases of Taxable Items Consummated at the Hotel, Convention Center, Parking Facility, and Ancillary Facilities.

"Taxable Items" has the meaning assigned by Section 151.010 of Texas Tax Code.

"Tenant" means any tenant, licensee or other occupant of the Project.

"Term" means the term of this Agreement as specified in Section 2 of this Agreement.

"Upper Upscale Category" means the "Upper Upscale" category of the then current STR Chain Scales published by STR, Inc. If STR, Inc. ceases to publish an "Upper Upscale" category list or ceases to publish the STR Chain Scales, the Parties shall mutually agree upon a replacement publication.

"Waiver of Confidentiality Form" means the form that authorizes the Comptroller to release to the City information related to City Sales Taxes during the Term.

2. **Term.**

This Agreement shall be effective as of the date of execution by all Parties hereto and shall remain in full force and effect until all Economic Development Grants, provided for in Section 4 and all Parking Facility Contributions provided for in Section 6, have been paid to Developer, unless sooner terminated in accordance with the terms of this Agreement.

3. **Developer's Obligations.**

In consideration of the City and AEDC entering into this Agreement providing for the payment of funds constituting (i) Economic Development Grants and Site Improvement Contribution to Developer, Developer agrees to do the following with respect to the applicable portions of the Hotel and the Convention Center and (ii) the Parking Facility Contributions, Developer agrees to do the following with respect to the Parking Facility, in each case, as applicable, from and after the applicable Closing and thereafter during the remainder of the Term:

(a) Developer shall provide all sums necessary for the payment of the Project Costs as and when a particular portion of the Hotel, the Convention Center, and the Parking Facility is to be constructed. City and Developer acknowledge and agree that as of the date hereof, the Project Costs do not include any costs and expenses related to the development of the Ancillary Facilities or Optional Development. In no event shall Developer be required to develop the Ancillary Facilities Site or Optional Development Site or to develop any Ancillary Facilities or Optional Development.

(b) With respect to the Project Costs, Developer shall determine the manner and method of obtaining funding and it may obtain such from any source,

including, but not limited to, cash, equity, or debt. As a condition to the Parking Facility Closing, Developer shall have provided reasonably satisfactory assurances to the City that the Developer's funding will be available to pay Project Costs for the Parking Facility. As a condition to the Hotel and Convention Center Closing, Developer shall have provided reasonably satisfactory assurances to the City that the Developer's funding will be available to pay Project Costs for the Hotel and the Convention Center identified in the Project Budget, and contemporaneously with the occurrence of the Developer's Financial Closing, Developer shall also provide the City with a completion guaranty substantially in the form attached hereto as Exhibit "K" (the "**City Completion Guaranty**"), guaranteeing completion of the Hotel and Convention Center, prior to the Hotel and Convention Center Closing, in each case as set forth in Section 7. Such City Completion Guaranty shall be from LHHC (or a creditworthy subsidiary thereof) or such other person or persons that has provided a completion guaranty to the Mortgagee providing Developer with a construction loan to fund all or a portion of the Project Costs for the Hotel and Convention Center. For the avoidance of doubt, Developer shall have no obligation to develop the Hotel or the Convention Center prior to the Hotel and Convention Center Closing, and Developer shall have no obligation to provide a completion guaranty with respect thereto.

(c) Developer shall use commercially reasonable efforts to commence construction (which commencement shall include demolition) of (i) the Parking Facility on or before May 15, 2024, and (ii) the Hotel and the Convention Center on or before December 31, 2025, as such dates may be extended for delays caused by Force Majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder.

(d) Developer shall use commercially reasonable efforts to plan, design, develop, construct, complete and make operational the Hotel, the Convention Center, and the Parking Facility in accordance with this Agreement, and cause completion of the Hotel and the Convention Center only to occur on or before the date that is three (3) years following the commencement of construction of the Hotel, as such date may be extended for delays caused by Force Majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder.

(e) The design and construction of the applicable components of the Project shall comply with all ordinances of the City applicable to the Project. In addition, Developer at its expense, shall obtain all permits, licenses, and inspections by City, State or federal agencies necessary for the construction of the applicable components of the Project. If Developer elects to retain a third party inspector under Section 3(e) below that has been approved by City in its sole discretion, then City shall waive all fees and costs imposed by City relating to the issuance of permits, licenses and approvals by the City for the construction of the applicable components

of the Project. If City does not approve such third party inspector, then City shall have no obligation to waive any such fees and costs.

(f) To facilitate and expedite scheduling and conducting necessary inspections, granting necessary permits to be issued by the City, and completion of other required compliance with City's ordinances, rules or regulations with respect to design and construction of the applicable components of the Project, Developer may elect to retain a third party inspector who shall, as necessary, be available at the construction site on a full-time basis during construction of the Project and who, upon granting its approval as described under Section 3(d) above, City agrees shall have such authority necessary to provide all such approvals and issue permits as required from City with regard to construction for the applicable components of the Project. The cost to retain a third party inspector shall be a Project Cost.

(g) Developer shall have exclusive control over the planning, design, engineering and construction of the Project, except to the extent the Convention Center Lease expressly provides for the City's participation in the planning, design, engineering and construction of the Convention Center for purposes of addressing the City's maintenance obligations in the Convention Center Lease. Notwithstanding the immediately preceding sentence, Developer shall cause to be installed in the Hotel an oxygen system for fire response, provided that such installation costs are deemed reasonable by Developer in accordance with market standards.

(h) The Hotel shall be operated in a manner that is no lower than the Upper Upscale Category for the Term of this Agreement unless there is a Disposition in compliance with Section 10. The initial operator of the Hotel shall be an Affiliate of Loews Hotels Holding Corporation.

(i) Developer shall not allow the ad valorem taxes owed to the City on any property owned or possessed by the Developer to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal during the Term of this Agreement. Nor shall Developer fail to render for taxation any personal property owned by Developer and located at the Project Site during the Term of this Agreement.

(j) Developer shall use commercially reasonable efforts to participate with the City on all bids for Major Special Events, including entering into a room block agreement with the City or local organizing committee pursuant to which Developer will provide all or portions of the Hotel and Convention Center to a Major Special Event host at the then current market rate for such facilities during the Term of this Agreement, all as more fully set forth in such room block agreement.

(k) Developer shall operate the Convention Center, the Parking Facility and the Hotel, as applicable, in accordance with the Convention Center Lease, the Parking Facility Lease, and the Hotel Ground Lease, as applicable, and shall also

operate the Convention Center and the Hotel, as applicable, in accordance with the following standards:

i. During the Term of this Agreement, Developer shall name and market the Hotel as determined by Developer, provided the word “Arlington” is included, whether in the name of the Hotel (e.g., The XYZ Arlington Hotel) or as a geographic identifier (e.g., The XYZ Hotel, Arlington, Texas) or, following any Disposition pursuant to Section 10, any other brand name in the Upper Upscale Category or higher.

ii. Developer shall refer to the Project in all marketing and advertising efforts that contain the location of the Project as being located in Arlington, Texas and shall not use any other proper geographic name (i.e. Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to describe the Project’s location, except that Developer may reference the distance of the Project from other locations.

iii. Developer shall operate and maintain the Hotel as a full-service, convention-class hotel in a manner to be listed on the Upper Upscale Category or higher.

(l) Developer shall implement a plan to provide meaningful community benefits and appropriate opportunities for local residents, minorities, and women in all aspects of the procurement, and construction of the Hotel, the Convention Center and the Parking Facility, including contracting, consulting, and supply of goods and services. Such plan will focus on achieving a goal of thirty percent (30%) use by the Developer of qualified minority and women owned businesses in the development, procurement, and construction of the Hotel, the Convention Center, the Parking Facility and the Site Improvements taken as a whole (and City acknowledges that such plan will not apply to any design services for any of the Project).

(m) Developer shall not develop a “Loews” branded hotel project of 500 rooms or more with equal or greater quality of the Hotel within the following four county region; Collin, Dallas, Denton and Tarrant, during the Term of this Agreement. Notwithstanding the foregoing, City acknowledges that an Affiliate of Developer has developed the Live! by Loews and the Loews Arlington Hotel, each of which are located in Tarrant County, Texas.

(n) Developer shall use commercially reasonable efforts to provide City with a quarterly update of charitable participation in Tarrant County.

(o) Developer shall provide documentation necessary to support a claim by the City to the Comptroller under Section 351.1022 of Texas Tax Code for a refund of State tax revenues. In addition, Developer shall provide updated and supplemental documentation as reasonably necessary to allow the City to claim

refunds of State tax revenues for all periods during the Term for which Developer is entitled to receive the State Refund Grants.

(p) Developer covenants and certifies that Developer does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay to the City the full amount of the Grant(s) made under Section 4 of this Agreement, plus ten percent (10%) interest per annum from the date the Grant(s) was made. Repayment shall be paid within one hundred twenty (120) days after the date Developer receives notice of violation of this provision from the City, which notice shall not be given by the City until after such conviction has become final and non-appealable.

(q) Developer shall comply in all material respects with all provisions of the Convention Center Lease, the Hotel Ground Lease and the Parking Facility Lease so as to not give rise to an Event of Default by Lessee (as that term is defined in the Convention Center Lease, the Hotel Ground Lease and the Parking Facility Lease).

(r) If the Hotel and Convention Center Closing occurs, Developer shall cause the existing hotel operating on the Project Site as of the Execution Date of this Agreement to be demolished no later than September 30, 2026.

4. **Economic Development Grants.**

(a) In exchange for Developer's compliance with all terms and provisions of this Agreement, and from and after the Hotel and Convention Center Closing provided the Hotel Ground Lease and Convention Center Lease remains in effect, the City shall make the following economic development grants to Developer for the Project:

i. **Ad Valorem Rebate.** Thirty (30) consecutive annual grants each calendar year during the period that commences on January 1<sup>st</sup> of the first full calendar year that follows the date of commencement of construction of the Parking Facility (for example, if construction commences during the 2023 calendar year, then the annual grants will commence as of January 1, 2024) and continues until Developer has received a total of thirty (30) annual payments pursuant to this Section 5(b). Such payments shall be made from lawfully available funds in an amount, determined annually, equal to one hundred percent (100%) of the total amount of ad valorem taxes paid by Developer to the City for the Hotel, Convention Center, Parking Facility, and Ancillary Facilities for the prior tax year. The City shall make such payment to the Developer on or before September 30<sup>th</sup> of each year. Such grants shall be subject to annual appropriation by the City Council of the City in the annual budget and the City's obligations under this Agreement to provide the grants



provided for in this Section 5(a)(i) shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas. Should the Hotel and Convention Center Closing not occur by the Hotel and Convention Center Closing Date, then the annual ad valorem rebates shall cease on January 1, 2026 and the Developer shall repay to the City all previously paid annual ad valorem rebates on or before March 1, 2026.

ii. **Annual Grants.** For a Grant Period of ten (10) years following Initial Occupancy, the City shall provide Developer, each year during such Grant Period, an economic development grant in an amount equal to Three Million Eight Hundred Thousand and 00/100 Dollars (\$3,800,000.00) per year. The City shall make such payment to the Developer on or before September 30<sup>th</sup> of each year. In addition, for a Grant Period of fifteen (15) years following the eleventh anniversary of Initial Occupancy, the City shall provide Developer, each year during such Grant Period, an economic development grant in an amount equal to One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00) per year. The City shall make such payment to the Developer on or before September 30<sup>th</sup> of each year. Such grants shall be subject to the annual appropriation of the City Council of the City in the annual budget and the City's obligations under this Agreement to provide the grants provided for in this Section 5(a)(ii) shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas. Developer and City agree that should additional public funds (other than federal funds) become available for the Project, the City and Developer shall discuss, in good faith, an amendment to this Agreement that reduces the annual grants to be paid by the City as provided for in this Section 4(ii) by an amount equivalent to the value to the Project of the additional public funds; provided, however, in no event shall Developer be obligated to enter into an amendment to this Agreement that (i) requires Developer to accept funds from an alternate source of public funds if the obligations imposed on Developer by such alternate source would be more onerous to Developer than Developer's accepting such funds from the existing grant source, (ii) results in Developer's receiving fewer funds than the annual grants provided herein and/or (iii) in Developer's determination, imposes a risk to Developer that such funds will not be available to Developer for the duration thereof.

iii. **State Refund Grant.** For a Grant Period of ten (10) years following Initial Occupancy, the City shall provide Developer, each year during such Grant Period, an economic development grant in an amount equal to all refunds received by the City from the Comptroller of State Sales Taxes, and State HOT. The City shall make or cause to be made a State Refund Grant payment to Developer within thirty days of the City's receipt from the Comptroller of each refund. The City shall deposit State Refund Grants into a bank account or accounts owned and controlled by Developer. The City represents and warrants

to Developer that the State Refund Grant is not subject to annual appropriation of the City Council of the City or any other governmental authority.

iv. **City Sales/Beverage Tax Chapter 351 Grant.** For a Grant Period of thirty (30) years following Initial Occupancy, the City shall provide Developer an economic development grant in an amount equal to all City Sales Taxes and City Mixed Beverage Taxes. After the conclusion of each calendar quarter beginning with the calendar quarter that includes the Initial Occupancy date, the City shall make a City Sales/Beverage Tax Chapter 351 Grant payment to Developer in amount to the City Sales Taxes and the City Mixed Beverage Taxes for such calendar quarter, as identified in the Area Reports for such quarter, no later than thirty (30) days after the later of (i) the City's receipt of Area Reports that identify amounts of City Sales Taxes and City Mixed Beverage Taxes for all months in a quarter and (ii) the City's receipt of the City Sales Taxes and City Mixed Beverage Taxes for all periods in the quarter. The City shall deposit such amounts into a bank account or accounts owned and controlled by Developer. The City represents and warrants to Developer that the City Sales/Beverage Tax Grant is not subject to annual appropriation of the City Council of the City or any other governmental authority.

v. **City Chapter 351 HOT Grant.** For a Grant Period of thirty (30) years following Initial Occupancy, the City shall provide Developer economic development grants in an amount equal to the City HOT pursuant to Chapter 351 of Texas Tax Code. After the conclusion of each calendar quarter beginning with the calendar quarter that includes the Initial Occupancy date, the City shall make a City Chapter 351 HOT Grant payment to Developer equal in amount to the City HOT for such calendar quarter, determined with reference to the City HOT Returns, no later than thirty (30) days after the later of (i) the City's receipt of the City HOT Returns for all periods in a quarter and (ii) the City's receipt of the City HOT for all periods in a quarter. The City shall deposit such amounts into a bank account or accounts owned and controlled by Developer. The City represents and warrants to Developer that the City Chapter 351 HOT Grant is not subject to annual appropriation of the City Council of the City or any other governmental authority.

(b) **Reports, Waivers, Adjustments.**

i. **Area Reports.** No later than the date of Initial Occupancy, the City shall submit a request to the Comptroller for Area Reports. During the Term the City shall take such other actions as are necessary to cause the Comptroller to issue Area Reports throughout the Term, including but not limited to supplementing its request for Area Reports to include any new sales tax permit holders or mixed beverage tax permittees that should be included in the Area Reports and, if necessary, provide Waiver of Confidentiality Form(s).

ii. **Adjustments to Grant Amounts.** If (i) the final result of an assessment, audit, refund claim or other action by a taxpayer or taxing authority results in a change in the amount of tax liability for a prior tax period of any City tax revenue that was used as the basis for the computation of any grant payment due under this Agreement, and (ii) such change in tax liability results in a payment to or from the City of such taxes, whether by actual payment, credit, offset, or otherwise, then (iii) for the grant type computed with reference to that type of tax, the City, after notice to Developer will adjust the grant payment otherwise due for the Grant Computation Period in which the City makes or receives such payment up or down, as the case may be, to account for such prior period's tax liability adjustment and payment. If the adjustment required by this Section 4(b)(ii) cannot be fully accomplished by adjusting the grant payment for the Grant Computation Period in which the City makes or receives such payment, the grant payment due for subsequent Grant Computation Periods shall be adjusted as necessary.

5. **Site Improvements Contribution.**

(a) In exchange for Developer's compliance with all terms and provisions of this Agreement, the AEDC shall provide Developer with funds towards the Project Costs associated with the planning, design, development, and construction of the Site Improvements as follows:

i. A single payment in the amount of Five Million and 00/100 Dollars (\$5,000,000.00). The AEDC shall make such payment to Developer within thirty (30) days after Developer has obtained all necessary building and development permits for construction of the Hotel and Convention Center, including the related Site Improvements and provided that the City Completion Guaranty also includes (or is amended to include) the guaranty of completion of the Site Improvements.

(b) Developer acknowledges that the Site Improvements Contribution is a project as defined by Section 501.103 of the Texas Local Government Code. Pursuant to Section 505.160 of the Texas Local Government Code, if a petition from more than ten percent (10%) of the registered voters in the City of Arlington is filed within sixty (60) days of the publication notice of this project, which was published on December 8, 2023, an election shall be held before any expenditure by the AEDC on the Site Improvements is made. If an election is held, the AEDC shall have no obligation to make the Site Improvement Contribution provided for in this Section 5 unless and until the project has been successfully approved by the voters. If a valid petition is filed, Developer may elect to either (i) terminate its right to receive the AEDC's Site Improvements Contribution by providing the AEDC with written notice terminating and relinquishing such right prior to any such election, or (ii) terminate this Agreement, in each case upon thirty (30) days written notice to the AEDC.

6. **Parking Facility Contributions.**

(a) In exchange for Developer's compliance with all the terms and provisions of this Agreement pertaining to the Parking Facility, the City and AEDC shall jointly provide Developer with fifteen (15) consecutive annual Parking Facility Contributions towards the Project Costs associated with the planning, design, development and construction of the Parking Facility, in the cumulative total amount equal to the lesser of (i) Thirty-Five Million Dollars (\$35,000,000), and (ii) the Project Costs associated with the planning, design, development and construction of the Parking Facility (including any Project Costs that are reasonably anticipated by Developer to be incurred following completion for punchlist and similar post-completion matters), which Project Costs (and such reasonably anticipated Project Costs) shall be certified by Developer to the City and AEDC upon completion of the Parking Facility. The Parking Facility Contributions shall commence in calendar year 2025 and continue until calendar year 2039, unless such payments are accelerated as provided for below, and shall be paid by the City and AEDC to Developer on or before September 30<sup>th</sup> of each year. The amount of each Parking Facility Contribution shall be equal to the lesser of (i) Two Million Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars 33/100 (\$2,333,333.33), and (ii) one fifteenth (1/15) of the Project Costs associated with the planning, design, development, and construction of the Parking Facility as certified by the Developer to the City and AEDC. The first six (6) annual Parking Facility Contributions will be paid exclusively by the AEDC, the seventh (7) annual Parking Facility Contribution will be paid jointly by the AEDC and the City with One Million Dollars 00/100 (\$1,000,000.00) coming from the AEDC and the balance coming from the City, the remaining eight (8) annual Parking Facility Contributions will be paid exclusively by the City. Parking Facility Contributions from the City shall be subject to the annual appropriation by the City Council of the City in the annual budget, and the City's obligations to provide the Parking Facility Contributions under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas.

(b) Developer acknowledges that the portion of the Parking Facility Contributions provided by the AEDC are a project as defined by Section 501.103 of the Texas Local Government Code. Pursuant to Section 505.160 of the Texas Local Government Code, if a petition from more than ten percent (10%) of the registered voters in the City of Arlington is filed within sixty (60) days of the publication notice of the Project, which was published on December 8, 2023, an election shall be held before any expenditure by the AEDC on the Parking Facility is made. If an election is held, the AEDC shall have no obligation to make the Parking Facility Contributions provided for in this Section 6 unless and until the Project has been successfully approved by the voters. If a valid petition is filed, and/or an election is held and the Project is not successfully approved by the voters, Developer may elect to either (i) terminate its right to receive the AEDC's Parking Facility Contributions by providing the AEDC with written notice terminating and relinquishing such right

prior to any such election, or (ii) terminate this Agreement, in each case upon thirty (30) days written notice to the AEDC. Developer further acknowledges that neither the City nor the AEDC has, as of the Execution Date, set aside funds or otherwise created a sinking fund to make the Parking Facility Contributions.

(c) Regardless of whether Developer determines not to proceed with the construction of the Hotel and Convention Center (whether because the conditions set forth in Section 7(f) are not satisfied by the Hotel and Convention Center Closing Date or otherwise, including pursuant to Section 7(d)), Developer shall complete construction of the Parking Facility, and the City and AEDC shall continue to provide the Parking Facility Contributions as set forth in Section 6(a).

7. **Real Estate Matters; Conditions to Closing.**

(a) On or before the Parking Facility Closing Date, City and Developer shall (i) amend the Existing Lease Agreement (the “**Existing Lease Amendment**”) to remove the Parking Facility Site from the Leased Premises (as that term is defined in the Existing Lease Agreement), and (ii) concurrently with the execution of the Existing Lease Amendment, City and Developer will enter into the Parking Facility Lease. The City Manager, on behalf of the City, is hereby authorized to, and shall, enter into the Existing Lease Amendment and the Parking Facility Lease in the form attached hereto as Exhibit “G” (the “**Parking Facility Closing**”). In addition, concurrently with the Parking Facility Closing, or at a later date, the City Manager, on behalf of the City, is hereby authorized to, and shall, enter into, any easement(s) necessary to allow for construction and operation of the weather protected walkway connecting the Parking Facility to the Esports Stadium and Expo Hall.

(b) If City and Developer have not executed the Existing Lease Amendment and the Parking Facility Lease by the Parking Facility Closing Date, then each of City and Developer shall have the right to terminate this Agreement upon thirty (30) days written notice to the other party.

(c) On or before the Hotel and Convention Center Closing Date, City and Developer shall (i) amend and restate the Existing Lease Agreement into the Hotel Ground Lease to, among other things, remove the Convention Center Site from the Leased Premises so that the premises leased to Developer under the Hotel Ground Lease is only the Hotel Site, and (ii) concurrently with the execution of the Hotel Ground Lease removing the Convention Center Site from the Leased Premises, City and Developer will enter into the Convention Center Lease. The City Manager, on behalf of the City, is hereby authorized to, and shall, execute the Hotel Ground Lease and the Convention Center Lease (the “**Hotel and Convention Center Closing**”). In addition, concurrently with execution of the Hotel Ground Lease and the Convention Center Lease, or at a later date, the City Manager, on behalf of the City, is hereby authorized to, and shall, enter into, any easement(s) necessary to allow for construction, maintenance, and operation of any portion of the Site Improvements located adjacent to the Project Site.

(d) If City and Developer have not executed both the Hotel Ground Lease and the Convention Center Lease by the Hotel and Convention Center Closing Date, then each of City and Developer shall have the right to terminate this Agreement solely with respect to the Hotel and the Convention Center (and all obligations with respect thereto) upon thirty (30) days written notice to the other party.

(e) Neither City nor Developer shall have any obligation to proceed with the Parking Facility Closing unless the following conditions have been satisfied on or before the Parking Facility Closing Date; provided, that if the parties are using good faith efforts to satisfy the following conditions, the Parking Facility Closing Date shall be extended for so long as the parties continue to use good faith efforts to satisfy the conditions: (i) the applicable parties have executed and delivered the Existing Lease Amendment and the Parking Facility Lease, (ii) Developer has provided City with a Project Budget for the Parking Facility that is acceptable to Developer, (iii) neither City nor Developer is in default (beyond applicable notice and cure periods) of this Agreement, (iv) Developer has provided reasonable assurances to City of the availability of funds to pay all Project Costs related to the Parking Facility as identified in the Project Budget for the Parking Facility, (v) Developer has provided a City Completion Guaranty guaranteeing completion of the Parking Facility pursuant to Section 3(a), (vi) the final guaranteed maximum price contract, final plans and specifications and construction budget shall have been approved by Developer and the final guaranteed maximum price contract shall have been executed by Developer, in each case for the Parking Facility, (vii) all permits necessary to commence construction of the Parking Facility have been obtained and (viii) all leases, declarations, reciprocal easement agreements, covenant agreements and parking easements affecting the Parking Facility have been approved by Developer. If such foregoing conditions are not satisfied on or before the Parking Facility Closing Date (as such date may be extended as provided herein), then each of City and Developer shall have the right to terminate this Agreement upon thirty (30) days written notice to the other party.

(f) Neither City nor Developer shall have any obligation to proceed with the Hotel and Convention Center Closing unless the following conditions have been satisfied on or before the Hotel and Convention Center Closing Date; provided, that if the parties are using good faith efforts to satisfy the following conditions, the Hotel and Convention Center Closing Date shall be extended for so long as the parties continue to use good faith efforts to satisfy the conditions: (i) the applicable parties have executed and delivered the Hotel Ground Lease and the Convention Center Lease, (ii) Developer has provided City with a Project Budget that covers at least the Hotel and the Convention Center that is acceptable to Developer, (iii) neither City nor Developer is in default (beyond applicable notice and cure periods) of this Agreement, (iv) if the Hotel and Convention Center Closing occurs on or after the Developer's Financial Closing, then Developer has provided the City Completion Guaranty for the Hotel and the Convention Center pursuant to Section

3(a), (v) the final guaranteed maximum price contract, final plans and specifications and construction budget shall have been approved by Developer and the final guaranteed maximum price contract shall have been executed by Developer, (vi) all permits necessary to commence construction have been obtained, and (vii) all leases, declarations, reciprocal easement agreements, covenant agreements and parking easements affecting the Project have been approved by Developer. If such foregoing conditions are not satisfied on or before the Hotel and Convention Center Closing Date (as such date may be extended as provided herein), then each of City and Developer shall have the right to terminate this Agreement (and all obligations with respect thereto) upon thirty (30) days written notice to the other party. In addition, if the Developer Financial Closing has not occurred by the Developer's Financial Closing Deadline, then Developer shall have the right to terminate this Agreement solely with respect to the Hotel and the Convention Center (and all obligations with respect thereto) upon thirty (30) days written notice to the other party.

8. **Indemnification.**

DEVELOPER IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY AND AEDC ASSUME NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PROJECT. DEVELOPER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, AEDC, THEIR OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES (THE "**CITY INDEMNIFIED PARTIES**"), FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND REASONABLE ATTORNEYS' FEES WHICH ANY CITY INDEMNIFIED PARTY MAY INCUR DUE TO ANY DEATH OR INJURY TO A PERSON ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, EXCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES.

9. **Default and Remedies.**

(a) **Developer Defaults.** The occurrence of any of the following shall be an event of default by the Developer ("**Developer Default**"):

i. The failure of Developer to fulfill its obligations under this Agreement if such failure is not remedied by Developer within forty-five (45) calendar days after written notice from City or AEDC of such default, or in the case of any such default which cannot with due diligence and good faith be cured within forty-five (45) calendar days, Developer fails to commence to cure such default within forty-five (45) calendar days after such notice or Developer fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith.



ii. The filing of Developer of a voluntary petition in bankruptcy which is not dismissed within ninety (90) days after the filing thereof; adjudication of Developer as bankrupt; approval as properly filed by a court of competent jurisdiction of any petition in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of Developer under United States Bankruptcy Code or any similar state or federal law dealing with creditors' rights generally; Developer's assets are levied upon by virtue of a writ of court of competent jurisdiction; insolvency of Developer; assignment by Developer of all or substantially all of its assets for the benefit of creditors; initiation of procedures for involuntary dissolution of Developer; or appointment of a receiver, trustee, or other similar official for Developer, or Developer's property, which is not removed within ninety (90) days after appointment thereof.

(b) City and AEDC Remedies. Upon the occurrence of any Developer Default, City and AEDC may, in their sole and absolute discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice required by law:

i. With respect to a Developer Default that pertains to the Parking Facility, partially terminate this Agreement with respect to the portion of this Agreement that pertains to the Parking Facility by providing thirty (30) days written notice to Developer. With respect to a Developer Default that pertains to the Hotel and Convention Center, partially terminate this Agreement with respect to the portion of this Agreement that pertains to the Hotel and Convention Center, by providing thirty (30) days written notice to Developer.

ii. If (A) the Developer Default involves the completion of the Hotel and Convention, seek repayment of the Economic Development Grants and Site Improvement Contribution paid to Developer and (B) the Developer Default involves the completion of the Parking Facility, seek repayment of the Parking Facility Contributions paid to Developer.

iii. If the Developer Default relates to Developer's obligation to complete the Hotel and the Convention Center from and after the Hotel and Convention Center Closing, enforce the City's rights under the City Completion Guaranty required to be provided pursuant to Section 3(a).

iv. Exercise any and all other remedies available to City and AEDC at law or in equity (other than the remedies set forth in clauses (i) through (iii) above), including enforcing specific performance on Developer's obligations under this Agreement.

(c) City Defaults. The occurrence of any of the following shall be an event of default by the City ("**City Default**"):

i. The failure of City to fulfill its obligations under this Agreement if such failure is not remedied by City within thirty (30) calendar days after written notice from Developer of such default, or in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) calendar days, City fails to commence to cure such default within thirty (30) calendar days after such notice or City fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; however, such time period shall not under any circumstances exceed ninety (90) days.

(d) AEDC Defaults. The occurrence of any of the following shall be an event of default by the AEDC (“**AEDC Default**”):

i. The failure of AEDC to fulfill its obligations under this Agreement if such failure is not remedied by AEDC within thirty (30) calendar days after written notice from Developer of such default, or in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) calendar days, AEDC fails to commence to cure such default within thirty (30) calendar days after such notice or AEDC fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; however, such time period shall not under any circumstances exceed ninety (90) days.

(e) Developer’s Remedies. Upon the occurrence of any City Default or AEDC Default the Developer may, in its sole and absolute discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice required by law:

i. Terminate this Agreement by providing thirty (30) days written notice to City and AEDC.

ii. Exercise any and all other remedies available to Developer at law or in equity, including enforcing specific performance on City’s or AEDC’s obligations under this Agreement.

10. **Restriction against Dispositions.**

(a) Dispositions of the Hotel, Convention Center, and Parking Facility. Developer shall be entitled to make or create or suffer to be made or created without the consent of any of the Parties hereto, including the City Representative, any Disposition of the Parking Facility, Convention Center and/or the Hotel to an Alternative Hotel Developer at any time. Prior to the fifteenth (15<sup>th</sup>) anniversary of the Initial Occupancy, Developer shall not make or create, or suffer to be made or created, any Disposition of the Parking Facility, Convention Center and/or the Hotel to any Person that is not an Alternative Hotel Developer, without the prior written

approval of the City Representative, which approval shall not be unreasonably withheld, conditioned or delayed. Any such approval or disapproval shall be made within thirty (30) Business Days of the City's receipt of such request, time being of the essence. On or any time after the fifteenth (15<sup>th</sup>) anniversary of the Initial Occupancy, Developer shall be entitled to make or create or suffer to be made or created any Disposition of the Project to any Person, whether or not such Person is an Alternative Hotel Developer without the consent of any of the Parties hereto, including the City Representative. Developer shall also be entitled to designate an Affiliate to enter into one or more of the Project Documents at the applicable Closing.

(b) Dispositions of the Ancillary Facilities and/or any Optional Development. At any time, Developer shall be entitled to make or create or suffer to be made or created any Disposition of any Ancillary Facilities and/or any Optional Development (or any portion thereof) to any Person, whether or not such Person is an Alternative Hotel Developer without the consent of any of the Parties hereto, including the City Representative.

(c) Assumption Agreement. In connection with any Disposition made during the Term of this Agreement, or in connection with any designation of an Affiliate to enter into one or more of the Project Documents at the applicable Closing, the counterparty to such Disposition shall assume all obligations of Developer under this Agreement applicable to the portion of the Project that was the subject of such Disposition (including, to the extent applicable, the Parking Facility Lease, the Convention Center Lease and/or the Hotel Ground Lease) accruing from and after the Execution Date of such Disposition (or Closing, as the case may be) by a written agreement (the "**Assumption Agreement**") to which the City is either a party or in which the City is specified to be a beneficiary, a copy of which Assumption Agreement shall be promptly provided to the City following the Disposition to evidence the assignment and assumption in question. The provisions of this Section 10(b) shall not apply to Operation Agreements, Lease or Mortgages.

(d) Liability. In the event of a Disposition of any interest of Developer applicable to the portion of the Project that was the subject of such Disposition, or in connection with any designation of an Affiliate to enter into one or more of the Project Documents at the applicable Closing, upon Developer's delivery of an Assumption Agreement pursuant to Section 9(b) hereof, (i) Developer shall be relieved of all further liability arising hereunder with respect to the portion of the Project that was the subject of such Disposition or designation, except for monetary obligations of Developer under this Agreement that was applicable to the portion of the Project that was the subject of such Disposition and that accrued before such Disposition which remain unpaid, and (ii) a default under this Agreement by the counterparty of such Disposition or designation shall only constitute a Developer Default with respect to the portion of the Project that was the subject of such Disposition or designation, and a Developer Default by such counterparty shall not

constitute a Developer Default by Developer hereunder with respect to the portion of the Project that has not yet been the subject of a Disposition or designation.

(e) Project Financing, Leases and Mortgages. The provisions of this Section 10 are not intended to modify or supersede any of the rights granted by Developer to any Mortgagee and any Tenant under Sections 11 and 12 hereof. In the event that the provisions of this Section 10 conflict with or are inconsistent with the any of the other provisions of Sections 11 and/or 12 hereof, the provisions of Sections 11 and 12 hereof shall control and the provisions of this Section 10 shall be construed and interpreted accordingly.

11. Leases. From and after the Execution Date, Developer shall have the right, without the need to request or obtain the consent of the City to Lease any part of the Project at any time and from time to time to Tenants provided however, with respect to any Leases of the Hotel, the Hotel remains operated in a manner that is no lower than the Upper Upscale Category. Notwithstanding anything in this Section to the contrary, a Lease or Leases may not be used as a way to circumvent the disposition or assignment limitations of this Agreement.

12. Developer Financing. The City and AEDC acknowledge and agree that after Initial Occupancy has occurred, Developer shall have the right to issue bonds or obtain financing for any of the Economic Development Grants so long as no guaranty is required from the City. The City shall reasonably cooperate with Developer in connection with any such monetization, which monetization shall be subject to compliance with applicable laws.

13. Mortgagee Rights.

(a) Right to Mortgage. Notwithstanding any other provisions of this Agreement, Developer shall at all times have the right to encumber, pledge, grant, or convey its rights, title and interest in and to the Project, or any portions thereof, and/or to this Agreement by way of a mortgage, pledge, assignment or other security agreement (a "**Mortgage**") to secure the payment of any loan or loans obtained by Developer to finance or refinance any portion or portions of the Project. The beneficiary of or mortgagee under any such Mortgage is hereby referred to herein as a "**Mortgagee**".

(b) Notice of Breaches to Mortgagees. In the event the City and/or AEDC gives notice to Developer of a default of its obligations under this Agreement, the City and/or AEDC shall forthwith furnish a copy of the notice to the Mortgagees that have been identified to the City and/or AEDC by Developer. To facilitate the operation of this Section 12(b), Developer shall at all times keep the City and AEDC provided with an up-to-date list of Mortgages.

(c) Mortgagee May Cure Breach of Developer.

(i) In the event that Developer receives notice from the City and/or AEDC of a breach by Developer of any of its obligations under this Agreement and such breach is not cured by Developer pursuant to the provisions of this Agreement, the City and/or AEDC shall, in addition to the notice provided in Section 14 hereof, give notice of the failure to cure on the part of Developer to the Mortgagees at the expiration of the period within which Developer may cure as set forth in this Agreement. Any one of the Mortgagees may elect to cure such default by giving the City and/or AEDC written notice of its intention so to cure within thirty (30) days after the receipt of the additional notice herein set forth. In the event that any Mortgagee elects to proceed to cure any such default, such Mortgagee shall do so within the applicable cure period contained in this Agreement; provided, however, that the commencement of the cure period for the Mortgagee shall commence on the date the Mortgagee notifies the City and/or AEDC of the Mortgagee's election to cure such default and each applicable cure period shall be deemed doubled in length for Mortgagee.

(ii) In the event any Mortgagee elects to exercise its rights of foreclosure under a Mortgage (or appoint a receiver or accept a deed and/or assignment-in-lieu of foreclosure), after foreclosure of Developer's interest in and to the Project or any portion thereof (or after the appointment of a receiver or the obtaining of Developer's interest in and to the Project or any portion thereof, via deed and/or assignment-in-lieu of foreclosure), such Mortgagee may at its option:

(A) elect to assume the position of Developer hereunder in which case, in the event the City and/or AEDC has terminated this Agreement or suspended the distribution of any funds, including the Economic Development Grants and Site Improvement Contribution that the City and AEDC are obligated to provide to Developer pursuant to this Agreement, the City and AEDC agree that this Agreement shall be deemed reinstated and the City and AEDC shall commence the distribution of such funds in accordance with the provisions of this Agreement provided such Mortgagee has cured any default by Developer hereunder that the Mortgagee has received notice of in accordance with the provisions of Section 12(b); or

(B) elect not to assume the provisions of this Agreement.

The Mortgagee shall have the right so to elect (A) above of this Section 12(c)(ii) only if it shall exercise such right within six (6) months after the receipt of the additional notice herein set forth. For purposes of this Section 11(c), the term "**Mortgagee**" shall include not only the "**Mortgagee**", this Section 11 hereof, but shall also include any Person that obtains Developer's interest in and to all or any portion of the Hotel Site,

the Convention Center Site, and/or the Parking Facility Site, and the improvements thereon as a result of a Mortgagee's exercise of its foreclosure rights or the transfer of Developer's interest in and to all or any part of the Hotel Site, the Convention Center Site, and/or the Parking Facility Site, and the improvements thereon at the direction of the Mortgagee by Developer to a Person by deed and/or assignment-in-lieu of foreclosure.

(d) Rights and Duties of Mortgagee. In no event shall any Mortgagee be obliged to perform or observe any of the covenants, terms or conditions of this Agreement on the part of Developer to be performed or observed, or be in any way obligated to complete the improvements to be constructed in accordance with this Agreement, nor shall it guaranty the completion of improvements as hereinbefore required of Developer, whether as a result of (i) its having become a Mortgagee, (ii) the exercise of any of its rights under the instrument or instruments whereby it became a Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (iii) the performance of any of the covenants, terms or conditions on the part of Developer to be performed or observed under this Agreement, or (iii) otherwise, unless such Mortgagee shall either make the election set forth in Section 11(c)(ii)(A) of this Agreement or shall specifically elect under this Section 11(d) to assume the obligations of Developer by written notice to the City and AEDC whereupon such Mortgagee, upon making such election as aforesaid, shall then and thereafter for all purposes of this Agreement be deemed to have assumed all of the obligations of Developer hereunder.

(e) Mortgagee's Rights Agreements. The City and AEDC, acting by and through the City Representative, shall, at the request of Developer made from time to time and at any time, enter into a lender's rights agreement with any Mortgagee (or potential Mortgagee) identified by Developer, which lender's rights agreement shall be consistent with the terms and provisions contained in this Section 12 that apply to Mortgagees and Mortgages. Within twenty (20) days of Developer's request for a lender's rights agreement pursuant to the provisions of this Section 12(e), time being of the essence, the City and AEDC shall execute and deliver to Developer such a lender's rights agreement benefiting the identified Mortgagee (or potential Mortgagee) and such Mortgagee's Mortgage (or potential Mortgagee's potential Mortgage), which executed lender's rights agreement shall be in a form and substance that are reasonably acceptable to such Mortgagee (or potential Mortgagee) and that is consistent with, and at the option of such Mortgagee (or potential Mortgagee) incorporates, this Section 12 that apply to Mortgagees and Mortgages. In addition, should there be multiple Mortgages for different Mortgagees securing separate financings for portions of the Project (primarily the Parking Facility, on the one hand, and the Hotel and Convention Center, on the other), such lender's rights agreement shall also address each Mortgagee's rights under this Agreement so that each portion of the Project that is separately financed can be on a stand-alone basis, without sharing of collateral or risk of cross-default among the various portions of

the Project and the related Mortgages securing any such financings. In furtherance of the foregoing, upon request by Developer or any of its Mortgagees, the City and AEDC will consider, in good faith, to enter into replacement economic development performance agreements in order to effect the separation of the obligations and rights with respect to (i) the Hotel and Convention Center, on the one hand, and (ii) the Parking Facility, on the other hand.

14. **Future Projects and Esports Stadium and Expo Hall.** City agrees as follows:

(a) Commencing on the Execution Date, and continuing for a period ending on the third (3rd) anniversary of the date of Initial Occupancy (the “**Initial Restricted Period**”), the City will not actively engage in negotiations or execute an agreement to provide an incentive to another hotel and/or Meeting Space project, of any size, located within the City of Arlington. Should the Parties engage in negotiations for a future hotel and/or Meeting Space project during the Initial Restricted Period the Parties may enter into a written agreement to extend the Initial Restricted Period.

(b) Commencing on the expiration of the Initial Restricted Period, and continuing for a period ending on the ninth (9th) anniversary of the date of Initial Occupancy (hereinafter the “**ROFO Period**”), the City will not actively engage in negotiations or execute an agreement to provide an incentive to another hotel and/or Meeting Space project, containing more than 300 keys or more than 15,000 square feet of meeting space, as applicable, and located in the portion of the City identified as the ROFO Zone in Exhibit "H," without first providing Developer with written notice of the right of first offer for the ability to invest in, manage and operate the hotel under a flag acceptable to the Developer (hereinafter “**ROFO**”). If the Developer does not exercise the ROFO, as evidenced by an executed agreement with the City, within six (6) months of the City's written notice of the ROFO then City may execute an agreement to provide an incentive to the hotel and/or Meeting Space project, provided the City may only incentivize one hotel and/or Meeting Space project during the ROFO Period.

(c) Notwithstanding Sections 14(a) and 14(b), the City may execute an agreement to provide an incentive to another hotel and/or Meeting Space project at any time after the Execution Date if the Developer provides, in its sole and absolute discretion, written consent for such hotel and/or Meeting Space project.

(d) City will collaborate with Developer, or Developer’s designated operator, to provide access for booking conventions and meetings at the Esports Stadium and Expo Hall, subject to availability of such space. When booking at the Esports Stadium and Expo Hall, City agrees to provide space to Developer, or Developer’s designated operator, at the current rate charged by the City for such space.

15. **General Provisions.**



(a) **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(b) **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by Developer, City, and AEDC and approved by the City through its City Council and AEDC through its Board of Directors.

(c) **Binding Agreements.** This Agreement shall be binding on and inure to the benefit of the parties hereto, their respective permitted successors and assigns. This Agreement may not be assigned by the City or AEDC until such time as Developer and its lenders are provided with assurances that all Economic Development Grants, Parking Facility Contributions and Site Improvement Contribution will be timely paid and that the City and AEDC is not being released from their respective obligations under Section 4 and Section 5 to cause such Economic Development Grant, Parking Facility Contributions and Site Improvement Contribution to be timely paid; provided that Developer may assign this Agreement to one or more Affiliates of Developer and may designate one or more Affiliates of Developer to enter into the Hotel Ground Lease, the Convention Center Lease and/or the Parking Facility Lease.

(d) **Notice.** All notices or statements given pursuant to or concerning this Agreement shall be in writing and sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any notice sent by (a) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (b) personal messenger shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the Business Day following the date the notice is deposited with the overnight delivery service addressed as specified below:

DEVELOPER: Go For Three, LLC  
c/o Loews Hotels Holding Corporation  
9 West 57<sup>th</sup> Street, 20<sup>th</sup> Floor  
New York, NY 10019  
Attention: Corporate Secretary

With a copy to:

Latham & Watkins LLP  
330 North Wabash Avenue, Suite 2800  
Chicago, Illinois 60611  
Attention: Gary E. Axelrod, Esq.

CITY: City of Arlington, Texas  
City Manager's Office

c/o City Manager  
101 W. Abram Street  
Arlington, Texas 76004-3231

AEDC: Arlington Economic Development Corporation  
c/o Executive Director  
101 W. Abram Street  
Arlington, Texas 76004-3231

With a copy to:

City Attorney's Office  
c/o City Attorney  
101 S. Mesquite  
Arlington, Texas 76004-3231

Such addresses may be changed by giving the other Party ten (10) days' notice in writing. In addition, Developer may add additional notice addressees.

(e) **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

(f) **Applicable Law.** This Agreement is made and shall be construed and interpreted under the laws of the State of Texas without regard to any conflict of law rules and venue shall lie in Tarrant County, Texas.

(g) **Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable. Notwithstanding the above, Developer shall have the right to terminate this Agreement in the event that it determines that the obligation of the City and/or AEDC to timely pay Developer the Economic Development Grant, Parking Facility Contributions and Site Improvements Contribution in accordance with the terms of this Agreement has been declared invalid or unenforceable. In the event any provision of this Agreement is illegal, invalid or unenforceable under present or future laws, each Party reserves the right to pursue any and all remedies available to them at law or equity. In the event that any of the provisions of this

Agreement concerning the Economic Development Grant and Site Improvements Contribution are challenged by any other Person as "illegal, invalid, or unenforceable under present or future laws", the parties shall reasonably cooperate with each other to defend the validity and enforceability of such provisions. The provisions of this Section 13(g) shall survive the termination of this Agreement.

(h) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

(i) **Force Majeure.** If any Party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, failure, refusal or delay in issuing permits, approvals or authorizations), injunction or court order, terrorist attacks, riots, insurrection, war, fire, earthquake, flood or other natural disaster, a default hereunder by the other Party or other reason of a like nature not the fault of the Party delaying in performing work or doing acts required under the terms of this Agreement (but excluding delays due to financial inability) (collectively, "**Force Majeure**"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

(j) **Independent Parties.** Nothing herein shall be construed as creating a partnership or joint enterprise between the City, AEDC, and Developer. Furthermore, the Parties acknowledge and agree that the doctrine of respondeat superior shall not apply between the City, AEDC, and Developer, nor between the City, AEDC and any officer, director, member, agent, employee, contractor, subcontractor, licensee, or invitee of Developer.

(k) **No Rights Conferred on Others.** Nothing in this Agreement shall confer any right upon any Person other than the City, AEDC, and Developer and no other Person is considered a third-party beneficiary to this Agreement.

(l) **Approval Not Guaranteed.** Nothing contained in this Agreement shall be construed as obligating the City to approve any application required for development of the land within the Project that is not in conformity with the City's adopted development regulations.

(m) **Entire Agreement.** This Agreement, the Convention Center Lease, the Parking Facility Lease and the Hotel Ground Lease, and the documents referenced therein, contain the entire agreement between the Parties with respect to the transaction contemplated herein.

(n) **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor will there be any estoppel to enforce any provision of this

Agreement, except by written instrument of the Party charged with such waiver or estoppel.

(o) **City Representative.** From and after the date hereof, the City shall designate a representative (a "**City Representative**") who shall be authorized to give all directions, consents, approvals, waivers or other acknowledgements under this Agreement on the part of the City and to receive any and all submissions from Developer under this Agreement. Developer shall be entitled to rely on, and Developer and City agree to be bound by, any direction, consent, approval, waiver or other acknowledgement given by the City Representative, unless prior to the time such direction, consent, approval, waiver or other acknowledgement is given, the City Manager (or his designee) gives written notice to Developer that the City Representative has been changed. For the purpose of this Agreement, Developer shall not be required to rely on and may refuse to accept directions, consents, approvals, waivers or other acknowledgements from any other Person, even if such Person has apparent or actual authority for the City. The City Manager, and only the City Manager, shall be entitled to change the City Representative at any time upon five (5) days written notice to Developer, provided that the City Manager shall appoint a replacement City Representative upon such removal of the prior City Representative or promptly in the event of death or disability of such City Representative. The initial City Representative shall be the City Manager.

(p) **Representatives Not Individually Liable.** No member, official, representative, or employee of the City or AEDC shall be personally liable to Developer or any successor in interest of either of them in the event of any default or breach by the City or AEDC for any amount which may become due to Developer or successor of either of them or on any obligations under the terms of the Agreement. No partner, member, representative, or employee of Developer or any of their respective members shall be personally liable to the City or AEDC in the event any default or breach by Developer for any amount which may become due to the City or AEDC or on any obligations under the terms of this Agreement.

(q) **Confidentiality.** The City acknowledges and agrees that any information provided by Developer to the City concerning the cost of developing the Project, the terms of any financing of the Project, and the cash flow, profit and loss of the Project are considered by Developer to be "confidential financial information" and may contain "trade secrets" and "confidential information".

The City shall notify Developer within five (5) Business Days after receiving any Public Information Act request that seeks disclosure of information provided by or concerning Developer, and the parties shall reasonably cooperate to determine whether or to what extent the requested information may be released without objection and without seeking a written opinion of the Texas Attorney General. If Developer takes the positions that responsive information provided by or concerning Developer is information not subject to release to the public pursuant to section 552.110 of Texas Government Code, or other applicable law, then the

City shall seek a written opinion from the Texas Attorney General; however, Developer must submit written comments to the Attorney General to establish reasons why the information should be withheld. The burden of establishing the applicability of exceptions to disclosure for such information resides with Developer. Should the Texas Attorney General issue an opinion that the requested information, or any part thereof, should be released, the City may release said information without penalty or liability. This Section shall survive termination of this Agreement for any reason whatsoever.

(r) **City Representations and Warranties.** The City represents and warrants to Developer that the City (i) is a constitutionally chartered city validly existing under the laws of the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(s) **Estoppel Certificates.** The City, AEDC, and Developer, at any time and from time to time, upon not less than thirty (30) days prior written notice from a Party hereto, or to a Person designated by such Party, such as a Mortgagee, shall execute, acknowledge, and deliver to the Party requesting such statement, a statement in reasonably acceptable form to the requested Party certifying, among other matters, (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) stating whether or not, to the best knowledge of the signer of such certificate, the City, AEDC, or Developer is in breach and/or default in performance of any covenant, agreement, or condition contained in this Agreement and, if so, specifying each such breach and/or default of which the signer may have knowledge, and (iii) any other factual matters reasonably requested in such estoppel certificate concerning this Agreement, it being intended that any such statement delivered hereunder may be relied upon by the Party requesting such statement and/or any Person not a Party to this Agreement (if such other Person is identified at the time such certificate was requested). The City Representative is hereby authorized to execute, acknowledge, and deliver such certificates on behalf of the City and AEDC.

(t) **Waiver of Immunity.** The City and AEDC each hereby waives its governmental immunity from suit and immunity from liability as to any legal action brought by Developer resulting from an uncured default by the City and/or AEDC. To effectuate such waiver, the Parties hereby agree, for purposes of this Agreement only, that this Agreement is a contract subject to Subchapter I, Chapter 271, Texas Local Government Code, as amended.

**SIGNATURES ON FOLLOWING PAGES**

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**CITY OF ARLINGTON, TEXAS**

By: \_\_\_\_\_  
TREY YELVERTON, CITY MANAGER

ATTEST:

\_\_\_\_\_  
ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
MOLLY SHORTALL, City Attorney

**ARLINGTON ECONOMIC DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_  
MICHAEL JACOBSON, President

ATTEST:

\_\_\_\_\_  
ALEX BUSKEN, Asst. Board Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
MOLLY SHORTALL, City Attorney

**DEVELOPER:**

**GO FOR THREE, LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

By: \_\_\_\_\_



## Schedule of Exhibits

Exhibit "A":	Ancillary Facilities Site
Exhibit "B":	Convention Center Lease
Exhibit "C":	Convention Center Site
Exhibit "D":	Hotel Ground Lease
Exhibit "E":	Hotel Site
Exhibit "F":	Parking Facility Site
Exhibit "G":	Parking Facility Lease
Exhibit "H":	Non-Compete Zone
Exhibit "I":	Grant Example
Exhibit "J":	Optional Development Site
Exhibit "K":	City Completion Guaranty

Exhibit "A"  
Ancillary Facilities Site

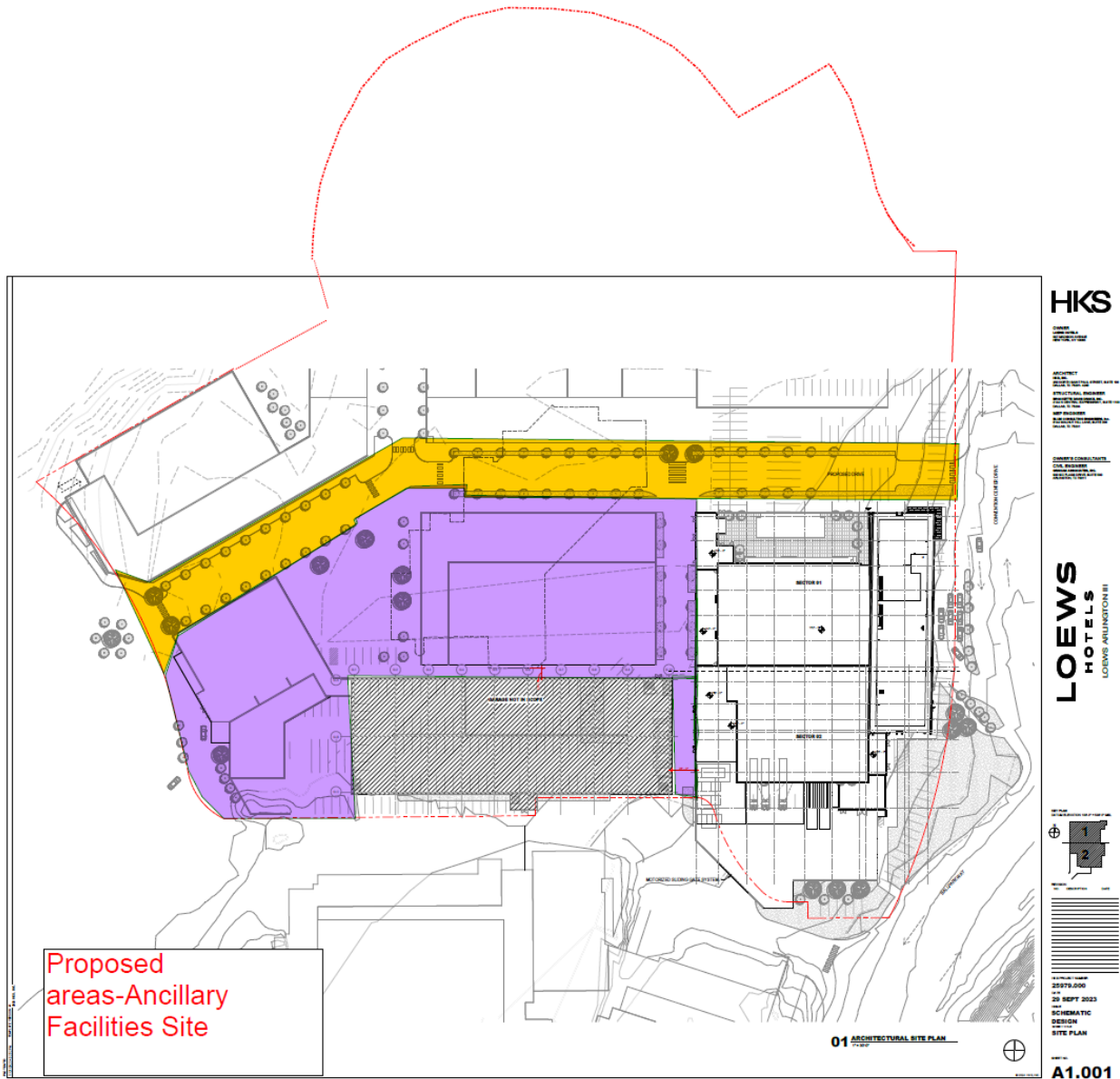


Exhibit "B"  
Convention Center Lease

## LEASE AGREEMENT FOR CONVENTION CENTER

THIS LEASE AGREEMENT FOR CONVENTION CENTER (“Lease”) is made and entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between THE CITY OF ARLINGTON, a home-rule city and municipal corporation of Tarrant County, Texas (“Lessor”) and \_\_\_\_\_, a Delaware limited liability company (“Lessee”).

### RECITALS

**WHEREAS**, Lessor owns the Leased Premises (as that term is defined herein). The City of Arlington, Lessor, the Arlington Economic Development Corporation, and an Affiliate of Lessee have entered into the Economic Development Performance Agreement (as that term is defined herein) concerning, among other matters, the development, construction, leasing, and operation of the Convention Center (as that term is defined herein); and

**WHEREAS**, Pursuant to Section 7 of the Economic Development Performance Agreement, Lessee is obligated to lease the Leased Premises from Lessor as a condition precedent to the payment of the Economic Development Grants and the Parking Facility Contributions, as those terms are defined in the Economic Development Performance Agreement; and

**WHEREAS**, Lessor, by Resolution \_\_\_\_ adopted on \_\_\_\_\_, 2023, among other things, authorized the City Manager to execute this Lease;

**NOW, THEREFORE**, in consideration of the payment of Ten and 00/100 Dollars (\$10.00) and the mutual covenants, conditions and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

#### **1. Definitions.**

Unless the context or use clearly indicates another or different meaning or intent, for purposes of this Lease, and in addition to terms defined elsewhere in this Lease, the following definitions shall generally apply to the following capitalized words or terms:

“**Accounting Standard**” shall have the meaning assigned to such term in Section 3.2.

“**Additional Improvements**” means additional improvements constructed on the Leased Premises after the Convention Center is completed.

“**Affiliate**” means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, controlled by, or is under common control with the specified Person. For the purpose of this definition, “**control**” means the ability to directly or indirectly, by voting securities, partnership or member interests, contract or otherwise, direct or cause the direction of the policies or management of the specified Person. Two persons may be Affiliates even if such Persons have different minority equity owners that each have the right to approve certain actions of such Person, such as the sale, financing or leasing of an asset of such Person.

**“Alternative Hotel Developer”** means a Person (and/or a direct or indirect Affiliate of such Person) that, as of the effective date of any Disposition, (i) owns or operates, or has engaged a manager or operator that owns or operates, on a full-service basis, either directly or through subsidiaries or Affiliates hotel properties comparable to the Hotel, and (ii) has a net worth equal to at least Fifty Million Dollars (\$50,000,000).

**“Applicable Law”** means, subject to the provisions of Section 15.21 hereof, any law, ordinance, regulation, properly adopted requirement or order of any Governmental Authority court, or other Governmental Authority, applicable from time to time to the acquisition, leasing, design, construction, equipping, financing, ownership, or operation of the Leased Premises or the performance of any obligations under any agreement entered into in connection with this Lease.

**“Assumption Agreement”** shall have the meaning set forth in Section 10.2.

**“Arbitration”** shall have the meaning set forth in Section 12.6.

**“Arbitration Notice”** shall have the meaning set forth in Section 12.6.

**“Arbitration Procedures”** shall have the meaning set forth in Section 12.6.

**“Arbitrator”** shall have the meaning set forth in Section B.1 of the Arbitration Procedures.

**“Business Day”** means any day except Saturday, Sunday, or any other day on which banking institutions are legally authorized to close in the City of New York or Tarrant County, Texas.

**“CC&Rs”** means any declaration, reciprocal easement agreements, covenant agreements and parking easements affecting the Leased Premises prior to the date hereof or entered into after the date hereof in accordance with Section 2.4, as the same may be amended from time to time.

**“CC&R Lot Owner”** shall have the meaning set forth in Section 2.5(a).

**“CC&R Owner(s)”** shall have the meaning set forth in Section 2.5(a).

**“Commencement Date”** means the date of this Lease.

**“Comparable Markets”** mean those convention markets determined to be comparable to the Arlington, Texas conventions market by Lessor’s destination marketing organization (presently the Arlington Convention and Visitor’s Bureau, Inc.) in consultation with Lessor and Lessee.

**“Consent”** means a written instrument executed by Lessor or the Lessor Representative as applicable, delivered to Lessee, and shall not include any implied or imputed consent and no consent by Lessor or the Lessor Representative pursuant to this Lease shall be deemed to constitute or include any consent required under any Applicable Law.

**“Convention Center”** means any of the buildings or other improvements constructed on the Land by Lessee that make up the Convention Center, as that term is defined in the

Economic Development Performance Agreement.

**“Default Rate”** means the lesser of (i) fifteen percent (15%) and (ii) the maximum lawful rate of interest under Texas law.

**“Disposition”** means a sale, lease, assignment or other transaction by which all or a part of Lessee’s interest in the Leased Premises (or any portion thereof) is passed on to another Person; but such term shall not include Operation Agreements (as defined in the Economic Development Performance Agreement), Subleases, Leasehold Mortgages or transfers from a foreclosure or deed in lieu of foreclosure of a Leasehold Mortgage.

**“Down Time”** shall have the meaning set forth in Section 6.5.

**“Economic Development Performance Agreement”** means that certain Economic Development Performance Agreement, dated \_\_\_\_\_, 2023, by and among Lessor, \_\_\_\_\_ and Arlington Economic Development Corporation, as amended, modified, supplemented or restated from time to time.

**“Encumbrances”** mean those matters of record which do not render title of the land unmarketable or uninsurable at ordinary rates by a title insurance company licensed in the State of Texas, as selected by Lessee, and which do not materially interfere with or materially increase the cost of the development of and/or operation of the Leased Premises as contemplated by the this Lease and the Economic Development Performance Agreement.

**“Event of Default by Lessee”** means any of those events, occurrences and circumstances so designated in Section 12.1 hereof.

**“Event of Default by Lessor”** means any of those events, occurrences and circumstances so designated in Section 12.2 hereof.

**“GAAP”** means those conventions, rules, procedures and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States.

**“Governmental Authority”** means any Federal, State or local governmental entity (including a local government corporation, whether formed under Section 431 of the Subchapter D of the Texas Transportation Code or otherwise), authority (including any taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof).

**“Governmental Authorization”** means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right-of-ways, and similar items from any Governmental Authority, including a liquor license from the Texas Alcohol and Beverage Commission.

“**Hotel**” shall have the meaning set forth in the Economic Development Performance Agreement.

“**Impositions**” means, collectively, all real estate taxes and assessments imposed by the State or any subdivision thereof, including Lessor or any other tax imposed upon or levied against real estate or upon owners of real estate as such rather than persons generally, including taxes imposed on leasehold improvements which are assessed against Lessee under this Lease, payable with respect to or allocable to the Leased Premises and any buildings or improvements situated thereon, including the Convention Center and any Additional Improvements.

“**Land**” shall mean that certain parcel of land located in the City of Arlington, Texas owned by Lessor and described by metes and bounds in **Exhibit “A”** attached hereto and made part hereof.

“**Land Records**” means the records of the County Clerk of Tarrant County, Texas.

“**Lease**” means this Lease Agreement for Convention Center, together with any amendments, modifications, supplements, restatements or replacements thereof.

“**Leased Premises**” shall mean the entire premises leased pursuant to the terms hereof, including (i) the Convention Center, (ii) the Land, and (iii) Additional Improvements, if any.

“**Leasehold Mortgage**” means, with respect to the Leased Premises, a mortgage or any other instrument securing the payment of a debt that encumbers Lessee’s interest, if any, in this Lease and/or the Economic Development Performance Agreement. “Leasehold Mortgage” shall not include a mortgage or any other instrument securing payment of a debt of a Subtenant and/or any or all of its Affiliates that encumbers the interests of such Subtenant in any Sublease of a part of the Leased Premises.

“**Leasehold Mortgagee**” means the Person to which all or any part of the interest of the Lessee in the Economic Development Performance Agreement and/or this Lease is transferred as security under a Leasehold Mortgage.

“**Lessee**” means \_\_\_\_\_, a Delaware limited liability company, as the lessee under this Lease, and the successors in title and assigns thereof permitted under the terms of this Lease.

“**Lessee Power of Attorney**” means a power of attorney granted by Lessor to Lessee pursuant to the terms of Section 2.5.

“**Lessee Proxy**” means a proxy, agency and power of attorney granted by Lessor to Lessee pursuant to Section 2.6.

“**Lessor**” means the City of Arlington, home-rule city and municipal corporation of Tarrant County, Texas, as the Lessor under this Lease, and the successors, successors-in-title and assigns thereof.

“**Lessor Representative**” means the City Manager for the City of Arlington, or his or her designee.

**“Maintenance and Repair Work”** shall have the meaning set forth in Section 7.1.

**“Notice”** means a written advice or notification required or permitted by this Lease, as more particularly provided in Section 15.4.

**“Parking Facility”** shall have the meaning set forth in the Economic Development Performance Agreement.

**“Parties”** means Lessor and Lessee.

**“Party”** means Lessor or Lessee.

**“Permitted Uses”** shall have the meaning set forth in Section 6.2.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, unincorporated organization or other entity or any government or any agency or political subdivision thereof.

**“Personalty”** shall have the meaning set forth in Section 5.1.

**“Prohibited Uses”** shall have the meaning set forth in Section 6.3.

**“Purchase Price”** shall have the meaning set forth in Section 2.3.

**“Rent”** shall have the meaning set forth in Section 3.

**“Required Capital Expenditures”** shall have the meaning set forth in Section 3.2.

**“Sponsorship and Naming Rights Revenue”** means proceeds received by Lessee before deductions are taken for expenses from the sale or license of the right to have a name or other sponsor recognition temporarily designated for all or any portion of the Leased Premises.

**“State”** means the State of Texas.

**“Sublease”** means a lease, license or other occupancy agreement between Lessee and a Subtenant for a portion of the Leased Premises.

**“Subleases”** means two or more Subleases.

**“Subtenant”** means any Person that is or may hereafter be the sublessee or subtenant under any Sublease and the occupant of a portion of the Leased Premises.

**“Term”** means the term of this Lease described in Section 2.2.

**“Total Operating Revenue”** shall have the meaning set forth in the Uniform System and as determined in accordance with GAAP.

**2. Lease of Leased Premises; Term of Lease; Option to Purchase; Grant of Easements; Lessee Power of Attorney; Lessee Proxy; Quiet Enjoyment; and Recordation.**



## 2.1 Lease.

Lessor, in consideration of the rents, covenants, agreements and conditions herein set forth, which Lessee hereby agrees shall be paid, kept and performed by Lessee, does hereby lease, let, demise and rent to Lessee, and Lessee does hereby rent and lease from Lessor, all right, title and interest of Lessor in and to the Leased Premises. The interest in the Leased Premises created hereby shall be deemed to be an estate for years under the Applicable Laws of the State.

**TO HAVE AND TO HOLD** the Leased Premises and all rights, privileges and appurtenances thereunto appertaining unto Lessee, for and during the Term, unless sooner terminated in accordance with any of the provisions of this Lease, subject to the Encumbrances and Impositions neither delinquent nor in default.

## 2.2 Term.

The term of this Lease (the **“Term”**) shall commence on the Commencement Date and expires at midnight on the date immediately preceding the ninety-ninth (99<sup>th</sup>) anniversary of the Initial Occupancy (as that term is defined in the Economic Development Performance Agreement).

## 2.3 Option to Purchase.

During the Term, Lessee shall have the right, any time after the thirtieth (30<sup>th</sup>) anniversary of the Initial Occupancy (and whether or not an Event of Default exists) to purchase Lessor’s interest in the Leased Premises (as same is encumbered by this Lease) by providing Lessor with a Notice of the exercise of such right to purchase for an amount (the **“Purchase Price”**) equal to the difference between (i) One Hundred Million and 00/100 Dollars (\$100,000,000.00), and (ii) the sum of (X) all Rent paid by Lessee under this Lease through the date of calculation of the Purchase Price, (Y) all operating costs paid by Lessee and its Affiliates in respect of operating the Leased Premises, the Hotel and the Parking Facility and verified to Lessor’s reasonable satisfaction through the date of calculation of the Purchase Price, and (Z) all Project Costs (as defined in the Economic Development Performance Agreement and for the avoidance of doubt including the cost to acquire, design, develop, and construct the Hotel) in respect of the Leased Premises, the Hotel Project and the Parking Facility paid by Lessee and its Affiliates through the date of calculation of the Purchase Price; provided, however, that in no event shall the Purchase Price be less than Zero and 00/100 Dollars (\$0.00). Closing on such sale shall occur in the City of Arlington, Texas within sixty (60) days of the date of such Notice (but no earlier than thirty (30) days of the date of such Notice) on a Business Day, time and place selected by Lessee. Lessee shall prepare the closing documents, at its expense, including the deed and the assignment of this Lease, which all shall be in a commercially reasonable form. The City Manager is hereby authorized by Lessor to execute and deliver such closing documents, in recordable form. Lessee shall pay the cost of recording the deed. Upon the expiration or earlier termination of this Lease, Lessee shall automatically be deemed to have exercised its option to purchase Lessor’s interest in the Leased Premises unless Lessee waives such option to purchase by written Notice delivered to Lessor no later than thirty (30) Business Days prior to expiration or the effective date of an earlier termination of the Term. Before the closing, Lessor shall remove (or cause to be removed) any liens or encumbrances affecting the Leased Premises that result from any intentional and voluntary act committed by Lessor in violation of Section 2.5.

## 2.4 Easements.

Throughout the Term, within twenty (20) Business Days after receipt of written request from Lessee, time being of the essence, Lessor, upon its approval, which approval shall not be unreasonably withheld, conditioned or delayed, shall execute and join in any CC&Rs and any other grants, licenses, franchises or easements within the Leased Premises for improvements and for electric, telephone, gas, water, sewer, and other public and private utilities and similar facilities necessary to the construction, alteration, operation, or maintenance or support of all or any part of the Leased Premises, as reasonably determined by Lessee, any other grants, licenses, franchises or easements, such as reciprocal easement and operating agreements or rights of way, that Lessee reasonably deems necessary for the leasing, construction and/or operation or support of the Leased Premises, any amendments and/or terminations of any such grants, licenses, franchises or easements that Lessee reasonably deems necessary for the leasing, construction and/or operation or support of the Leased Premises.

## 2.5 Lessee Power of Attorney under the CC&Rs.

(a) Lessor, its successors and assigns hereby grant Lessee a power of attorney to exercise all of the rights and powers under any CC&Rs of Lessor as owner of the Leased Premises (the “**CC&R Lot Owner**”). The Lessee Power of Attorney granted to Lessee pursuant to this Section 2.5 (a) shall be conclusively deemed to be on the terms set forth in Section 2.5(b) below. While Lessee holds the Lessee Power of Attorney, any owners under any CC&Rs (“**CC&R Owner(s)**”) will deal exclusively with Lessee on all such matters pertaining to Lessor as CC&R Lot Owner under any CC&Rs.

(b) The following apply to Lessee's Power of Attorney:

(i) Effect. The grant of any Lessee Power of Attorney shall, except to the extent of any limitations on the extent or exercise of the Lessee Power of Attorney expressly set forth in this Lease or other document by which such Lessee Power of Attorney is granted, conclusively constitute the designation of Lessee as the exclusive agent and attorney in fact of Lessor as CC&R Lot Owner, and the grant to Lessee of an exclusive power of attorney.

(ii) Irrevocable and perpetual. The Lessee Power of Attorney (A) shall conclusively be deemed to be coupled with an interest, and (B) except as otherwise expressly provided in (iii) below, shall be (x) irrevocable and (y) perpetual.

(iii) Termination. Any Lessee Power of Attorney shall conclusively be deemed to be effective for the entire Term of this Lease, except that any Lessee Power of Attorney shall automatically terminate upon the expiration of such Term or any earlier termination of this Lease, including, but not limited to, termination as a result of Lessor's transfer of its rights, title and interest in the Leased Premises to Lessee.

(c) No Effect on Power to Convey a Unit or Amend Governing Documents. Except as may otherwise expressly provided in the terms of any CC&Rs or an amendment thereto, a Lessee Power of Attorney:

(i) shall not include the power to sell, lease, convey, mortgage or otherwise encumber the fee simple reversion in and to the Leased Premises under this Lease, or the power to join in or consent to, on Lessor's behalf as CC&R Lot Owner under any CC&Rs, any amendment to any CC&Rs; and

(ii) shall not affect Lessor's right to convey the title to or any interest in the Leased Premises, or grant a mortgage thereon, but no such conveyance or mortgage shall alter the legal effect of any Lessee Power of Attorney granted pursuant to this Section 2.5 or any other Lessee Power of Attorney granted to Lessee by Lessor, and except as Lessee may otherwise agree, expressly and in writing, any Lessee Power of Attorney shall remain in full force and effect on its own terms notwithstanding such conveyance, and shall bind Lessor's heirs, personal representatives, successors, and assigns. Notwithstanding the immediately preceding sentence, such heirs, personal representatives, successors and assigns shall, promptly upon notice from Lessee requesting such action, provide such further written assurances of the continued effect of the Lessee Power of Attorney as Lessee may reasonably request in such notice.

(d) Persons Exercising. Lessee, as holder of a Lessee Power of Attorney, may permit its rights, powers and duties thereunder to be exercised and performed on its behalf by its officers, directors, employees and agents. A Lessee Power of Attorney may be transferred, pledged or collaterally assigned by Lessee as a part of a loan transaction.

## **2.6 Lessee Proxy under the CC&Rs.**

(a) Lessor, its successors and assigns hereby grant Lessee a proxy to (i) cast all of Lessor's votes as CC&R Lot Owner at any meetings of CC&R Owners, and (ii) exercise, as Lessor's agent and attorney in fact, Lessor's right to give or withhold Lessor's approval or consent in connection with (1) any decision to be taken by the Owners or without the holding of a meeting, or (2) any other consent or action to be given, withheld or taken by Lessor or in its capacity as CC&R Lot Owner. The Lessee Proxy (i) shall collectively constitute a proxy for purposes of any CC&Rs, (ii) shall conclusively be deemed to be coupled with an interest, and (iii) except as otherwise expressly provided in this Lease or in a separate document signed by Lessor and Lessee, shall be (1) irrevocable and (2) perpetual until the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary, the Lessee Proxy shall conclusively be deemed to be effective for the entire Term of this Lease, except that the Lessee Proxy shall automatically terminate upon the expiration of such Term or any earlier termination of this Lease, including, but not limited to, termination as a result of Lessor's transfer of its rights, title and interest in the Leased Premises to Lessee. While Lessee holds the Lessee Proxy, the CC&R Owners shall deal exclusively with Lessee on matters concerning the casting of votes or the giving of consent by the CC&R Owners under the terms of any CC&Rs.

(b) Lessee may permit the Lessee Proxy to be exercised on its behalf by its officers, directors, employees or agents. A Lessee Proxy may be transferred, pledged or collaterally assigned by Lessee as a part of a loan transaction.

(c) Nothing in this Section 2.6 shall affect Lessor's right to convey the title to or any interest in the Leased Premises, but no such conveyance shall affect the legal effect of the Lessee

Proxy granted by Lessor, and except as Lessee may otherwise have agreed, expressly and in writing, the Lessee Proxy shall remain in full force and effect notwithstanding such conveyance, and shall bind the heirs, personal representatives, successors and assigns of Lessor. Notwithstanding the immediately preceding sentence, such heirs, personal representatives, successors and assigns shall, promptly upon notice from Lessee requesting such action, provide such further written assurances of the continued effect of the Lessee Proxy as Lessee may reasonably request in such notice.

### **2.7 Quiet Enjoyment.**

Lessor covenants and agrees that Lessee, while paying the Rent and other sums payable under this Lease and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the full Term without hindrance or molestation from Lessor or any other Person claiming by, through or under Lessor, subject to the terms, conditions and provisions of this Lease, and to the Encumbrances. Lessor shall not, without the prior approval of Lessee, which approval Lessee may withhold in its sole and subjective discretion, encumber the Leased Premises with any easements, mortgages, liens or other encumbrances.

### **2.8 Recordation.**

Lessee shall have the right to record this Lease, and/or a memorandum of same prepared by Lessee (which Lessor covenants to execute and deliver in recordable form within ten (10) Business Days of Lessee's request therefore) among the Land Records.

### **2.9 Licenses and Permits.**

Whenever requested by Lessee, Lessor, at no cost to Lessor, shall execute and deliver to Lessee, in its capacity as fee owner of the Leased Premises, within ten (10) Business Days of Lessee's request therefore, subdivision plats, permit applications, building permit applications, liquor license applications, zoning and use related applications and any other type of application, for or concerning the Leased Premises and/or the development, construction, reconstruction and/or operation of the Leased Premises; provided however, that nothing in this Section 2.9 shall obligate Lessor to execute any agreement or do any other act that requires, or that could require, Lessor to pay any sum not reimbursed by Lessee or constitute a waiver or delegation of any of the governmental functions of Lessor or constitute approval by Lessor in its capacity as a Governmental Authority to such applications.

## **3. Rent.**

### **3.1 Base Rent.**

Commencing on the Commencement Date and continuing thereafter throughout the remainder of the Term, Lessee shall pay to Lessor annually the sum of Ten and 00/100 Dollars (\$10.00) (the "**Rent**") payable on or before the ninetieth (90th) day following each anniversary of the Commencement Date.

### **3.2**

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### **3.3 Sponsorship; Naming Rent.**

Commencing on the first anniversary of the Commencement Date and continuing thereafter until such time as Lessor has provided all Parking Facility Contributions (as that term is defined in the Economic Development Performance Agreement), Lessee shall pay to the Lessor annually an amount equal to fifty (50%) of all Sponsorship and Naming Rights Revenue received by Lessee during the previous twelve (12) month period on or before the ninetieth (90<sup>th</sup>) calendar day of each anniversary of the Commencement Date. Commencing in the lease year following the year Lessor has provided the last Parking Facility Contribution under the terms of the Economic Development Performance Agreement and throughout the remainder of the Term, Lessee shall pay to Lessor annually an amount equal to twenty-five percent (25%) of all Sponsorship and Naming Rights Revenue received by Lessee during the previous twelve (12) month period on or before the ninetieth (90<sup>th</sup>) calendar day of each anniversary of the Commencement Date. For purposes of determining Sponsorship and Naming Rights Revenue and the preparation of all financial statements required to be delivered to Lessor under this Section 3.2, Sponsorship and Naming Rights Revenue shall be determined by Lessee on an accrual basis in accordance with GAAP (“**Accounting Standard**”). Accounting Standard shall be consistently applied during the Term and shall be used for the preparation and maintenance of all books and records required to be maintained by or on behalf of Lessee under the terms of this Lease. Commencing after the end of the first (1<sup>st</sup>) twelve (12) month period following the Lease Commencement Date, Lessee at its sole cost and expense shall deliver, or caused to be delivered, to the Lessor no later than sixty (60) calendar days after the end of the twelve (12) month period, a financial statement of Sponsorship and Naming Rights Revenue prepared and certified by Lessee. Throughout the Term, Lessee shall keep or cause to be kept, full, complete, and proper books, records, and accounting of Sponsorship and Naming Rights Revenue on an accrual basis in accordance with the Accounting Standard. Such books and records shall be available to Lessor and its agents and employees, who shall have the right at Lessor’s sole cost and expense and at all reasonable times during normal business hours and upon not less than five (5) Business Days prior written notice given to Lessee, to examine and inspect all books of account and other records necessary to investigate and verify accuracy of the Sponsorship and Naming Rights Revenue.

## **4. Impositions; Lessor Obligations.**

### **4.1 Impositions.**

From and after the Commencement Date, Lessee shall pay all Impositions that accrue and are payable for any part of the period that commences on the Commencement Date and ends on the expiration or earlier termination of this Lease before same are past due. Lessee shall provide Lessor with reasonable evidence of each such payment. Lessor shall promptly provide Lessee with a copy of all bills for Impositions that it receives. Lessee may collect from a Subtenant any of the Impositions as part of the rent under a Sublease or may have any Subtenant pay directly any of the Impositions; provided, however, Lessee remains primarily liable for the timely payment of the Impositions. Notwithstanding anything to the contrary contained herein, but subject to the terms of Section 4.2, in the event Lessee fails to pay any Imposition payable by Lessee pursuant to the provisions of this Lease before the date the same becomes delinquent,

Lessor may, after giving Lessee ten (10) Business Days' Notice of its intention to do so, pay or cause to be paid any such Imposition which is delinquent and Lessee shall, within thirty (30) Business Days following Lessor's demand and Notice, pay and reimburse Lessor therefor with interest at the Default Rate from the date of payment by Lessor until repayment in full by Lessee.

#### 4.2 Contests.

Lessee may, at its expense, contest any of the Imposition and/or attempt to obtain a lowering of the assessed valuation of the Leased Premises. Lessor shall not be required to join any such contest unless required by application Applicable Law in order to make such contest effective, in which event any such contest may be taken by Lessee in the name of, but without expense to Lessor, **LESSEE HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD LESSOR HARMLESS FROM ALL COSTS, FEES, EXPENSES, CLAIMS, LOSSES OR DAMAGES BY REASON OF, IN CONNECTION WITH, OR IN ACCOUNT OF, GROWING OUT OF, RESULTING FROM, ANY SUCH CONTEST. THIS REQUIREMENT TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SHALL EXPRESSLY SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE.** To the extent such cooperation is required by Applicable Law or any applicable Governmental Authority for such contest, Lessor shall cooperate in any such action or proceeding as reasonably requested by Lessee, at Lessee's sole cost and expense, whether or not Lessor is joined pursuant thereto and Lessor agrees to take no action that would be adverse to Lessee in any such contest where Lessee seeks to reduce its obligation to pay Impositions. Upon request by Lessee, Lessor shall execute in its capacity as fee owner and promptly deliver to Lessee any documents or pleadings associated with such contest that Lessee may reasonably request.

#### 4.3 Ad Valorem Taxes, Exemptions.

Lessor and Lessee intend that the Leased Premises presently are and shall continue to be (for so long as the Leased Premises is owned by Lessor and used as a convention center) exempt from ad valorem taxes as exempt properties under applicable provisions of the Texas Constitution, the Texas Tax Code, and other Applicable Laws. Lessee is authorized to assert, insist upon, continue, and restate this joint intent in any agency, forum, or court having jurisdiction and at which the question may arise or be presented, and Lessor, at the request of Lessee and at Lessee's sole expense, shall jointly take and pursue such lawful actions with Lessee, including if necessary, judicial actions, as may be available and appropriate, to protect and defend the Leased Premises and the leasehold interest of Lessee therein against the levy, assessment, or collection of ad valorem taxes by any Governmental Authority asserting the power to levy, assess, and collect such taxes under currently Applicable Law. In the event of any proposed or actual change in the Texas Constitution, the Texas Tax Code, and other Applicable Law, which threatens to alter the ad valorem tax status of the Leased Premises, Lessor shall reasonably cooperate with Lessee (which cooperation may include joining any legal proceeding deemed appropriate by Lessee) to maintain all possible ad valorem tax exemptions available to the Leased Premises. Notwithstanding anything to the contrary, if Lessor undertakes any action requested by Lessee pursuant to this Section, Lessee shall pay all third-party costs, including outside attorney fees and expenses, reasonably incurred by Lessor, or within thirty (30) Business Days after written demand therefor, reimburse such costs to Lessor.

#### **4.4 No Lessor Obligations.**

For so long as this Lease remains in effect and except for costs that Lessor has specifically agreed to pay pursuant to the express terms of this Lease and the Economic Development Performance Agreement, Lessor shall not be required to make any expenditure, incur any obligation or incur any liability of any kind whatsoever in connection with this Lease and the Leased Premises which is not reimbursed by or indemnified against by Lessee.

### **5. Improvements.**

#### **5.1 Improvements.**

Lessee shall cause the Convention Center to be constructed and maintained in accordance with the terms of the Economic Development Performance Agreement and the provisions of this Lease. Title to the Convention Center, as well as any other Additional Improvements constructed on the Land, and all equipment, fixtures, machinery, furniture, furnishings and other personal property therein erected, constructed, installed or placed in or affixed to the Leased Premises by or on behalf of Lessee (collectively, "**Personalty**"), shall be and remain with Lessor and leased to Lessee pursuant to this Lease together with the Leased Premises for and during the Term, as applicable. Lessee shall have the right, from time to time to make Additional Improvements, as well as renovate, alter, and modify the Convention Center provided such do not result in a material reduction of the value of the Convention Center as same existed prior to such construction, alteration, modification, expansion, reduction or demolition.

#### **5.2 Sales Tax During Construction.**

(a) During construction of the Convention Center, the Lessor and Lessee shall cooperate in seeking a determination from the Comptroller of Public Accounts of the State of Texas confirming that items of tangible personal property incorporated or consumed in the construction of the Convention Center acquired by Lessee and transferred to Lessor prior to any use in the construction of the Convention Center shall be exempt from sales and use tax pursuant to Texas Tax Code, Chapter 151.

(b) Lessee hereby transfers to Lessor all tangible personal property incorporated into the Convention Center (including fixtures) prior to incorporation and prior to any use by Lessee, its contractors, or subcontractors. Lessee hereby transfers to Lessor all items of tangible personal property used and/or consumed in the construction of the Convention Center prior to any use by Lessee, its contractors, or subcontractors. Lessor will take title to all of the tangible personal property described in this subsection prior to incorporation into the Convention Center or use by Lessee, its contractors, or subcontractors. By taking possession of the personal property, Lessee agrees there are no representations or warranties of any kind, express or implied, by Lessor regarding the personal property, AND LESSOR HEREBY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, notwithstanding any provision of this Lease or law to the contrary, and Lessee shall indemnify and hold Lessor harmless for any and all claims with respect to the quality, quantity or condition of the personal property and agrees not to sue Lessor with respect to the quality, quantity or condition of the personal

property. Nothing in this paragraph shall be construed as a waiver of claims by Lessee against third parties as to the personal property.

(c) Lessor and Lessee shall take appropriate or necessary steps to establish and maintain the foregoing exemption described in paragraph (a) above, including without limitation (i) structuring all construction contracts and subcontracts as "separated contracts" within the meaning of the Texas Tax Code and Comptroller Rule 3.291, containing separately stated contract prices for the materials and labor, (ii) structuring all construction contracts to ensure that title to all tangible personal property incorporated or consumed in the construction of the Convention Center passes to Lessee when it is delivered to the Land prior to incorporation or use by Lessee, contractor, or other party, and (iii) Lessee issuing certificates to its contractors and requiring that all contractors issue resale certificates to their subcontractors, in each case claiming appropriate exemption from sales and use tax. To be clear, the "passing of title" described in paragraph (b) and clause (ii) above excludes any risk of ownership, all of which shall remain with Lessee, including, without limitation, any risk of loss, which Lessee shall insure against for full replacement value in accordance with the provisions of this Lease.

### **5.3 Tax Benefits.**

Lessor acknowledges that Lessee may claim any income tax benefit and burden that may be available to it under the Internal Revenue Code of 1986, as amended, as a result of its participation in the Convention Center, including all depreciation for all improvements located on, or to be located on, the Leased Premises.

### **5.4 Termination or Expiration of Lease.**

Upon the termination or expiration of this Lease, whether by lapse of time or otherwise, Lessee shall vacate and surrender the Leased Premises together with any permanently affixed improvements then existing on the Leased Premises.

### **5.5 No Lessor's Lien.**

Lessor hereby waives any landlord's lien Lessor has or ever may have.

## **6. Acceptance and Use.**

### **6.1 Acceptance; Condition of the Leased Premises; Disclaimer of Representations and Warranties.**

**LESSEE ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE OR THE ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT:**

**(a) THAT NEITHER LESSOR NOR ANY AFFILIATE OF LESSOR MAKES OR HAS MADE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, CONCERNING (i) THE PHYSICAL CONDITION OF THE LEASED PREMISES (INCLUDING THE GEOLOGY OR THE CONDITION OF THE SOILS OR OF ANY AQUIFER**



UNDERLYING THE SAME AND ANY ARCHEOLOGICAL OR HISTORICAL ASPECT OF THE SAME), (ii) THE SUITABILITY OF THE LEASED PREMISES OR ITS FITNESS FOR A PARTICULAR PURPOSE AS TO ANY USES OR ACTIVITIES WHICH LESSEE MAY MAKE THEREOF OR CONDUCT THEREON AT ANY TIME DURING THE TERM, (iii) THE LAND USE REGULATIONS APPLICABLE TO THE LEASED PREMISES OR THE COMPLIANCE THEREOF WITH ANY APPLICABLE LAWS, (iv) THE FEASIBILITY OF THE CONVENTION CENTER OR ANY ADDITIONAL IMPROVEMENTS, (v) THE EXISTENCE OF ANY CONTAMINATED MATERIALS OR ENVIRONMENTAL CLAIMS, (vi) THE CONSTRUCTION OF ANY IMPROVEMENTS ON THE LEASED PREMISES OR (vii) ANY OTHER MATTER RELATING TO ANY IMPROVEMENTS AT ANY TIME CONSTRUCTED OR TO BE CONSTRUCTED THEREON;

(b) THAT NO REVIEW, APPROVAL, CONSENT OR OTHER ACTION BY LESSOR UNDER THIS LEASE SHALL BE DEEMED OR CONSTRUED TO BE SUCH A REPRESENTATION OR WARRANTY;

(c) THAT LESSEE HAS BEEN AFFORDED FULL OPPORTUNITY TO INSPECT, AND HAS HAD FULL OPPORTUNITY TO BECOME FAMILIAR WITH, THE CONDITION OF THE LEASED PREMISES, THE BOUNDARIES THEREOF, ALL LAND USE REGULATIONS APPLICABLE THERETO AND OTHER MATTERS RELATING TO THE DEVELOPMENT THEREOF; AND

(d) THAT LESSEE ACCEPTS, ON AN "AS IS, WHERE IS" BASIS, THE LEASED PREMISES IN THE CONDITION IN WHICH THEY EXIST ON THE COMMENCEMENT DATE.

(e) NEITHER LESSOR NOR ANY OF ITS AFFILIATES SHALL BE LIABLE AS A RESULT OF ANY FAILURE BY ANY PERSON (OTHER THAN LESSOR) TO PERFORM THEIR RESPECTIVE OBLIGATIONS HEREUNDER. IT IS UNDERSTOOD AND AGREED BY LESSEE (FOR ITSELF OR ANY PERSON CLAIMING BY, THROUGH OR UNDER IT) THAT IT HAS ITSELF BEEN, AND WILL CONTINUE TO BE, SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF, AND INVESTIGATION INTO, THE FINANCIAL CONDITION, CREDIT WORTHINESS, CONDITION, AFFAIRS, STATUS AND NATURE OF ANY PERSON UNDER THE LEASE AND THE LEASED PREMISES.

## 6.2 Permitted Uses.

Lessee covenants and agrees that it shall use and occupy the Leased Premises, including the Convention Center, solely for the following purposes, but not the Prohibited Uses (collectively, the "**Permitted Uses**"):

(a) During construction of the Convention Center, Lessee covenants and agrees that it shall use and occupy the Leased Premises solely for the purposes of designing, developing, constructing, furnishing and opening the Convention Center pursuant to the terms and conditions of this Lease and the Economic Development Performance Agreement;

(b) The use of the Leased Premises as a convention and meeting center, marketed as being located in the City of Arlington;

(c) Maintenance and Repair Work pursuant to Section 7.1 hereof; and

(d) Construction of Additional Improvements after the Convention Center is completed, subject to the limitations and requirements contained elsewhere in this Lease, and provided such Additional Improvements are made at the sole cost and expense of Lessee.

### **6.3 Prohibited Uses.**

Lessee shall not use, nor knowingly permit the use of, the Leased Premises for any other or additional purpose that is not a Permitted Use, without first obtaining the Consent of Lessor, which Consent, may be granted, withheld, conditioned or delayed in Lessor's sole and absolute discretion. Lessee acknowledges that the Permitted Uses are subject to all Applicable Laws at any time applicable to the Leased Premises and that nothing in this Section 6 or elsewhere in this Lease or in the Economic Development Performance Agreement shall constitute or be deemed to constitute a waiver by Lessor of the performance of its governmental functions or of any such Applicable Laws or of the duty of Lessee to comply with such Applicable Laws. Notwithstanding the Permitted Uses hereunder, Tenant agrees that it shall not (collectively, the "**Prohibited Uses**"):

(a) cause or permit obnoxious or offensive odors or fumes to emanate or be dispelled from the Leased Premises in violation in any material respect of Applicable Laws;

(b) cause or permit undue accumulations of garbage, trash, rubbish or any other refuse in, on or about the Leased Premises;

(c) create, cause, maintain or knowingly permit any public or private nuisance in, on or about the Leased Premises;

(d) use or knowingly allow the Leased Premises to be used for the sale or display of any pornographic material or material which is obscene under standards set forth in any Applicable Laws or operate, or allow any Person to operate, in, on or about the Leased Premises any store or other facility a principal or significant portion of the business of which is a "sexually oriented business" as such term is defined in the City of Arlington Code of Ordinances;

(e) use or knowingly allow the Leased Premises to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs (or their equivalent);

(f) use or knowingly permit the Leased Premises to be used for the public display or public or private sale of guns or other weapons, ammunition, explosives or fireworks;

(g) use or knowingly permit the Leased Premises to be used as a gentlemen's club (or other establishment which allows full or partial nudity) or a massage parlor;

(h) use or permit the Leased Premises to be used for a shooting gallery, target range, vehicle repair facility, car wash facility, warehouse (but any area for the storage of goods intended to be sold at any permitted retail establishment within the Convention Center or use in operation of the Convention Center shall not be deemed to be a warehouse), convalescent care facility or mortuary, or use or knowingly permit it to be used for any assembly, manufacture, distillation, refining, smelting or other industrial or commercial agricultural operation or use;

(i) except during the course of constructing Additional Improvements, and then only if kept in a neat and orderly condition, use any portion of the Leased Premises (other than portions inside the Convention Center) for storage other than areas designated as storage of goods intended to be sold at any permitted retail establishment within the Convention Center or use in operation of the Convention Center;

(j) engage in (or permit any Subtenants or other occupant of the Leased Premises to engage in) activities on or in the Leased Premises that create dust, noise, traffic hazards or other effects that unreasonably disturb the use and enjoyment of the Convention Center by its owner, guests, invitees, patrons, or the general public; and

(k) use, generate, manufacture, produce, store, treat or dispose of contaminated materials (other than the use, storage and disposal of contaminated materials customarily used, stored or disposed of in the operation or cleaning of convention centers, so long as such contaminated materials are used, stored and disposed of in compliance in all material respects with all Applicable Laws).

The provisions of this Section 6.3 shall inure to the benefit of and be enforceable by Lessor and its successors and assigns. No other person, including any transient guest or patron of the Leased Premises shall have any right to enforce the prohibitions as to the Prohibited Uses.

#### **6.4 Covenant to Operate.**

Subject to the provisions of Section 6.5 hereof, commencing on the first day of the Initial Occupancy (as that term is defined in the Economic Development Performance Agreement) and continuing thereafter (except for Down Times) during the remainder of the Term, Lessee covenants, at Lessee's sole cost and expense to:

(a) operate the Convention Center, and cause the same to be operated,

diligently and continuously as a convention and meeting space without interruption for any reason other than Down Times;

(b) perform all Maintenance and Repair Work in accordance with Section 7.1; and

(c) possess all Personalty necessary for the operation of the Convention Center and maintain all spare parts and inventory.

### **6.5 Down Times.**

Lessee may temporarily cease to operate areas or all or substantially all of the Convention Center during the Term for, and only for, limited periods of down time ("**Down Times**") for the limited purpose of, and only for the limited purpose of, one or more of the following circumstances for the applicable period specified below:

(a) During the period following any fire or other casualty or condemnation or other exercise by a Governmental Authority of the power of eminent domain to the extent, and only to the extent, necessary in order to repair and restore the Convention Center in accordance with the terms of this Lease; provided that any portion of the Convention Center taken by eminent domain shall no longer be subject to the terms and provisions of this Lease including the operation covenant in Section 6.4;

(b) During any period of construction of Additional Improvements, but only to the extent necessary to make such Additional Improvements;

(c) As a result of such other commercially reasonable interruptions as are incidental to the normal operation of the Convention Center;

(d) As a result of any remodeling or renovation of the Convention Center; or

(e) To the extent and only to the extent the same is not the result of Lessee's failure to timely fulfill its obligation under this Lease, including its obligations to comply with Applicable Laws as provided in this Lease, during any period required by Applicable Law;

*provided, however* that during all Down Times Lessee shall (x) use its commercially reasonable efforts to minimize the disruption of such Down Time, (y) use its commercially reasonable efforts to minimize the disruption to the areas of the Convention Center which remain open to the public, if any, and the services, aesthetic appearances and public and guest access to and in such portions of the Convention Center.

### **6.6 Continuing Obligation.**

No cessation of operations pursuant to Down Times shall relieve Lessee of any obligations under this Lease (including the obligation to pay Rent unless expressly provided otherwise pursuant to the terms of this Lease) other than the relevant portions of the covenant of continuous operation contained in Section 6.4. Lessee acknowledges and agrees that (a) its continuous use and occupancy of the Leased Premises and operation of the Convention Center

(other than during Down Times) and its payment of Rent provide a significant benefit on which Lessor in part economically depends, (b) violation of the covenants of continuous operation in Section 6.4 shall each be a default by Lessee subject to the terms and conditions of Section 12.1(c) and (c) Lessor considers such covenants of continuous operation a valuable contractual interest.

#### **6.7 Governmental Authorizations.**

Before commencement of any construction work on the Convention Center or any Additional Improvements, Lessee shall at its expense secure or cause to be secured any and all Governmental Authorizations, which may be required by the City of Arlington or other Governmental Authority having jurisdiction over such development, demolition, construction, alteration or reconstruction work to begin such work and as necessary during the course of the construction work. The approval or consent by the Lessor of any matter submitted to Lessor pursuant to this Lease, which matter is specifically provided herein to be approved or consented to Lessor, shall not constitute a replacement or substitute for, or otherwise excuse Lessee from, such permitting, licensing or approval processes; and, conversely, no permit so obtained shall constitute a replacement or substitute for, or otherwise excuse the Lessee from any requirement hereunder for the approval or consent of Lessor.

#### **6.8 Operation Performance Standards.**

The Convention Center shall be operated in a first-class manner consistent with a level of standard and quality attendant to Convention Centers of comparable quality in Comparable Markets.

#### **6.9 Reserved.**

#### **6.10 Availability for Lessor Events.**

Lessee covenants that all or portions of the Leased Premises shall be made available for booking of Lessor sponsored and Lessor hosted events or which Lessor is a major participant (as opposed to events that are booked by Lessor's destination marketing organization, which is governed by Section 6.9 above) at the then current market rate for the requested space; provided the event organizer has contacted the Lessee at least a year in advance of the event and the space requested is available. In addition, Lessee shall provide all or portions of the Leased Premises for Lessor sponsored events to Lessor three (3) times per year at no cost to Lessor, with the exception of direct expenses incurred by Lessee (e.g. staffing, food and beverage).

#### **6.11 Marketing.**

Lessee shall have the right to name and market the Convention Center in its discretion provided that Lessee shall refer to the Convention Center in all marketing and advertising efforts that contain the location of the Convention Center as being located in Arlington, Texas and shall not use any other proper geographic name (i.e. Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to describe the Convention Center's location, except that Lessee may reference the distance of the Convention Center from other locations.

## **6.12 Ownership of Plans and Specifications.**

Lessee shall own all intellectual property rights in, to and relating to the Convention Center design documents, whether now in existence or created in the future; provided, however, that Lessor shall have a limited license to use such design documents in connection with the maintenance, repair or demolition of the Leased Premises after the termination of this Lease (unless Lessee has acquired the Leased Premises in accordance with Section 2.3) or at any time as necessary in the performance of the Lessor's governmental functions.

## **6.13 Additional Requirements.**

Lessee shall be obligated (or cause its general contractor to be obligated) to: (1) provide to the Lessor, upon request therefor, a copy of each construction contract with respect to the construction of the Leased Premises to which Lessee is a party, (2) provide to Lessor copies of schematic design, design development and construction plans and specifications for all elements of the Leased Premises as such are completed and approved (or accepted) by Lessee, and be available to discuss with the Lessor Representative comments the Lessor may have concerning such plans and specifications (provided that Lessee shall have sole discretion and full right and authority to make decisions regarding such comments), (3) provide to Lessor at least three sets of construction documents once approved (or accepted) by Lessee, signed and sealed by one or more registered professional architects or engineers licensed in the State of Texas, (4) provide Lessee with a copy of the detailed construction schedule outlining the major items of work of each major construction contractor, and revisions to such schedule at reasonable intervals during construction, (5) keep the Lessor Representative reasonably advised and informed regarding the design and construction of the Leased Premises, (6) provide the Lessor with reasonable advance notice of regularly-scheduled construction meetings and permit the Lessor Representative to attend such meetings, (7) maintain reasonable vehicular and pedestrian access to property and buildings on the Land that abut any right-of-way, including the provision of temporary facilities, including pavements and utilities, until permanent facilities are in place or existing facilities are restored, (8) arrange for site security within designated areas under construction, except as otherwise expressly required by its contract with Lessee, (9) require the general contractor to comply with, and its agents and contractors comply in all material respects with, all Applicable Laws regarding the use, removal, storage, transportation, disposal and remediation of hazardous materials; (10) notify Lessor and not proceed without Lessee obtaining the Lessor's approval (which approval shall not be unreasonably withheld, conditioned or delayed) with regard to all field changes that directly result in material changes to preexisting plans for the Leased Premises connections with public streets, storm sewers and utilities, (11) cause all appropriate soils and materials testing to be conducted by certified independent laboratories and furnish to the Lessor copies of reports of such testing, (12) cause the general contractor to promptly repair, restore or correct, on a commercially reasonable basis, all damage caused by the general contractor or its subcontractors to property or facilities of the Lessor, and reimburse the Lessor for out-of-pocket costs actually incurred by Lessor that are directly related to the Lessor's necessary emergency repairs of any such damage, (13) provide reasonable advance notice to the Lessor Representative and allow such designated representative to be present during the scheduled pre-final (if any) and final inspection of the Leased Premises following substantial completion of construction and prior to Initial Occupancy, (14) upon request therefor, cause the correction of defective work or other such warranty work to

be performed, within the applicable curative period(s) as required by the applicable contract, (15) provide Lessor with a sufficient number of copies of all manuals relating to fire, safety and other governmentally required building systems for the Leased Premises within a reasonable time following completion of construction, and (16) provide Lessor, within a reasonable time following completion of construction, with as-built drawings for the Leased Premises.

## **7. Repairs and Maintenance; Utilities.**

### **7.1 Lessee's Obligation.**

Lessee shall, from the Initial Occupancy throughout the remainder of the Term, at its own expense and at no cost or expense to Lessor, do the following (collectively, the "**Maintenance and Repair Work**"):

(a) Keep and maintain, or cause to be kept and maintained, the Leased Premises, including the Convention Center and any Additional Improvements, in good working repair and order, ordinary wear and tear, casualty and condemnation excepted;

(b) Promptly make, or cause to be made, all necessary repairs, interior and exterior, structural and non-structural, foreseen as well as unforeseen, to the Leased Premises, including the Convention Center and any Additional Improvements, to keep them clean and in a condition such that they may be operated in compliance in all material respects with all Applicable Laws; and

(c) Perform all alterations, upgrades, improvements, renovations or refurbishments to the Convention Center necessary to meet the requirements of this Lease.

(d) Maintain a balance in a reserve fund (the "**FF&E Reserve**") in an amount equal to (i) for the period of time from the Initial Occupancy until the end of the first (1<sup>st</sup>) full calendar year following the calendar year in which Initial Occupancy occurs, one percent (1%) of Total Operating Revenue per month, (ii) for the period of time from the second (2<sup>nd</sup>) full calendar year following the calendar year in which Initial Occupancy occurs, two percent (2%) of Total Operating Revenue per month, (iii) for the period of time during the third (3<sup>rd</sup>) full calendar year following the calendar year in which Initial Occupancy occurs, three percent (3%) of Total Operating Revenue per month, and (iv) for the period of time during the fourth (4<sup>th</sup>) full calendar year following the calendar year in which Initial Occupancy occurs and thereafter, four percent (4%) of Total Operating Revenue per month, to fund expenditures designed to maintain the Convention Center. Lessee shall make available to the Lessor an accounting of the FF&E Reserve on an annual basis.

### **7.2 No Services Provided by Landlord; Tenant's Sole Responsibility.**

Lessor shall not be required to furnish any services or facilities or to perform any maintenance, repair or alterations in or to the Leased Premises, including the Convention Center and any Additional Improvements. Lessee hereby assumes the full and sole responsibility for the

condition, operation, security, repair, replacement, maintenance and management of the Leased Premises, including the Convention Center and any Additional Improvements, throughout the Term.

### **7.3 Utilities.**

Lessor shall not be obligated to furnish or pay for any utilities for the Leased Premises. Lessee shall cause the necessary mains, conduits, and other facilities to be provided and maintained to supply water, gas, telephone, electricity, chilled water, steam and other utility services commonly supplied to and within comparable convention center properties similar to the Leased Premises, and Lessee shall, at Lessee's sole cost and expense, subject to the obligations of the applicable utility provider, maintain and repair all water pipes, conduits, electric lines, gas pipes, steam pipes and other transmission facilities in, on or servicing the Leased Premises during the Term. No interruption or malfunction of any utility services shall constitute an eviction or disturbance of Lessee's possession of the Leased Premises or a breach of the covenant of quiet enjoyment, and no such interruption or malfunction shall result in any abatement or reduction in the Rent. No interruption or malfunction of any utility services not caused by Lessee shall be an Event of Default or an occurrence that would lead to an Event of Default by Lessor upon the giving of notice or passage of time.

## **8. Damage or Destruction.**

### **8.1 Obligation to Reconstruct.**

In the event of damage or destruction to the Convention Center during the thirty (30) year period that commences on Initial Occupancy, Lessee shall promptly secure or cause to be secured the area of damage or destruction to safeguard against injury to persons or property and, promptly thereafter, remediate any hazard and restore the Convention Center thereon to a presentable condition whether by repair or by demolition, removal of debris and screening from public view. Lessee shall, to the extent allowed by Applicable Law promptly commence and thereafter proceed with reasonable diligence to repair, restore, replace or rebuild the Convention Center as nearly as practicable to a condition substantially equivalent to that existing immediately prior to such damage or destruction (as the same may be modified by Lessee at the time of such repair or restoration, provided that such modification is of equal or greater value), whether done by application of insurance proceeds or other financial means. On or after the expiration of such thirty (30) year period that commences on Initial Occupancy, in the event the Convention Center is damaged or destroyed by fire or other casualty, Lessee shall have the right to determine whether, and to what extent the Convention Center should be restored or replaced. Notwithstanding the above, a Mortgagee and any person or entity that acquires title to the Improvements as a result of a foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 8.

### **8.2 No Obligation of Landlord.**

Under no circumstances shall Lessor be obligated to make any payment, disbursement or contribution toward the cost of the repairing, remediating, replacing, or rebuilding any damage or destruction to the Convention Center.



## **9. Condemnation.**

### **9.1 General.**

If, at any time during the Term, the Leased Premises, or any part thereof, shall be condemned and taken by the United States of America, the State or any other authority or Person having the power of eminent domain, then the provisions of this Section 9 shall apply to such condemnation proceedings and the distribution of any awards pertaining thereto.

### **9.2 Entire Leased Premises Taken by Eminent Domain/Partial Taking Resulting in Termination.**

If the fee simple title in, or permanent possession of, all of the Leased Premises is taken by a governmental or other authority under the power of eminent domain, then this Lease shall terminate (or be suspended for the duration of the temporary taking) as of the taking date, and any Rent shall be prorated and paid by Lessee to the date of such taking. In the event that less than all of the Leased Premises is taken by a governmental or the authority under the power of eminent domain and if reconstruction of the Convention Center is not feasible, or if the Convention Center remaining after such taking is no longer economically viable, in each case as determined by Lessee in its sole and absolute discretion within one year after the date of the taking, then this Lease, at the election of Lessee, shall terminate as to the Leased Premises not so taken as of the date of such taking. The condemnation award shall be promptly paid as follows, in the following order of priorities:

(a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by Lessor and Lessee in such condemnation suit or conveyance (except that nothing contained in this Section 9 shall require payment to Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages, to the extent that the Leasehold Mortgages require such payments; and

(c) The balance, if any, shall be applied and distributed to pay each Subtenant any amount of which such Subtenant is entitled for its leasehold improvements, and the value of such Subtenant's leasehold interests, but only to the extent required in such Subtenant's lease; and

(d) The balance, if any, shall be applied and distributed to Lessee up to the amount of the Project Costs actually funded by Lessee with respect to the Convention Center, as reasonably determined by Lessee; and

(e) The balance, if any, shall be divided and paid fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is Lessor, the entire balance shall be paid to Lessee.

### **9.3 Partial Taking of Leased Premises by Condemnation.**

In the event that less than all of the Leased Premises (or only an interest therein) is taken for any public use or purpose by the exercise of the power of eminent domain, or shall be conveyed by the Parties acting jointly to avoid proceedings of such taking, then, subject to the exceptions expressly set forth in Section 9.2 above for a partial taking where reconstruction of the Convention Center is not feasible or where the Convention Center remaining after such partial taking is no longer economically viable: (i) this Lease and all the covenants, conditions, and provisions hereunder shall be and remain in full force and effect as to all of the Leased Premises not so taken or conveyed, and (ii) Lessee shall remodel, repair, and restore the Convention Center as nearly as practicable to a condition substantially equivalent to that existing immediately prior to such taking, taking into consideration the fact of the condemnation.

The condemnation award shall be promptly paid as follows, in the following order of priorities:

(a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by each Party in such condemnation suit or conveyance (except that nothing contained in this Section 9 shall require payment of Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages to the extent that the Mortgages require such payments; and

(c) The balance, if any, remaining shall be applied and distributed to pay each Subtenant whose space is taken any amount to which such Subtenant is entitled for its leasehold improvements and the value of such Subtenant is entitled for its leasehold improvements and the value of such Subtenant's leasehold interest, but only to the extent required in such Subtenant's lease; and

(d) There shall be paid to Lessee out of the balance, if any, remaining, the amount required to enable Lessee to remodel, repair, and restore any improvements to such condition as Lessee determines in its sole and absolute discretion to be appropriate, taking into consideration the fact of the condemnation; and

(e) The balance, if any, shall be applied and distributed to Lessee up to the amount of the Project Costs actually funded by Lessee with respect to the Convention Center, as reasonably determined by Lessee; and

(f) The balance, if any, shall be divided and paid over fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is owner, the entire balance shall be paid to Lessor.

#### **9.4 Temporary Taking.**

If the whole or any part of the Leased Premises or of Lessee's interest in this Lease shall be taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full the Rent without reduction or abatement in the manner and at the times herein specified.

Except only to the extent that Lessee is prevented from so doing pursuant to the terms of any order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred.

#### **9.5 Condemnation Proceedings.**

Lessee, Lessor and Leasehold Mortgagee shall each have the right, as its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials and appeals therein.

#### **9.6 Notice Condemnation.**

In the event Lessor or Lessee shall receive notification of any proposed or pending condemnation proceeding affecting the Leased Premises, the Party receiving such notification shall promptly notify, by Notice, the other Party.

### **10. Assignments; Subleases.**

#### **10.1 Restriction Against Dispositions.**

Lessee shall be entitled to make or create or suffer to be made or created without the consent of Lessor any Disposition of the Leased Premises to an Affiliate of Lessee or to any Alternative Hotel Developer at any time. Prior to the fifteenth (15th) anniversary of the Initial Occupancy, Lessee shall not make or create, or suffer to be made or created, any Disposition of the Leased Premises to any Person that is not an Alternative Hotel Developer, without the prior written approval of Lessor, acting by and through the Lessor Representative, which approval shall not be unreasonably withheld, conditioned or delayed. Any such approval or disapproval shall be made within thirty (30) Business Days of Lessor's receipt of such request, time being of the essence. On or any time after the fifteenth (15th) anniversary of the Initial Occupancy, Lessee shall be entitled to make or create or suffer to be made or created any Disposition of the Leased Premises to any Person, whether or not such Person is an Alternative Hotel Developer without the consent of Lessor.

#### **10.2 Assumption Agreement.**

In connection with any Disposition made during the Term, the counterparty to such Disposition shall assume all obligations of Lessee under this Lease accruing from and after the execution date of such Disposition by a written agreement (the "**Assumption Agreement**") to which the Lessor is either a party or in which the Lessor is specified to be a beneficiary, a copy of which Assumption Agreement shall be promptly provided to the Lessor following the Disposition to evidence the assignment and assumption in question. Upon Lessee's delivery of an Assumption Agreement, Lessee shall be relieved of all further liability arising hereunder except for defaults of Lessee under this Lease that accrued before such Disposition which Lessor had notified Lessee of and which remain uncured.

#### **10.3 Project Financing and Mortgages.**

The provisions of Section 10.1 and 10.2 are not intended to modify or supersede any of the rights granted by Lessee to any Leasehold Mortgagee and any Subtenant under Sections 11 and 12 hereof. In the event that the provisions of this Section 10 conflict with or are inconsistent with the any of the other provisions of Sections 11 and/or 12 hereof, the provisions of Sections 11 and 12 hereof shall control and the provisions of Sections 10.10 and 10.2 shall be construed and interpreted accordingly.

#### **10.4 Permitted Disposition to Subtenants.**

Notwithstanding anything in Sections 10.1 or other sections of this Lease to the contrary, Lessee may enter into Subleases or other contractual agreements with Subtenants for any part of the Leased Premises, at any time and from time to time from and after the Initial Occupancy and during the Term, with such Subtenants and upon such terms and conditions as Lessee shall, in its sole discretion, deem fit and proper consistent with the other provisions of this Lease. Notwithstanding anything in this Section 10 to the contrary, a Sublease or Subleases may not be used as a way to circumvent the disposition or assignment limitations of this Lease. Each Sublease shall be subject and subordinate to this Lease.

#### **10.5 Non-disturbance and Attornment.**

(a) Lessor covenants and agrees with Lessee for the benefit of each and every Subtenant from time to time occupying any part of the Leased Premises or having rights granted to it by Lessee with regard to the Leased Premises, which Subtenants shall be third party beneficiaries of this Section 10.5 as it may apply to each of them respectively, that in the event of a termination of this Lease, each such Subtenant may continue to occupy its premises under its pre-existing Sublease and enjoy the rights granted to such Subtenant in such Sublease; provided such Subtenant shall then attorn to Lessor (to the extent that such Subtenant occupies any part of the Leased Premises) and, if such Subtenant's Sublease does not provide for such attornment (and such Subtenant occupies any part of the Leased Premises), such Subtenant, promptly after the termination of this Lease, provides Lessor with a written statement of such Subtenant whereby such Subtenant attorns to Lessor.

(b) In addition to the provisions of Section 10.5(a) hereof, Lessor covenants and agrees with Lessee that Lessor will, at the request of Lessee made from time to time enter into a non-disturbance and attornment agreement with any Subtenant identified by Lessee, which non-disturbance and attornment agreement shall provide for all terms set forth in Section 10.5(a) hereof and be in commercially reasonable form. Lessor shall execute and deliver to Lessee such a non-disturbance and attornment agreement or specify in writing its objections thereto within twenty (20) Business Days after receipt of the form thereof from Lessee, time being of the essence.

### **11. Leasehold Mortgage Financing.**

#### **11.1 Rights to Leasehold Mortgage.**

(a) Notwithstanding any other provision of this Lease, Lessee shall at all times have the right to enter into or grant one or more Leasehold Mortgages. Lessee may

encumber, pledge, grant, or convey its rights, title and interest under this Lease by way of a Leasehold Mortgage (or assignment) to secure payment of any loan or loans obtained by Lessee. Such Leasehold Mortgage may also encumber Lessee's right to purchase the Leased Premises.

(b) Lessee, and any Subtenant (to the extent permitted by Lessee), may grant security interests in or place liens upon any equipment or personal property (so long as such equipment or property is not a fixture integrated into the real property, which equipment or property could not be removed without permanent damage to the Leased Premises), without such interest or liens constituting a Disposition. Such equipment and personal property shall not be deemed to be "improvements" under this Lease. During the Term, at the request of Lessee, Lessor will, within thirty (30) days of such a request, execute and deliver a landlord's waivers of liens (including customary terms such as restoration of the premises) to facilitate such security interests and liens upon such equipment and personal property, which landlord's waivers of liens shall be in a form and substance reasonably satisfactory to Lessee.

(c) Each Subtenant (to the extent permitted by Lessee), shall have the right at any time to encumber its sub-leasehold estate by a mortgage or other encumbrance or lien without the necessity of obtaining the consent of Lessor (so long as the deed of trust, mortgage or other primary security instrument creating such Subtenant's mortgage refers to this Section 11 by reference). At the request of Lessee (given by notice), Lessor shall treat a mortgagee of a Subtenant's sub-leasehold estate in the same manner that it treats a Leasehold Mortgagee as to notice rights and shall enter into a non-disturbance agreement with such Subtenant's mortgagee, which agreement shall be in a form and substance that is reasonably acceptable to such Subtenant's mortgagee.

(d) In the event Lessor gives notice to Lessee of a default of its obligations under this Lease, Lessor shall forthwith furnish a copy of the notice to the Leasehold Mortgagees that have been identified to Lessor by Lessee.

## **11.2 Rights of Leasehold Mortgagee**

### **11.2.1 Lessee's Acceptance.**

Lessor agrees to accept performance and compliance by any Leasehold Mortgagee of and with any term, covenant, agreement, provision, or limitation on Lessee's part to be kept, observed, or performed by Lessee hereunder.

### **11.2.2 Cure of Default.**

Following an Event of Default by Lessee, Lessor will exercise no remedies under this Lease, unless it shall first give Leasehold Mortgagee notice after the occurrence of any such Event of Default and stating the intention of Lessor, on a date specified in such notice, to exercise such remedies. Notwithstanding such notice, Lessor shall not exercise any such remedies, if:

(a) such Event of Default can be cured by the payment of a fixed monetary amount and Leasehold Mortgagee shall make such payment within ninety (90) days after the date such notice was given: or

(b) such Event of Default can be cured with the exercise of reasonable diligence by Leasehold Mortgagee after obtaining possession of the Leased Premises, and Leasehold Mortgagee or Leasehold Mortgagee's designee, within one hundred eighty (180) days after the date of such notice, obtains the interest of Lessee in this Lease or Leasehold Mortgagee commences such proceedings (including, but not limited to, the filing of a petition for the appointment of a receiver) as it may deem necessary to obtain such possession (except that if Leasehold Mortgagee is precluded, notwithstanding the filing of a petition to the bankruptcy court for a waiver, from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period during which leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure) and thereafter diligently prosecutes such action and promptly upon obtaining such possession (or promptly upon its designee obtaining such possession) thereupon promptly commences (or its designee commence); and thereafter diligently pursues, the curing of such Event of Default; or

(c) such Event of Default is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises were obtained by Leasehold Mortgagee or its designee, and Leasehold Mortgagee, within one hundred eighty (180) days after the date such notice is given, either obtains title to all of Lessee's right, title and interest in and to this Lease (or Leasehold Mortgagee's designee obtains such interest) or publishes any required notice of foreclosure or institutes foreclosure proceedings, as the case maybe be, and thereafter proceeds with diligence to acquire (or have its designee acquire) the interest of Lessee in the Lease (except that if Leasehold Mortgagee is precluded from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period during which Leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure), and such Event of Default, to the extent that the same shall have occurred prior to such acquisition of the interest of Lessee in this Lease by Leasehold Mortgagee or its designee, shall thereupon be deemed to have been waived.

### **11.2.3 Lease Termination; New Lease:**

(a) If this Lease is terminated in connection with a bankruptcy proceeding involving Lessee, Lessor shall give Leasehold Mortgagee notice of such termination and shall enter into a new lease for the Leased Premises that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage or, at the request of Leasehold Mortgagee, with an assignee, designee, or nominee of Leasehold Mortgagee for the remainder of the Term of this Lease effective as of the date of such termination, at the rate and upon the same covenants, Leases, terms, provisions and limitations as are herein contained, provided that:

(i) Leasehold Mortgagee makes written request upon Lessor for such new lease within one hundred eighty (180) days after the giving of such notice of termination and such written request is accompanied by payment to Lessor of all amounts then due to Lessor in connection with the Leased Premises that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage of which Lessor shall have given Leasehold Mortgagee notice; and

(ii) Leasehold Mortgagee pays or causes to be paid to Lessor at the time of the execution and delivery of such new lease any and all additional sums which would at the time of the execution and delivery thereof due under this Lease but for such termination and pays or causes to be paid any and all expenses, including reasonable attorneys' fees, court costs, and disbursements, incurred by Lessor concerning the Leased Premises in connection with any such termination or in connection with the execution and delivery of such new lease and any conveyance of title to the improvements; and

(iii) Leasehold Mortgagee agrees to cure, within sixty (60) days after the execution and delivery of such new lease, all uncured Events of Default of which Lessor shall have given Leasehold Mortgagee notice (except any Event of Default which is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises were obtained, to the extent that same shall have occurred prior to the execution and delivery of such new lease, shall be deemed to have been waived), or if any such Event of Default cannot be cured within such period, Leasehold Mortgagee agrees to commence, within such period, to cure such Event of Default and thereafter pursues the same with due diligence.

(b) Any new lease made pursuant to this subsection 11.2.3 shall (i) have the same relative priority in time and in right as this Lease, and (ii) have the benefit of all of the right, title, powers and privileges of Lessee hereunder in and to the Leased Premises At Lessee's request, Lessor will enter into an agreement with Leasehold Mortgagee granting to Leasehold Mortgagee the rights set forth in this Section 11.2.

#### **11.2.4 Notice to Lessor and Leasehold Mortgagee.**

If Lessee shall furnish Lessor with a written notice setting forth the name and address of a Leasehold Mortgagee, Lessor shall thereafter send to such Leasehold Mortgagee a copy of any notice given to Lessee under this Lease, and no such notice shall be deemed to have been properly given unless and until a copy thereof shall have been sent to Leasehold Mortgagee at the address specified in such notice.

#### **11.2.5 Performance by Leasehold Mortgagee; Rights and Duties of Leasehold Mortgagee.**

No Leasehold Mortgagee shall have any liability for the performance of any of the covenants, conditions or obligations of Lessee under this Lease unless and until such time as Leasehold Mortgagee acquires title to the leasehold estate created by this Lease. Further, in no event shall any Leasehold Mortgagee be obligated to perform or observe any of the covenants, terms or conditions of this Lease on the part of Lessee to be performed or observed, or be in any way obligated to complete the improvements to be constructed in accordance with this Lease, nor shall it guarantee the completion of improvements as hereinbefore required of Lessee, whether as a result of (i) its having become a Leasehold Mortgagee, (ii) the exercise of any of its rights under the instrument or instruments whereby it became a Leasehold Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (iii) the performance of any of the covenants, terms or conditions on the part of Lessee to be performed or observed under this Lease, or (iii) otherwise, unless such Mortgagee shall either make the election set forth in Section 11.2.3 to assume the obligations of Lessee.

### **11.3 Non-subordination.**

Nothing contained in this Section 11, or in any other section of this Lease shall be deemed to allow a subordination of Lessor's reversionary estate in any part or portion of the Leased Premises leased to Lessee. In no event will such subordination be made. Lessee and each Subtenant may mortgage only its leased or sub-leasehold interest in the Leased Premises.

### **11.4 Leasehold Mortgagee's Rights Agreements.**

Lessor covenants and agrees with Lessee that Lessor will, at the request of Lessee made from time to time and at any time, enter into a lender's rights agreement with any Leasehold Mortgagee (or potential Leasehold Mortgagee) identified by Lessee, which lenders' rights agreement shall be consistent with the terms and provisions contained in this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages. Within twenty (20) Business Days of Lessee's request for a Leasehold Mortgagee's rights agreement pursuant to the provisions of this Section 11.4, Lessor shall execute and deliver to Lessee such a lender's rights agreement benefiting the identified Leasehold Mortgagee (or potential Leasehold Mortgagee) and such Leasehold Mortgagee's Leasehold Mortgage (or potential Leasehold Mortgagee's potential Leasehold Mortgage), which executed Leasehold Mortgagee's rights agreement shall be commercially reasonable and in a form and substance that are reasonably acceptable to such Leasehold Mortgagee (or potential Leasehold Mortgagee) and that is consistent with, and at the option of such Leasehold Mortgagee (or potential Leasehold Mortgagee) incorporates, the terms and provisions of this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages (such as the Leasehold Mortgagee notice provisions and the Leasehold Mortgagee cure rights provisions of this Section 11).

## **12. Defaults/Arbitration.**

### **12.1 Events of Default by Lessee.**

Each of the following shall constitute an Event of Default by Lessee:

(a) The filing by Lessee of a voluntary proceeding or the consent by Lessee to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessee or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessee in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessee to perform or to observe any material covenant, obligation or requirement of Lessee arising under this Lease not specifically named as an Event of Default in this Section 12.1, and the continuation of such failure for thirty (30) days after receipt of written Notice from Lessor specifying the nature and extent of such failure, or if such failure cannot reasonably be cured within such thirty (30) day period, the failure of Lessee to commence to cure such failure within such thirty (30) day period and to diligently pursue same to completion.



## **12.2 Events of Default by Lessor.**

Each of the following shall constitute an Event of Default by Lessor:

(a) The filing by Lessor of a voluntary proceeding or the consent by Lessor to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessor or appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessor in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessor to perform or to observe any material nonmonetary covenant, obligation or requirement of this Lease not specifically named as an Event of Default by Lessor in this Section 12.2, and the continuation of such failure for thirty (30) days after receipt of written Notice from Lessee specifying the nature and extent of any such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of Lessor to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such effort to cure to completion.

(d) The failure of Lessor to execute and deliver any document, agreement or instrument (such as a non-disturbance, attornment and subordination agreement with a Subtenant, any estoppel certificate, any permit application, any subdivision plan, any agreement with any Leasehold Mortgagee or Subtenant, any deed, lease or lease amendment) requested by Lessee and required to be given by Lessor in accordance with the provisions of this Lease and the continuation of such failure for twenty (20) days after written notice from Lessee specifying the nature and extent of such failure.

### **12.3 Remedies.**

Should an Event of Default by Lessee occur hereunder, Lessor may, by written notice to Lessee, initiate the procedures contained in Section 12.6. Should an Event of Default by Lessor occur hereunder, Lessee may, by written notice to Lessor, initiate the procedures contained in Section 12.6. This Lease may not be terminated by Lessee or Lessor as a result of the occurrence of an Event of Default by the other Party hereunder. Lessor shall not have the right to terminate this Lease and/or the Term of this Lease, nor to re-enter and take possession of the Leased Premises as a result of an Event of Default by Lessee; provided, however, that Lessor shall have the right to engage a third-party asset manager (at Lessee's expense but not in an amount in excess of a customary, market rate asset management fee) for the Convention Center, and such asset manager shall be entitled to direct any funds in the FF&E Reserve to be spent on maintaining the Convention Center and performing Required Capital Expenditures for the Convention Center. All remedies under this Lease shall be cumulative and not restrictive of other remedies (except that Lessor does not have the right to terminate this Lease or Lessee's right to possession), including without limitation, specific performance. The initiation of any remedy by Lessor or Lessee shall not constitute or be deemed an election of remedies by it and such Party may invoke two or more remedies hereunder concurrently or consecutively. No Party may seek or obtain an award of consequential or punitive damages against the other Party.

### **12.4 Waiver.**

Failure of Lessor or Lessee to exercise any right or remedy hereunder shall not impair any of its rights nor be deemed a waiver thereof and no waiver of any of its rights shall be deemed to apply to any other such rights, nor shall it be effective unless in writing and signed by the waiving Party.

### **12.5 Attorneys' Fees.**

If either Lessor or Lessee brings suit or other legal proceedings or arbitration proceeding to enforce the provisions of this Lease against the other, then each Party in such suit or proceeding shall bear its own attorneys' fees and litigation and/or arbitration costs and expenses incurred by it in connection with such suit or proceeding.

### **12.6 Arbitration.**

In the event any dispute, controversy or claim between or among the Parties hereto arises under this Lease (a "**Dispute or Controversy**"), including a claim that an Event of Default has occurred, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement. In the event a Dispute or Controversy arises, any Party hereto shall have the right to notify the other Party hereto that the notifying Party has elected to implement the procedures set forth in this Section 12.6. Within fifteen (15) days after delivery of any such notice by one Party to the other Party regarding a Dispute or Controversy, a representative of each of the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained within fifteen (15) days after the meeting of the Parties representatives for such purpose, or such longer period as the Parties may agree upon, then either Party may by notice to

the other Party (the "**Arbitration Notice**") submit the Dispute or Controversy to arbitration in accordance with the provisions of this Section 12.6 and Exhibit "B" attached hereto (the "**Arbitration Procedures**"). The Arbitration Notice must comply with the Arbitration Procedures. Upon receipt of the Arbitration Notice, all Parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section 12.6 and Exhibit "B" without regard to the justiciable character or nature of such Dispute or Controversy. Each Party hereto agrees that any Dispute or Controversy which is not resolved pursuant to this Section 12.6 shall be submitted to binding arbitration hereunder and shall be resolved exclusively and finally through such binding arbitration in accordance with the Arbitration Procedures (the "Arbitration"). This Section 12.6 and Exhibit "B" hereto are and hereby constitute a written agreement by the Parties hereto to submit to arbitration any such Dispute or Controversy arising after the Commencement Date within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code. Notwithstanding any provision of this Lease to the contrary, any Party hereto may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Tarrant County, Texas. In the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the Arbitration Procedures, notwithstanding that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the Parties hereto expressly agree that the Arbitration Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

### **13. Representations.**

#### **13.1 Representations by Lessee.**

Lessee represents and warrants to Lessor that Lessee (i) is validly existing limited liability company under the laws of Delaware and is in good standing in the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

#### **13.2 Representations by Lessor.**

Lessor represents and warrants to Lessee that Lessor (a) is a constitutionally chartered city validly existing under the laws of the State of Texas; (b) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; and (c) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

### **14. Insurance; Bonds.**

#### **14.1 Insurance.**

During the Term, Lessee, at no cost or expense to Lessor, will keep and maintain, or cause the Subtenants to keep and maintain, the insurance set forth below. Lessee shall not commence any work on the Leased Premises until Lessee has obtained or caused to be obtained all the insurance required under this Lease, nor shall Lessee allow any work on the Leased Premises to commence until all similar insurance of the contractor or subcontractor performing work on the Leased Premises has been obtained. All insurance policies provided under this Lease will be

written on an “occurrence” basis, if available in the market at commercially reasonable rates. The insurance requirements shall remain in effect throughout the Term. The insurance required by this Lease consists of the following:

(a) Worker's Compensation Insurance, statutory policy as required by law; Employers Liability Insurance of not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease-each employee, \$1,000,000.00 disease-policy limit.

(b) All Risk Property, insuring all buildings and structures on the Leased Premises against all direct physical loss or damage; including by fire, windstorm, hail, explosion and terrorism, in an amount at least equal to one hundred percent (100%) of the then full cost of replacing the buildings and structures on the Leased Premises and all Personalty.

(c) Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, fully insuring Lessor's liability for injury to or death of employees of Lessee and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

(d) Commercial Automobile Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.

(e) Umbrella Insurance, combined single limit bodily injury and property damage liability insurance, including death, in excess of the primary coverage required herein for an amount equal to \$2,000,000.00 per occurrence and \$2,000,000.00 aggregate.

#### **14.2 Conditions.**

Each insurance policy to be furnished by Lessee, or its contractors or subcontractors, shall include the following conditions by endorsement to the policy:

(a) Name Lessor, as an additional insured as to all applicable coverage, except worker's compensation. For general liability purposes, this requirement extends to premises/operations as well as products/completed operations.

(b) Each policy will require that thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, a Notice thereof shall be given to Lessor by certified mail to:

City of Arlington  
Attn: Risk Management  
Post Office Box 90231 MS# 63-0790  
Arlington, Texas 76004-3231

However, if the policy does not require notice of non-renewal or any material change in coverage, Lessee will provide Lessor with thirty (30) days prior written notice thereof. However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written Notice to Lessor is required. Lessee shall also notify Lessor within twenty-four (24) hours after receipt of any Notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s).

#### **14.3 Miscellaneous Insurance Provisions.**

(a) For purposes of this Section 14, the term “Lessor” shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of Lessor and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of Lessor.

(b) All insurance prescribed by this Section 14 shall (i) be procured from financially sound and reputable insurers licensed to do business in the State of Texas and have an A.M. Best rating of not less than A VII or, if not rated with A.M. Best, the equivalent of A.M. Best’s surplus size of A VII or better, (ii) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved, and (iii) be evidenced by a certificate of insurance naming Lessor as an additional insured, as its interest may appear.

(c) The General and Automobile liability policies required herein shall be written with an “occurrence” basis coverage trigger.

#### **14.4 Waiver of Subrogation.**

Lessee agrees to the following:

(a) Lessee hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against Lessor, it being the intention that the insurance policies shall protect all Parties to this lease and be primary coverage for all losses covered by the policies; and

(b) Companies issuing the insurance policies and Lessee shall have no recourse against Lessor for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of Lessee; and

(c) Approval, disapproval or failure to act by Lessor regarding any insurance supplied by Lessee (or any subcontractors) shall not relieve Lessee of full responsibility or liability for damages and accidents as set forth in the lease documents. Neither shall the insolvency or denial of liability by the insurance company exonerate Lessee from liability.

#### **14.5 Lessor May Procure Insurance.**

If at any time and for any reason Lessee fails to provide, maintain, keep in force and effect, or deliver to Lessor proof of, any of the insurance required under this Section 14 and

such failure continues for five (5) Business Days after Notice thereof from Lessor to Lessee, Lessor may, but shall have no obligation to, procure single interest insurance for such risks covering the Lessor, within five (5) Business Days following Lessor's demand and Notice, pay and reimburse Lessor therefor with interest from the date of payment by Lessor until repayment of Lessor in full by Lessee.

#### **14.6 Bonds.**

Lessee shall be obligated, or cause its general contractor on the Convention Center and any Additional Improvements, to put all reasonable procedures in place to assure payment and performance by the general contractor's subcontractors, including payment and performance bonds, prior to the commencement of any work on the Convention Center or any Additional Improvements.

### **15. Miscellaneous Provisions.**

#### **15.1 Force Majeure.**

For the purpose of any of the provisions of this Lease, neither Lessor, nor Lessee, as the case may be, nor any successor in interest, shall be considered in breach of or default in any of its obligations, in the event of forced delay in the performance of such obligations due to Force Majeure. For purposes of this Lease, Force Majeure shall mean acts of God (including storms, floods or other casualty), war, invasion, insurrection, taking by eminent domain laws, the lack of labor or supplies due to an act of God, strike or labor disputes or delays beyond the control of the affected Party, or order of government authorities. In the event of the occurrence of any such forced delays, the time or times for the performance of the covenants, provisions, and agreements of this Lease shall be extended for the period of the forced delay (including any time reasonably required to recommence performance due to such forced delay). The affected Party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements and provided further, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected Party, and the affected Party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected Party, unfavorable to the affected Party. Notwithstanding the above (a) Lessee may not rely on its own acts or omissions as grounds for delay in its performance and (b) the absence of immediately available funds shall not be grounds for delay.

#### **15.2 Estoppel Certificates.**

Lessor and Lessee, at any time and from time to time, upon not less than twenty (20) Business Days prior written Notice from a Party hereto, or to a person designated by such Party, such as a tenant or a mortgagee or lender of Lessee, shall execute, acknowledge, and deliver to the Party requesting such statement, a statement in reasonably acceptable form to the requesting Party certifying, among other matters, (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating whether or not, to the best of knowledge of the signer of such certificate, Lessor and Lessee are in breach and/or default in performance of any covenant, agreement, or

condition contained in this Lease and, if so, other factual matters reasonably requested in such estoppel certificate concerning this Lease, the Leased Premises, the Convention Center and/or the Economic Development Performance Agreement, it being intended that any such statement delivered hereunder may be relied upon by the Party requesting such statement and/or any person not a Party to this Lease (if such other person is identified at the time such certificate was requested).

### **15.3 Lessor's Rights of Access.**

Lessee agrees that Lessor and Lessor's duly authorized agents shall have the right to all reasonable times during normal business hours and following reasonable prior Notice to enter upon the Leased Premises to examine and inspect the same, provided, however, (i) Lessor and Lessor's duly authorized agents shall not have the right to enter or inspect portions of the Leased Premises deemed off limits by Lessee, unless accompanied by a representative of Lessee, and (ii) Lessor and Lessor's duly authorized agents shall use good faith efforts to minimize any interference in Lessee's use of the Leased Premises during any entry upon or inspection of the Leased Premises.

### **15.4 Notices.**

All Notices or statements given pursuant to or concerning this Lease shall be in writing and sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any Notice sent by (a) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (b) personal messenger shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the Business Day following the date the notice is deposited with the overnight delivery service addressed as specified below:

Lessee:                      Arlington Convention Center Hotel Owner, LLC  
                                    c/o Loews Hotels Holding Corporation  
                                    9 West 57<sup>th</sup> Street, 20<sup>th</sup> Floor  
                                    New York, New York 10019  
                                    Attention: Corporate Secretary

With a copy to:            Latham & Watkins LLP  
                                    330 North Wabash Avenue, Suite 2800  
                                    Chicago, Illinois 60611  
                                    Attention: Gary E. Axelrod, Esq.

Lessor:                      City of Arlington  
                                    City Manager's Office  
                                    c/o City Manager  
                                    101 W. Abram Street  
                                    Arlington, Texas 76004-3231

With a copy to            Arlington City Attorney's Office  
                                    c/o City Attorney  
                                    101 S. Mesquite Street

Arlington, Texas 76004- 3231

Such addresses may be changed by giving the other Party ten (10) days' Notice in writing. Lessee, by Notice to the Lessor, may add additional Notice addressees.

**15.5 No Broker Fees.**

Lessor and Lessee each represent and warrant for itself that it has not dealt with any broker or agent in connection with this Lease and each covenants and agrees, to the extent allowed by law, to indemnify and hold the other harmless from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this representation and warranty.

**15.6 No Waiver.**

No failure on the part of Lessor or Lessee to enforce any covenant or provision contained in this Lease nor any waiver of any right under this Lease shall discharge or invalidate such covenant or provision or affect the right of the other Party to enforce the same in the event of any subsequent default.

**15.7 Severability.**

If any provision of this Lease or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to any other Person or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law. In the event any provision of this Lease is illegal, invalid or unenforceable under present or future laws, each Party reserves the right to pursue any and all remedies available to them at law or equity (including arbitration proceedings). The provisions of this Section 15.7 shall survive the termination of this Lease.

**15.8 Amendment.**

Neither the Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge, or termination is sought.

**15.9 Terminology.**

All personal pronouns used in this Lease, whether used in the masculine, feminine or neutral gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Unless otherwise expressly state, titles of Sections, Subsections and Paragraphs of this Lease are for convenience only, and neither limit nor amplify the provisions of this Lease, and all references in the Lease of Sections, Subsections or Paragraphs shall refer to the corresponding Section, Subsection or Paragraph of this Lease unless specific reference is made to the articles, sections or subdivisions of another document or instrument.

**15.10 Counterparts.**



This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

#### **15.11 Binding Agreement.**

Subject to the restrictions on Dispositions set forth herein, this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors and assigns. Whenever in this Lease a reference to Lessor, Lessee or any Person is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Lessor, Lessee or such Person.

#### **15.12 Interpretation.**

No provision of this Lease shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

#### **15.13 Governing Law/Venue.**

This Lease and the obligations of Lessor and Lessee hereunder shall be interpreted, construed and enforced in accordance with the Applicable Laws of the State, including conflicts of laws. Subject to the provisions of Section 12.6, venue shall lie in Tarrant County, Texas.

#### **15.14 Relationship of Parties.**

No express or implied term, provision or condition of this Lease shall or shall be deemed to constitute Lessor and Lessee as partners or joint venturers.

#### **15.15 Indemnity.**

**LESSEE IS AND SHALL BE IN EXCLUSIVE CONTROL OF THE LEASED PREMISES, AND LESSOR SHALL NOT IN ANY WAY WHATSOEVER BE LIABLE FOR ANY INJURY OR DAMAGE TO ANY PERSON OR PROPERTY HAPPENING ON, ABOUT OR IN CONNECTION WITH THE LEASED PREMISES OR ANY PART THEREOF. LESSEE SHALL INDEMNIFY AND HOLD HARMLESS LESSOR AND ALL ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR FROM ALL CLAIMS, SUITS, ACTIONS AND PROCEEDINGS WHATSOEVER WHICH MAY BE BROUGHT OR INSTITUTED ON ACCOUNT OF, GROWING OUT OF, OCCURRING FROM, INCIDENT TO OR RESULTING FROM, DIRECTLY OR INDIRECTLY, ANY AND ALL INJURIES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, DEATH) TO PERSONS OR PROPERTY (INCLUDING ANY CLAIMS, SUITS, ACTIONS AND PROCEEDINGS RELATING TO CONTAMINATED MATERIALS (DEFINED BELOW) AND ENVIRONMENTAL CLAIMS (DEFINED BELOW)) ARISING OUT OF THE USE OR OCCUPATION OF THE LEASED PREMISES, ANY ENVIRONMENTAL EVENT (DEFINED BELOW) OR ANY EXERCISE BY LESSEE OF ANY LESSEE POWER OF ATTORNEY OR LESSEE PROXY GRANTED PURSUANT TO THE TERMS OF THIS LEASE, OR WHICH MAY BE BROUGHT OR INSTITUTED UNDER ANY CC&RS, AND ALL LOSSES, COSTS, DAMAGES AND EXPENSES (INCLUDING, WITHOUT**

LIMITATION, REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENDING AGAINST SUCH CLAIMS, SUITS, ACTIONS AND PROCEEDINGS), WHETHER OR NOT SUCH INJURIES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, DEATH) RESULT FROM, OR ARE CLAIMED TO HAVE RESULTED FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LESSOR OR ANY PERSON CLAIMING BY, THROUGH OR UNDER LESSOR. LESSEE SHALL ASSUME ON BEHALF OF LESSOR AND ALL ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR, AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH, THE DEFENSE OF ALL SUCH CLAIMS, SUITS, ACTIONS AND PROCEEDINGS AGAINST LESSOR OR ANY PERSON CLAIMING BY, THROUGH OR UNDER LESSOR, WHETHER OR NOT LESSEE IS JOINED THEREIN, EVEN IF SUCH CLAIMS, SUITS, ACTIONS OR PROCEEDINGS BE GROUNDLESS, FALSE OR FRAUDULENT, AND LESSEE SHALL BEAR THE COSTS OF ALL JUDGMENTS AND SETTLEMENTS IN CONNECTION THEREWITH. THIS INDEMNITY SHALL APPLY WITHOUT LIMITATION TO ANY LIABILITIES IMPOSED ON ANY PARTY INDEMNIFIED HEREUNDER AS A RESULT OF ANY STATUTE, RULE, REGULATION OR THEORY OF STRICT LIABILITY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. NOTWITHSTANDING THE FOREGOING, THIS INDEMNITY SHALL NOT APPLY TO INJURY OR DAMAGE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL ACTS OR OMISSIONS OF LESSOR OR ANY ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR OR ITS AGENTS, EMPLOYEES AND CONTRACTORS, OR TO CLAIMS ASSERTED AGAINST OR LIABILITIES IMPOSED ON LESSOR OR ANY ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR OR ITS AGENTS, EMPLOYEES AND CONTRACTORS IN CONNECTION WITH OR AS A RESULT OF THEIR PERFORMANCE OF GOVERNMENTAL FUNCTIONS.

"CONTAMINATED MATERIALS" AS USED IN THIS SECTION 15.15 MEANS (A) ANY PETROLEUM OR PETROLEUM PRODUCTS, METALS, GASES, CHEMICAL COMPOUNDS, RADIOACTIVE MATERIALS, ASBESTOS, UREA FORMALDEHYDE FOAM INSULATION, TRANSFORMERS OR OTHER EQUIPMENT THAT CONTAIN DIELECTRIC FLUID CONTAINING POLYCHLORINATED BIPHENYLS, LEAD PAINT, PUTRESCIBLE AND INFECTIOUS MATERIALS, AND RADON GAS; (B) ANY CHEMICALS OR SUBSTANCES DEFINED AS OR INCLUDED IN THE DEFINITION OF "HAZARDOUS SUBSTANCES", "HAZARDOUS WASTES", "HAZARDOUS MATERIALS", "EXTREMELY HAZARDOUS WASTES", "RESTRICTED HAZARDOUS WASTES", "TOXIC SUBSTANCES", "TOXIC POLLUTANTS", "CONTAMINANTS" OR "POLLUTANTS", OR WORDS OF SIMILAR IMPORT, UNDER ANY APPLICABLE ENVIRONMENTAL LAW; AND (C) ANY OTHER CHEMICAL, MATERIAL OR SUBSTANCE, EXPOSURE TO WHICH IS PROHIBITED, LIMITED OR REGULATED BY ANY APPLICABLE ENVIRONMENTAL LAW OR GOVERNMENTAL AUTHORITY OR WHICH IS REGULATED BECAUSE OF ITS ADVERSE EFFECT OR POTENTIAL ADVERSE EFFECT ON HEALTH AND THE

**ENVIRONMENT, INCLUDING SOIL AND CONSTRUCTION DEBRIS THAT MAY CONTAIN ANY OF THE MATERIALS DESCRIBED IN THIS DEFINITION.**

**"ENVIRONMENTAL EVENT" AS USED IN THIS SECTION 15.15 MEANS THE OCCURRENCE OF ANY OF THE FOLLOWING: (I) ANY NONCOMPLIANCE WITH AN ENVIRONMENTAL LAW; (II) AN ENVIRONMENTAL CONDITION REQUIRING RESPONSIVE ACTION, INCLUDING AN ENVIRONMENTAL CONDITION CAUSED BY A THIRD PERSON; (III) ANY EVENT ON, AT OR FROM THE PROPERTY IN QUESTION OR RELATED TO THE OPERATION THEREOF OF SUCH A NATURE AS TO REQUIRE REPORTING TO APPLICABLE GOVERNMENTAL AUTHORITIES UNDER ANY ENVIRONMENTAL LAW, (IV) AN EMERGENCY ENVIRONMENTAL CONDITION, (V) THE EXISTENCE OR DISCOVERY OF ANY SPILL, DISCHARGE, LEAKAGE, PUMPAGE, DRAINAGE, POURAGE, INTERMENT, EMISSION, EMPTYING, INJECTING, ESCAPING, DUMPING, DISPOSING, MIGRATION OR OTHER RELEASE OR ANY KIND OF CONTAMINATED MATERIALS ON, AT OR FROM THE PROPERTY IN QUESTION WHICH MAY CAUSE A THREAT OR ACTUAL INJURY TO HUMAN HEALTH, THE ENVIRONMENT, PLANT OR ANIMAL LIFE OR (VI) ANY THREATENED OR ACTUAL ENVIRONMENTAL CLAIM.**

**"ENVIRONMENTAL CLAIMS" AS USED IN THIS SECTION 15.15 MEANS ANY AND ALL CLAIMS THAT ANY PERSON MAY NOW OR HEREAFTER HAVE IN CONNECTION WITH OR AS A RESULT OF THE CONDITION OF ANY PROPERTY, ANY EXISTING OR PAST ENVIRONMENTAL RELEASE OF ANY CONTAMINATED MATERIALS FROM ANY PROPERTY OR INTO THE GROUND, GROUND WATER OR SURFACE WATER OF ANY PROPERTY, THE EXISTENCE OF ANY ENVIRONMENTAL PROCEEDINGS WITH RESPECT TO ANY PROPERTY OR ITS OPERATION OR THE VIOLATION OF ANY ENVIRONMENTAL LAWS WITH RESPECT TO ANY PROPERTY OR ITS OPERATION.**

**"ENVIRONMENTAL LAW(S)" AS USED IN THIS SECTION 15.15 MEANS ANY APPLICABLE FEDERAL, STATE OR LOCAL STATUTE, LAW (INCLUDING COMMON LAW TORT LAW, COMMON LAW NUISANCE LAW AND COMMON LAW IN GENERAL), RULE, REGULATION, ORDINANCE, CODE, PERMIT, CONCESSION, GRANT, FRANCHISE, LICENSE, POLICY OR RULE OF COMMON LAW NOW IN EFFECT OR ADOPTED IN THE FUTURE, AND IN EACH CASE AS MAY BE AMENDED OR REPLACED, AND ANY JUDICIAL OR ADMINISTRATIVE INTERPRETATION THEREOF (INCLUDING ANY JUDICIAL OR ADMINISTRATIVE ORDER, CONSENT DECREE OR JUDGMENT) RELATING TO**

**(I) THE ENVIRONMENT, HEALTH, SAFETY OR CONTAMINATED MATERIALS,**

**(II) THE STORAGE, HANDLING, EMISSION, DISCHARGE, RELEASE AND USE OF CHEMICALS AND OTHER CONTAMINATED MATERIALS, (III) THE GENERATION, PROCESSING, TREATMENT, STORAGE, TRANSPORT, DISPOSAL, INVESTIGATION, REMEDIATION OR OTHER MANAGEMENT OF WASTE MATERIALS OF ANY KIND, AND (IV) THE PROTECTION OF ENVIRONMENTALLY SENSITIVE AREAS, INCLUDING CERCLA; THE HAZARDOUS MATERIALS**

TRANSPORTATION ACT, AS AMENDED, 49 U.S.C. § 5101 ET SEQ.; THE RESOURCE CONSERVATION AND RECOVERY ACT, AS AMENDED, 42 U.S.C. § 6901 ET SEQ.; THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED, 33 U.S.C. § 1251 ET SEQ.; THE TOXIC SUBSTANCES CONTROL ACT, 15 U.S.C. § 2601 ET SEQ.; THE CLEAN AIR ACT, 42 U.S.C. § 7401 ET SEQ.; THE SAFE DRINKING WATER ACT, 42 U.S.C. § 300F ET SEQ.; THE ENDANGERED SPECIES ACT, AS AMENDED, 16 U.S.C. § 1531 ET SEQ.; THE TEXAS SOLID WASTE DISPOSAL ACT, TEX. HEALTH & SAFETY CODE ANN. CH. 361 (VERNON 1990); THE TEXAS CLEAN AIR ACT, TEX. HEALTH & SAFETY CODE ANN. CH. 382 (VERNON 1990); THE TEXAS WATER CODE, TEX. WATER CODE ANN. (VERNON 1988 AND SUPP. 1990); THE TEXAS HAZARDOUS SUBSTANCES SPILL PREVENTION AND CONTROL ACT, TEX. WATER CODE ANN. (VERNON 1988 AND SUPP. 1990); THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT, 7 U.S.C. § 136 ET. SEQ.; AND THE EMERGENCY PREPAREDNESS AND RESPONSE COMMUNITY RIGHT-TO-KNOW ACT, 42 U.S.C. § 11001.

"ENVIRONMENTAL PROCEEDING" AS USED IN THIS SECTION 15.15 MEANS (I) ANY NOTICE OF ANY INVESTIGATION, RESPONSE ACTION, SPILL, PROCEEDING, WHETHER EXECUTIVE, ADMINISTRATIVE OR JUDICIAL, OR LITIGATION OR LITIGATION THREATENED IN WRITING RELATING TO ENVIRONMENTAL LAWS OR OTHER ENVIRONMENTAL MATTERS CONCERNING A PROPERTY INsofar AS SUCH INVESTIGATION, RESPONSE ACTION, SPILL, LITIGATION, LITIGATION THREATENED IN WRITING OR PROCEEDING RELATES TO SUCH PROPERTY; OR (II) RECEIPT OF ANY NOTICE FROM ANY PERSON OF: (X) ANY VIOLATION OR ALLEGED VIOLATION OF ANY ENVIRONMENTAL LAW RELATING TO A PROPERTY OR ANY PART THEREOF OR ANY ACTIVITY AT THE TIME CONDUCTED ON ANY PROPERTY, (Y) THE COMMENCEMENT OF ANY CLEAN-UP, ABATEMENT OR CONTROL PURSUANT TO OR IN ACCORDANCE WITH ANY ENVIRONMENTAL LAW OF ANY CONTAMINATED MATERIALS ON OR ABOUT ANY SUCH PROPERTY OR ANY PART THEREOF OR (Z) ANY VIOLATION OF ANY APPLICABLE LAWS OR HARM TO PERSON OR PROPERTY IN EACH CASE WITH RESPECT TO WORKER SAFETY AT OR IN CONNECTION WITH SUCH PROPERTY OR ANY PART THEREOF.

#### **15.16 Representatives Not Individually Liable.**

No member, official, representative, or employee of Lessor shall be personally liable to Lessee or any successor in interest in the event of any default or breach by Lessor for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease. No partner, member, representative, or employee of Lessee or any of its members shall be personally liable to Lessor in the event any default or breach by Lessee for any amount which may become due to Lessor or on any obligations under the terms of this Lease.

#### **15.17 Entire Agreement.**

This Lease and the Economic Development Performance Agreement (and all agreements executed pursuant to the terms of the Economic Development Performance Agreement by Lessee

and Lessor, including the Hotel Ground Lease (as that term is defined in the Economic Development Performance Agreement, provided the Lessee hereunder is also the “lessee” under such lease) incorporate all prior negotiations and discussions between the Parties regarding the subject matter and represent the entire agreement of Lessor and Lessee for the Leased Premises.

#### **15.18 Third Party Beneficiary.**

Except as otherwise specifically provided for in this Lease, nothing contained in this Lease shall be construed to confer upon any other party the rights of a third-party beneficiary.

#### **15.19 Payment or Performance on Saturday, Sunday or Holiday.**

Whenever the provisions of this Lease call for any payment or the performance of any act on or by a date that is not a Business Day, including the expiration date of any cure periods herein, then such payment or such performance shall be required on or by the immediately succeeding Business Day.

#### **15.20 Incorporate into Agreement.**

All exhibits, schedules, and recitals form a part of this Lease.

#### **15.21 Applicable Laws.**

Nothing in this Lease shall be construed to (a) limit or prevent Lessee from challenging at law or in equity the applicability of any Applicable Law and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (b) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Lease, no provision of this Lease shall be construed to require Lessee to comply with any Applicable Law during the period that Lessee may be pursuing a bona fide challenge of this applicability, lawfulness, and/or enforceability of such Applicable Law (unless such law requires compliance during any such challenge). If Lessee’s challenge is successful, Lessee shall not be required by the provisions of this Lease to comply with such Applicable Law.

#### **15.22 Consents and Approvals.**

Lessor and Lessee commit to work harmoniously with each other, and except in instances (if any) where a consent or approval is specified to be within the sole discretion of either Party, any consent or approval contemplated under this Lease shall not be unreasonably withheld, conditioned or delayed. Unless a shorter or longer time period is specified in this Lease, Lessor shall give or withhold (provided such withholding is reasonable under the circumstances, unless a sole discretion standard expressly applies) such approvals, certifications, or consents within twenty (20) Business Days.

#### **15.23 Good Faith and Fair Dealing.**

The Parties covenant and agree each to the other that its conduct under this Lease and the interpretation and enforcement of the provisions hereof, shall be characterized by good faith and fair dealings so that the objectives of each Party as set forth in this Lease may be achieved.

#### **15.24 Further Assurances.**

In connection with the execution and delivery of this Lease and the execution, delivery and recordation of any other instrument or agreement, provided for or contemplated by this Lease, Lessor or Lessee, at the written request of the other Party hereto, shall, within twenty (20) Business Days of such written request, execute and deliver to the requesting Party such other documents, certifications or agreements that are reasonably necessary to effectuate the intent of this Lease, such as bills of sale, assignments of leases, or certifications required by Applicable Law in connection with the recordation of instrument or agreements among the Land Records.

#### **15.25 Waiver of Immunity.**

Lessor hereby waives its governmental immunity from suit and immunity from liability and/or legal action brought by Lessee resulting from an uncured default by Lessee. To effectuate such waiver, the Parties hereby agree, for purposes of this Lease only, that this Lease is a contract subject to Subchapter I, Chapter 271, Texas Local Government Code, as amended.

#### **15.26 Assignment by Lessor.**

This Lease may not be transferred or assigned by Lessor unless and until Lessee and its Leasehold Mortgagees are provided with assurances that all Grants (as that term is defined in the Economic Development Performance Agreement) will be timely paid and that Lessor is not being released from its obligations under Section 4 of the Economic Development Performance Agreement to cause such Grants to be timely paid.

**SIGNATURES ON NEXT PAGE**

**IN WITNESS WHEREOF**, Lessor and Lessee executed this Lease under seal, the day and year first about written.

LESSOR:  
CITY OF ARLINGTON

ATTEST:

By: \_\_\_\_\_  
ALEX BUSKEN, City Secretary

By: \_\_\_\_\_  
TREY YELVERTON, City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
MOLLY SHORTALL, City Attorney

LESSEE:  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

WITNESS:

By: \_\_\_\_\_

STATE OF TEXAS           §  
                                  §  
                                  §  
COUNTY OF TARRANT   §

**CITY OF ARLINGTON**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **TREY YELVERTON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON**, a municipal corporation of Tarrant County, Texas, and as a **City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:

STATE OF \_\_\_\_\_ §  
                                  §  
                                  §  
COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as the Authorized Person of \_\_\_\_\_, a \_\_\_\_\_, organized under the laws of \_\_\_\_\_.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:



**Exhibit “A”**

**Land**

## Exhibit "B"

### Arbitration Procedures

B.1 In the event a Party, pursuant to the provisions of Section 12.6, has elected to provide the other Party with an Arbitration Notice, such Arbitration Notice shall include such Party's determinations of the applicable issues of the Dispute and Controversy subject to such Arbitration. In the event that the Arbitration Notice has been sent in accordance with the provisions hereof and the Lease, the Parties shall mutually agree, within fifteen (15) Business Days of the deemed delivery date of the Arbitration Notice to the appointment of a single arbitrator (the "**Arbitrator**") to handle the Arbitration. If the Parties are unable to mutually agree upon the Arbitrator within the fifteen (15) Business Days described above, any Party may request the American Arbitration Association to independently select, within thirty (30) Business Days after such Arbitration Notice, an Arbitrator who has the qualifications to serve as the single Arbitrator to resolve this Arbitration. The Arbitration must take place in Tarrant County and be conducted by an Arbitrator that has no conflict of interest.

B.2 Within fifteen (15) Business Days after the appointment of the Arbitrator, each Party shall supply the Arbitrator with such documents, materials or other evidence or written arguments as it or the Arbitrator desires, including such Party's proposed determinations of the applicable issues subject to such Arbitration. Each Party shall thereafter have an additional period of ten (10) Business Days to supply any rebuttal or other information it desires. The Arbitrator, in his/her sole discretion, may also request in writing, specific information and/or a hearing and shall alone otherwise determine the conduct of the Arbitration. Any information delivered or communicated during Arbitration by a Party shall be simultaneously delivered or communicated to (i) the other Party and (ii) the Arbitrator. The Arbitration shall be confidential, and the Parties shall maintain the confidential nature of the arbitration proceeding, arbitration hearing and award, except to the extent disclosure is required to regulators, to insurers, pursuant to an enforcement proceeding, or as otherwise required by applicable law.

B.3 The Arbitrator shall determine all matters necessary to resolve the dispute, including matters beyond the expertise of the Arbitrator. The Arbitrator shall be permitted to employ other professional advisors or experts as the Arbitrator deems reasonably necessary, at the expense of the Parties.

B.4 All costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in connection with an Arbitration shall be borne equally by the Parties, subject to reimbursement as set forth herein. Within forty-five (45) Business Days after the selection of an Arbitrator, the Arbitrator shall select one of the proposed determinations submitted by one of the Parties (and the Arbitrator shall not have the power to add to, modify, or change any of proposed determinations of the Parties). For purposes of this provision, the Party whose position is adopted by the Arbitrator will be deemed the prevailing Party. While each Party shall advance 1/2 of the costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in connection with the Arbitration, the prevailing Party will be reimbursed by the non-prevailing party the 1/2 of the costs and expenses referenced herein within 30 days of the

Arbitrator's final decision. All other costs and expenses incurred by the Parties shall be borne by the Party incurring same.

B.5 The Parties agree to act in good faith with respect to any communication with the Arbitrator and the Arbitration process.

B.6 Time shall be of the essence with respect to these Arbitration Procedures, and the Parties shall take all reasonable actions necessary to cause any necessary Arbitration hearing to occur promptly, and the Arbitrator shall be directed to arbitrate the dispute and issue its decision as soon as reasonably practicable, but in no event later than forty-five (45) Business Days after the appointment of the Arbitrator.

B.7 The Arbitration shall not relieve any Party from any of its respective obligations under this Lease during the term of any such Arbitration (other than in respect of the subject matter of the dispute that is being arbitrated).

B.8 In the event of a dispute between one or more of the Parties concerning this Lease and the Economic Development Performance Agreement, and one or more of the Parties have elected to resolve such dispute pursuant to the Arbitration Procedures contained herein or in the Economic Development Performance Agreement, there shall only be one Arbitration proceeding concerning such dispute (and not separate proceedings under this Lease and the Economic Development Performance Agreement or under any of the other leases executed pursuant to the terms of the Economic Development Performance Agreement). If more than one Arbitration proceeding has been initiated, such proceedings shall be consolidated.

Exhibit "C"  
Convention Center Site

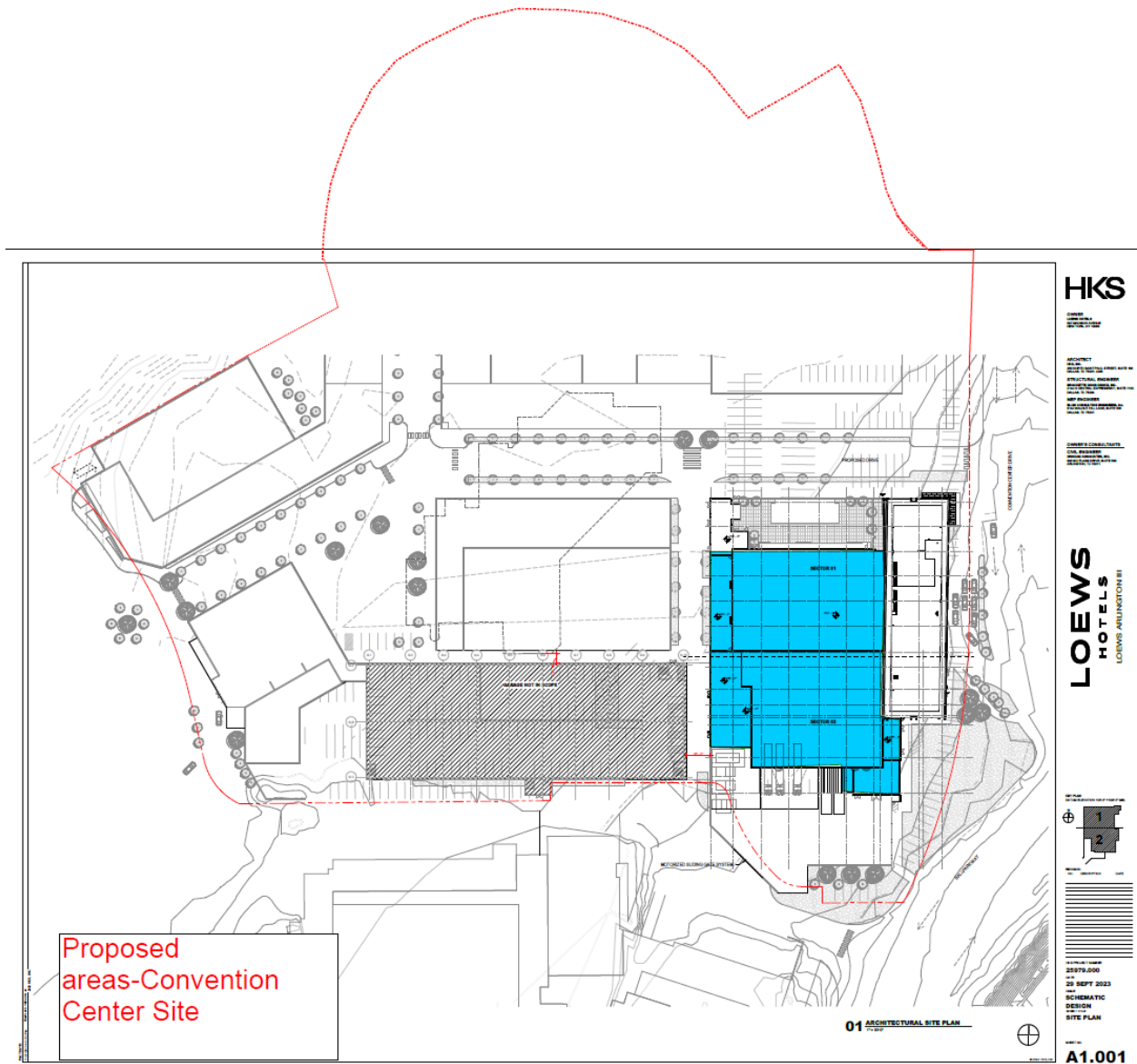


Exhibit "D"  
Hotel Ground Lease

## GROUND LEASE AGREEMENT FOR HOTEL

THIS GROUND LEASE AGREEMENT FOR HOTEL (“**Lease**”) is made and entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between THE CITY OF ARLINGTON, a home-rule city and municipal corporation of Tarrant County, Texas (“**Lessor**”) [\_\_\_\_\_], a Delaware limited liability company (“**Lessee**”).

### RECITALS

**WHEREAS**, Lessor owns the Leased Premises (as that term is defined herein). The City of Arlington, Arlington Economic Development Corporation, Lessor, and [an affiliate of] Lessee have entered into the Economic Development Performance Agreement (as that term is defined herein) concerning, among other matters, the development, construction, leasing, and operation of the Hotel Project (as that term is defined herein); and

**WHEREAS**, Pursuant to Section 7 of the Economic Development Performance Agreement, Lessee is obligated to lease the Leased Premises from Lessor as a condition precedent to the payment of the Economic Development Grants, as the term is defined in the Economic Development Performance Agreement; and

**WHEREAS**, Lessor currently leases the Leased Premises to [Lessee / Go For Three, LLC, a Delaware limited liability company] pursuant to the Existing Lease (as that term is defined herein); and

**WHEREAS**, Lessor and Lessee desire to amend and restate the Existing Lease pursuant to this Lease pursuant to the terms and provisions contained herein; and

**WHEREAS**, Lessor, by Resolution [\_\_\_\_\_] adopted on [\_\_\_\_\_], among other things, authorized the City Manager to execute this Lease;

**NOW, THEREFORE**, in consideration of the payment of Ten and 00/100 Dollars (\$10.00) and the mutual covenants, conditions and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

#### **1. Definitions.**

Unless the context or use clearly indicates another or different meaning or intent, for purposes of this Lease, and in addition to terms defined elsewhere in this Lease, the following definitions shall generally apply to the following capitalized words or terms:

“**Additional Improvements**” means additional improvements constructed on the Leased Premises that are not part of the Hotel Project and any additional improvements incorporated into the Hotel Project after the Hotel Project is completed.

“**Affiliate**” means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, controlled by, or is under common control with the specified Person. For the purpose of this definition, “**control**” means the ability to directly

or indirectly, by voting securities, partnership or member interests, contract or otherwise, direct or cause the direction of the policies or management of the specified Person. Two persons may be Affiliates even if such Persons have different minority equity owners that each have the right to approve certain actions of such Person, such as the sale, financing or leasing of an asset of such Person.

**“Alternative Hotel Developer”** means a Person (and/or a direct or indirect Affiliate of such Person) that, as of the effective date of any Disposition, (i) owns or operates, or has engaged a manager or operator that owns or operates, on a full-service basis, either directly or through subsidiaries or Affiliates hotel properties comparable to the Hotel Project, and (ii) has a net worth equal to at least Fifty Million Dollars (\$50,000,000).

**“Applicable Law”** means, subject to the provisions of Section 15.21 hereof, any law, ordinance, regulation, properly adopted requirement or order of any Governmental Authority, court, or other Governmental Authority, applicable from time to time to the acquisition, leasing, design, construction, equipping, financing, ownership, or operation of the Leased Premises and/or the Hotel Project or the performance of any obligations under any agreement entered into in connection with this Lease.

**“Assumption Agreement”** shall have the meaning set forth in Section 10.2.

**“Arbitration”** shall have the meaning set forth in Section 12.6.

**“Arbitration Notice”** shall have the meaning set forth in Section 12.6.

**“Arbitration Procedures”** shall have the meaning set forth in Section 12.6.

**“Arbitrator”** shall have the meaning set forth in Section B.1 of the Arbitration Procedures.

**“Business Day”** means any day except Saturday, Sunday, or any other day on which banking institutions are legally authorized to close in the City of New York or Tarrant County, Texas.

**“CC&Rs”** means any declaration, reciprocal easement agreements, covenant agreements and parking easements affecting the Leased Premises, as the same may be amended from time to time.

**“CC&R Lot Owner”** shall have the meaning set forth in Section 2.5(a).

**“CC&R Owner(s)”** shall have the meaning set forth in Section 2.5(a).

**“Commencement Date”** means the date of this Lease.

**“Consent”** means a written instrument executed by Lessor or the Lessor Representative as applicable, delivered to Lessee, and shall not include any implied or imputed consent and no consent by Lessor or the Lessor Representative pursuant to this Lease shall be deemed to constitute or include any consent required under any Applicable Law.

“**Convention Center**” shall have the meaning set forth in the Economic Development Performance Agreement.

“**Default Rate**” means the lesser of (i) fifteen percent (15%) and (ii) the maximum lawful rate of interest under Texas law.

“**Disposition**” means a sale, lease, assignment, or other transaction by which all or a part of Lessee’s interest in the Hotel Project (or any portion thereof) is passed on to another Person; but such term shall not include Operation Agreements (as defined in the Economic Development Performance Agreement), Subleases, Leasehold Mortgages or transfers from a foreclosure or deed in lieu of foreclosure of a Leasehold Mortgage.

“**Down Time**” shall have the meaning set forth in Section 6.5.

“**Economic Development Performance Agreement**” means that certain Economic Development Performance Agreement, dated [\_\_\_\_\_], by and among Lessor, [\_\_\_\_\_] and Arlington Economic Development Corporation, as amended, modified, supplemented or restated from time to time.

“**Encumbrances**” mean those matters of record which do not render title of the land unmarketable or uninsurable at ordinary rates by a title insurance company licensed in the State of Texas, as selected by Lessee, and which do not materially interfere with or materially increase the cost of the development of and/or operation of the Hotel Project as contemplated by the this Lease and the Economic Development Performance Agreement.

“**Event of Default by Lessee**” means any of those events, occurrences and circumstances so designated in Section 12.1 hereof.

“**Event of Default by Lessor**” means any of those events, occurrences and circumstances so designated in Section 12.2 hereof.

“**Existing Lease**” means that certain lease agreement, dated September 1, 1983, by and between The City of Arlington Texas, and Centrepark Hotel, Ltd., a Texas limited partnership, a memorandum of which was recorded at Volume 7650, Page 1159 of the Real Property Records of Tarrant County, Texas, covering certain real property located in the City of Arlington, Tarrant County, Texas, amended by that certain (i) Amendment to Lease Agreement, dated December 10, 1986, by and between Lessor and Centrepark Hotel, Ltd., recorded as Instrument No. D205041250, (ii) Amendment, Modification and Ratification of Lease Agreement, dated October 10, 2001, by and between Lessor and IHC Realty Corporation, as general partner for IHC Realty Partnership, L.P., recorded as Instrument No. D205019126, (iii) Amendment, Modification and Ratification of Lease Agreement, dated April 3, 2007, by and between Lessor and W2005 WYN Hotels, L.P. and Lessor, (iv) Amendment, Modification and Ratification of Lease Agreement, dated December 4, 2007, by and between Lessor and W2005 WYN Hotels, L.P., (v) Amendment, Modification and Ratification of Lease Agreement, dated August 7, 2008, by and between Lessor and W2005 WYN Hotels, L.P., (vi) Amendment, Modification and Ratification of Lease Agreement, dated February 2, 2009, by and between Lessor and W2005 WYN Hotels, L.P., (vii) Amendment, Modification and Ratification of Lease Agreement, dated June 23, 2009, by and between Lessor and W2005



WYN Hotels, L.P., as assigned to [Lessee / Go For Three, LLC, a Delaware limited liability company] pursuant to that certain Assignment of Ground Lease, dated June 16, 2022, under which Lessor leases to [Lessee / Go For Three, LLC, a Delaware limited liability company] the Leased Premises.

“**FF&E Reserve**” shall have the meaning set forth in Section 7.1(d).

“**GAAP**” means those conventions, rules, procedures and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States.

“**Governmental Authority**” means any Federal, State or local governmental entity (including a local government corporation, whether formed under Section 431 of the Subchapter D of the Texas Transportation Code or otherwise), authority (including any taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof).

“**Governmental Authorization**” means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, rights-of-way, and similar items from any Governmental Authority, including a liquor license from the Texas Alcohol and Beverage Commission.

“**Hotel Project**” means any of the buildings or other improvements constructed on the Leased Premises by Lessee together with any related personal property that make up the Hotel and any Ancillary Facilities that Lessee elects to build in its sole and absolute discretion, as those term is defined in the Economic Development Performance Agreement.

“**Impositions**” means, collectively, all real estate taxes and assessments imposed by the State or any subdivision thereof, including Lessor or any other tax imposed upon or levied against real estate or upon owners of real estate as such rather than persons generally, including taxes imposed on leasehold improvements which are assessed against Lessee under this Lease, payable with respect to or allocable to the Leased Premises and any buildings or improvements situated thereon, including the Hotel Project and any Additional Improvements.

“**Land Records**” means the records of the County Clerk of Tarrant County, Texas.

“**Lease**” means this Ground Lease Agreement for Hotel, together with any amendments, modifications, supplements, restatements or replacements thereof.

“**Leased Premises**” shall mean that certain parcel of land located in the City of Arlington, Texas described by metes and bounds in Exhibit “A” attached hereto and made part hereof.

“**Leasehold Mortgage**” means, with respect to the Leased Premises and the Hotel Project, a mortgage or any other instrument securing the payment of a debt that encumbers Lessee’s interest, if any, in this Lease and/or the Economic Development Performance Agreement.

**“Leasehold Mortgage”** shall not include a mortgage or any other instrument securing payment of a debt of a Subtenant and/or any or all of its Affiliates that encumbers the interests of such Subtenant in any Sublease of a part of the Leased Premises and/or Hotel Project.

**“Leasehold Mortgagee”** means the Person to which all or any part of the interest of the Lessee in the Economic Development Performance Agreement and/or this Lease and/or the Hotel Project is transferred as security under a Leasehold Mortgage.

**“Lessee”** means [\_\_\_\_\_], a Delaware limited liability company, as the lessee under this Lease, and the successors in title and assigns thereof permitted under the terms of this Lease.

**“Lessee Power of Attorney”** means a power of attorney granted by Lessor to Lessee pursuant to the terms of Section 2.5.

**“Lessee Proxy”** means a proxy, agency and power of attorney granted by Lessor to Lessee pursuant to Section 2.6.

**“Lessor”** means the City of Arlington, home-rule city and municipal corporation of Tarrant County, Texas, as the Lessor under this Lease, and the successors, successors-in-title and assigns thereof.

**“Lessor Representative”** means the City Manager for the City of Arlington, or his or her designee.

**“Maintenance and Repair Work”** shall have the meaning set forth in Section 7.1.

**“Notice”** means a written advice or notification required or permitted by this Lease, as more particularly provided in Section 15.4.

**“Parties”** means Lessor and Lessee.

**“Party”** means Lessor or Lessee.

**“Permitted Uses”** shall have the meaning set forth in Section 6.2.

**“Prohibited Uses”** shall have the meaning set forth in Section 6.3.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, unincorporated organization or other entity or any government or any agency or political subdivision thereof.

**“Personalty”** shall have the meaning set forth in Section 5.1.

**“Rent”** shall have the meaning set forth in Section 3.

**“State”** means the State of Texas.

**“Sublease”** means a lease, license or other occupancy agreement between Lessee and a Subtenant for a portion of the Hotel Project.

“**Subleases**” means two or more Subleases.

“**Subtenant**” means any Person that is or may hereafter be the sublessee or subtenant under any Sublease and the occupant of a portion of the Hotel Project pursuant to such Sublease.

“**Term**” means the term of this Lease described in Section 2.2.

“**Total Operating Revenue**” shall have the meaning set forth in the Uniform System and as determined in accordance with GAAP.

“**Uniform System**” means the Uniform System of Accounts for the Lodging Industry (Eleventh Revised Edition 2014) published by the Hotel Association of New York City, Inc. and approved by the American Hotel & Motel Association, including any subsequent revisions, updates or editions to the Uniform System.

## **2. Lease of Leased Premises; Term of Lease; Option to Purchase; Grant of Easements; Lessee Power of Attorney; Lessee Proxy; Quiet Enjoyment; and Recordation.**

### **2.1 Lease.**

Lessor, in consideration of the rents, covenants, agreements and conditions herein set forth, which Lessee hereby agrees shall be paid, kept and performed by Lessee, does hereby lease, let, demise and rent to Lessee, and Lessee does hereby rent and lease from Lessor, all right, title and interest of Lessor in and to the Leased Premises. The interest in the Leased Premises created hereby shall be deemed to be an estate for years under the Applicable Laws of the State. Lessor and Lessee agree that this Lease amends and restates the Existing Lease in its entirety. In addition, with respect to that certain portion of the Leased Premises described on Exhibit “C” attached hereto and made a part hereof (the “**Optional Development Site**”), Lessor is hereby authorized to, and shall, enter into with Lessee or an Affiliate of Lessee, at Lessee's request, (a) any amendment, modification, or restatement of this Lease which removes the Optional Development Site from this Lease and/or (b) any new lease for the Optional Development Site in substantially similar form as this Lease (except that (i) all references to the Hotel Project shall be removed, (ii) Section 5.1, shall be modified to allow Lessee to develop any improvements on the Optional Development Site as Lessee (or such Affiliate) elects, in its sole and absolute discretion, (iii) Section 6.2 shall be modified to allow any use of the Optional Development Site that is not prohibited under Applicable Law, (iv) Sections 6.4, 6.5, 6.6 and 6.8, 7.1(c), and 7.1(d) shall be deleted and (v) Section 10.1 shall be modified to allow for Dispositions without any conditions, restrictions or consent requirements.

**TO HAVE AND TO HOLD** the Leased Premises and all rights, privileges and appurtenances thereunto appertaining unto Lessee, for and during the Term, unless sooner terminated in accordance with any of the provisions of this Lease, subject to the Encumbrances and Impositions neither delinquent nor in default.

## **2.2 Term.**

The term of this Lease (the “**Term**”) shall commence on the Commencement Date and expires at midnight on the date immediately preceding the ninety-ninth (99th) anniversary of the Initial Occupancy (as that term is defined in the Economic Development Performance Agreement).

## **2.3 Option to Purchase.**

During the Term, Lessee shall have the right, any time after the thirtieth (30th) anniversary of the Initial Occupancy (and whether or not an Event of Default exists) to purchase Lessor’s interest in the Leased Premises for One Hundred and 00/100 Dollars (\$100.00) (as same is encumbered by this Lease) by providing Lessor with a Notice of the exercise of such right to purchase. Closing on such sale shall occur in the City of Arlington, Texas within sixty (60) days of the date of such Notice (but no earlier than thirty (30) days of the date of such Notice) on a Business Day, time and place selected by Lessee. Lessee shall prepare the closing documents, at its expense, including the deed and the assignment of this Lease, which all shall be in a commercially reasonable form. The City Manager is hereby authorized by Lessor to execute and deliver such closing documents, in recordable form. Lessee shall pay the cost of recording the deed. Upon the expiration or earlier termination of this Lease, Lessee shall automatically be deemed to have exercised its option to purchase Lessor’s interest in the Leased Premises unless Lessee waives such option to purchase by written Notice delivered to Lessor no later than thirty (30) Business Days prior to expiration or the effective date of an earlier termination of the Term. Before the closing, Lessor shall remove (or cause to be removed) any liens or encumbrances affecting the Leased Premises that result from any intentional and voluntary act committed by Lessor in violation of Section 2.5.

## **2.4 Easements.**

Throughout the Term, within twenty (20) Business Days after receipt of written request from Lessee, time being of the essence, Lessor shall execute and join in any CC&Rs and any other grants, licenses, franchises or easements within the Leased Premises for improvements and for electric, telephone, gas, water, sewer, and other public and private utilities and similar facilities necessary to the construction, alteration, operation, or maintenance or support of all or any part of the Hotel Project, as reasonably determined by Lessee, any other grants, licenses, franchises or easements, such as reciprocal easement and operating agreements or rights of way, that Lessee reasonably deems necessary for the leasing, construction and/or operation or support of the Hotel Project, any amendments and/or terminations of any such grants, licenses, franchises or easements that Lessee reasonably deems necessary for the leasing, construction and/or operation or support of the Hotel Project.

## **2.5 Lessee Power of Attorney under the CC&Rs.**

(a) Lessor, its successors and assigns hereby grant Lessee a power of attorney to exercise all of the rights and powers under any CC&Rs of Lessor as owner of the Leased Premises (the “**CC&R Lot Owner**”). The Lessee Power of Attorney granted to Lessee pursuant to this Section 2.5(a) shall be conclusively deemed to be on the terms set forth in Section 2.5(b) below. While Lessee holds the Lessee Power of Attorney, any owners under any

CC&Rs (“**CC&R Owner(s)**”) will deal exclusively with Lessee on all such matters pertaining to Lessor as CC&R Lot Owner under any CC&Rs.

(b) The following apply to Lessee’s Power of Attorney:

(i) Effect. The grant of any Lessee Power of Attorney shall, except to the extent of any limitations on the extent or exercise of the Lessee Power of Attorney expressly set forth in this Lease or other document by which such Lessee Power of Attorney is granted, conclusively constitute the designation of Lessee as the exclusive agent and attorney in fact of Lessor as CC&R Lot Owner, and the grant to Lessee of an exclusive power of attorney.

(ii) Irrevocable and perpetual. The Lessee Power of Attorney (A) shall conclusively be deemed to be coupled with an interest, and (B) except as otherwise expressly provided in (iii) below, shall be (x) irrevocable and (y) perpetual.

(iii) Termination. Any Lessee Power of Attorney shall conclusively be deemed to be effective for the entire Term of this Lease, except that any Lessee Power of Attorney shall automatically terminate upon the expiration of such Term or any earlier termination of this Lease, including, but not limited to, termination as a result of Lessor’s transfer of its rights, title and interest in the Leased Premises to Lessee.

(c) No Effect on Power to Convey a Unit or Amend Governing Documents. Except as may be otherwise expressly provided in the terms of any CC&Rs or an amendment thereto, a Lessee Power of Attorney:

(i) shall not include the power to sell, lease, convey, mortgage or otherwise encumber the fee simple reversion in and to the Leased Premises under this Lease, or the power to join in or consent to, on Lessor’s behalf as CC&R Lot Owner under any CC&Rs, any amendment to any CC&Rs; and

(ii) shall not affect Lessor’s right to convey the title to or any interest in the Leased Premises, or grant a mortgage thereon, but no such conveyance or mortgage shall alter the legal effect of any Lessee Power of Attorney granted pursuant to this Section 2.5 or any other Lessee Power of Attorney granted to Lessee by Lessor, and except as Lessee may otherwise agree, expressly and in writing, any Lessee Power of Attorney shall remain in full force and effect on its own terms notwithstanding such conveyance, and shall bind Lessor’s heirs, personal representatives, successors, and assigns. Notwithstanding the immediately preceding sentence, such heirs, personal representatives, successors and assigns shall, promptly upon notice from Lessee requesting such action, provide such further written assurances

of the continued effect of the Lessee Power of Attorney as Lessee may reasonably request in such notice.

(d) Persons Exercising. Lessee, as holder of a Lessee Power of Attorney, may permit its rights, powers and duties thereunder to be exercised and performed on its behalf by its officers, directors, employees and agents. A Lessee Power of Attorney may be transferred, pledged or collaterally assigned by Lessee as a part of a loan transaction.

## **2.6 Lessee Proxy under the CC&Rs.**

(a) Lessor, its successors and assigns hereby grant Lessee a proxy to (i) cast all of Lessor's votes as CC&R Lot Owner at any meetings of CC&R Owners, and (ii) exercise, as Lessor's agent and attorney in fact, Lessor's right to give or withhold Lessor's approval or consent in connection with (1) any decision to be taken by the Owners or without the holding of a meeting, or (2) any other consent or action to be given, withheld or taken by Lessor or in its capacity as CC&R Lot Owner. The Lessee Proxy (i) shall collectively constitute a proxy for purposes of any CC&Rs, (ii) shall conclusively be deemed to be coupled with an interest, and (iii) except as otherwise expressly provided in this Lease or in a separate document signed by Lessor and Lessee, shall be (1) irrevocable and (2) perpetual until the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary, the Lessee Proxy shall conclusively be deemed to be effective for the entire Term of this Lease, except that the Lessee Proxy shall automatically terminate upon the expiration of such Term or any earlier termination of this Lease, including, but not limited to, termination as a result of Lessor's transfer of its rights, title and interest in the Leased Premises to Lessee. While Lessee holds the Lessee Proxy, the CC&R Owners shall deal exclusively with Lessee on matters concerning the casting of votes or the giving of consent by the CC&R Owners under the terms of any CC&Rs.

(b) Lessee may permit the Lessee Proxy to be exercised on its behalf by its officers, directors, employees or agents. A Lessee Proxy may be transferred, pledged or collaterally assigned by Lessee as a part of a loan transaction.

(c) Nothing in this Section 2.6 shall affect Lessor's right to convey the title to or any interest in the Leased Premises, but no such conveyance shall affect the legal effect of the Lessee Proxy granted by Lessor, and except as Lessee may otherwise have agreed, expressly and in writing, the Lessee Proxy shall remain in full force and effect notwithstanding such conveyance, and shall bind the heirs, personal representatives, successors and assigns of Lessor. Notwithstanding the immediately preceding sentence, such heirs, personal representatives, successors and assigns shall, promptly upon notice from Lessee requesting such action, provide such further written assurances of the continued effect of the Lessee Proxy as Lessee may reasonably request in such notice.

## **2.7 Quiet Enjoyment.**

Lessor covenants and agrees that Lessee, while paying the Rent and other sums payable under this Lease and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the full Term without hindrance or molestation from Lessor or any other Person claiming by, through or under Lessor,

subject to the terms, conditions and provisions of this Lease, and to the Encumbrances. Lessor shall not, without the prior approval of Lessee, which approval Lessee may withhold in its sole and subjective discretion, encumber the Leased Premises with any easements, mortgages, liens or other encumbrances.

## **2.8 Recordation.**

Lessee shall have the right to record this Lease, and/or a memorandum of same prepared by Lessee (which Lessor covenants to execute and deliver in recordable form within ten (10) Business Days of Lessee's request therefore) among the Land Records.

## **2.9 Licenses and Permits.**

Whenever requested by Lessee, Lessor, at no cost to Lessor, shall execute and deliver to Lessee, in its capacity as fee owner of the Leased Premises, within ten (10) Business Days of Lessee's request therefore, subdivision plats, permit applications, building permit applications, liquor license applications, zoning and use related applications and any other type of application, for or concerning the Leased Premises and/or the development, construction, reconstruction and/or operation of the Hotel Project; *provided however*, that nothing in this Section 2.9 shall obligate Lessor to execute any agreement or do any other act that requires, or that could require, Lessor to pay any sum not reimbursed by Lessee or constitute a waiver or delegation of any of the governmental functions of Lessor or constitute approval by Lessor in its capacity as a Governmental Authority to such applications.

## **3. Rent.**

Commencing on the Commencement Date and continuing thereafter throughout the remainder of the Term, Lessee shall pay to Lessor annually the sum of Ten and 00/100 Dollars (\$10.00) (the "**Rent**") payable on or before the ninetieth (90th) day following each anniversary of the Commencement Date.

## **4. Impositions; Lessor Obligations.**

### **4.1 Impositions.**

From and after the Commencement Date, Lessee shall pay all Impositions that accrue and are payable for any part of the period that commences on the Commencement Date and ends on the expiration or earlier termination of this Lease before same are past due. Lessee shall provide Lessor with reasonable evidence of each such payment. Lessor shall promptly provide Lessee with a copy of all bills for Impositions that it receives. Lessee may collect from a Subtenant any of the Impositions as part of the rent under a Sublease or may have any Subtenant pay directly any of the Impositions; provided, however, Lessee remains primarily liable for the timely payment of the Impositions. Notwithstanding anything to the contrary contained herein, but subject to the terms of Section 4.2, in the event Lessee fails to pay any Imposition payable by Lessee pursuant to the provisions of this Lease before the date the same becomes delinquent, Lessor may, after giving Lessee ten (10) Business Days' Notice of its intention to do so, pay or cause to be paid any such Imposition which is delinquent and Lessee shall, within thirty (30) Business Days following

Lessor's demand and Notice, pay and reimburse Lessor therefor with interest at the Default Rate from the date of payment by Lessor until repayment in full by Lessee.

#### **4.2 Contests.**

Lessee may, at its expense, contest any of the Imposition and/or attempt to obtain a lowering of the assessed valuation of the Leased Premises and the Hotel Project. Lessor shall not be required to join any such contest unless required by application Applicable Law in order to make such contest effective, in which event any such contest may be taken by Lessee in the name of, but without expense to Lessor, **LESSEE HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD LESSOR HARMLESS FROM ALL COSTS, FEES, EXPENSES, CLAIMS, LOSSES OR DAMAGES BY REASON OF, IN CONNECTION WITH, OR IN ACCOUNT OF, GROWING OUT OF, RESULTING FROM, ANY SUCH CONTEST. THIS REQUIREMENT TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SHALL EXPRESSLY SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE.** To the extent such cooperation is required by Applicable Law or any applicable Governmental Authority for such contest, Lessor shall cooperate in any such action or proceeding as reasonably requested by Lessee, at Lessee's sole cost and expense, whether or not Lessor is joined pursuant thereto and Lessor agrees to take no action that would be adverse to Lessee in any such contest where Lessee seeks to reduce its obligation to pay Impositions. Upon request by Lessee, Lessor shall execute in its capacity as fee owner and promptly deliver to Lessee any documents or pleadings associated with such contest that Lessee may reasonably request.

#### **4.3 No Lessor Obligations.**

For so long as this Lease remains in effect and except for costs that Lessor has specifically agreed to pay pursuant to the express terms of this Lease and the Economic Development Performance Agreement, Lessor shall not be required to make any expenditure, incur any obligation or incur any liability of any kind whatsoever in connection with this Lease, the Leased Premises, the Hotel Project, Additional Improvements, or any Impositions which is not reimbursed by or indemnified against by Lessee.

### **5. Improvements.**

#### **5.1 Improvements.**

Lessee shall cause the Hotel Project to be constructed and maintained in accordance with the terms of the Economic Development Performance Agreement and the provisions of this Lease. Title to the Hotel Project, as well as any other Additional Improvements constructed on the Leased Premises, and all equipment, fixtures, machinery, furniture, furnishings and other personal property therein erected, constructed, installed or placed in or affixed to the Hotel Project by or on behalf of Lessee (collectively, "**Personalty**"), shall be and remain in the Lessee for and during the Term, as applicable. Lessee shall have the right, from time to time to make Additional Improvements, as well as renovate, alter, and modify the Hotel Project provided such do not result in a material reduction of the value of the Hotel Project as same existed prior to such construction, alteration, modification, expansion, reduction or demolition.



## **5.2 Tax Benefits.**

Lessor acknowledges that Lessee may claim any income tax benefit and burden that may be available to it under the Internal Revenue Code of 1986, as amended, as a result of its participation in the Hotel Project, including all depreciation for all improvements located on, or to be located on, the Leased Premises.

## **5.3 Termination or Expiration of Lease.**

Upon the termination or expiration of this Lease, whether by lapse of time or otherwise, Lessee shall vacate and surrender the Leased Premises together with any permanently affixed improvements then existing on the Leased Premises.

## **5.4 No Lessor's Lien.**

Lessor hereby waives any landlord's lien Lessor has or ever may have.

## **6. Acceptance and Use.**

### **6.1 Acceptance; Condition of the Leased Premises; Disclaimer of Representations and Warranties.**

**LESSEE ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE OR THE ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT:**

**(a) THAT NEITHER LESSOR NOR ANY AFFILIATE OF LESSOR MAKES OR HAS MADE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, CONCERNING (i) THE PHYSICAL CONDITION OF THE LEASED PREMISES (INCLUDING THE GEOLOGY OR THE CONDITION OF THE SOILS OR OF ANY AQUIFER UNDERLYING THE SAME AND ANY ARCHEOLOGICAL OR HISTORICAL ASPECT OF THE SAME), (ii) THE SUITABILITY OF THE LEASED PREMISES OR ITS FITNESS FOR A PARTICULAR PURPOSE AS TO ANY USES OR ACTIVITIES WHICH LESSEE MAY MAKE THEREOF OR CONDUCT THEREON AT ANY TIME DURING THE TERM, (iii) THE LAND USE REGULATIONS APPLICABLE TO THE LEASED PREMISES OR THE COMPLIANCE THEREOF WITH ANY APPLICABLE LAWS, (iv) THE FEASIBILITY OF THE HOTEL PROJECT OR ANY ADDITIONAL IMPROVEMENTS, (v) THE EXISTENCE OF ANY CONTAMINATED MATERIALS OR ENVIRONMENTAL CLAIMS, (vi) THE CONSTRUCTION OF ANY IMPROVEMENTS ON THE LEASED PREMISES OR (vii) ANY OTHER MATTER RELATING TO ANY IMPROVEMENTS AT ANY TIME CONSTRUCTED OR TO BE CONSTRUCTED THEREON;**

**(b) THAT NO REVIEW, APPROVAL, CONSENT OR OTHER ACTION BY LESSOR UNDER THIS LEASE SHALL BE DEEMED OR CONSTRUED TO BE SUCH A REPRESENTATION OR WARRANTY;**

(c) THAT LESSEE HAS BEEN AFFORDED FULL OPPORTUNITY TO INSPECT, AND HAS HAD FULL OPPORTUNITY TO BECOME FAMILIAR WITH, THE CONDITION OF THE LEASED PREMISES, THE BOUNDARIES THEREOF, ALL LAND USE REGULATIONS APPLICABLE THERETO AND OTHER MATTERS RELATING TO THE DEVELOPMENT THEREOF; AND

(d) THAT LESSEE ACCEPTS, ON AN “AS IS, WHERE IS” BASIS, THE LEASED PREMISES IN THE CONDITION IN WHICH THEY EXIST ON THE COMMENCEMENT DATE.

(e) NEITHER LESSOR NOR ANY OF ITS AFFILIATES SHALL BE LIABLE AS A RESULT OF ANY FAILURE BY ANY PERSON (OTHER THAN LESSOR) TO PERFORM THEIR RESPECTIVE OBLIGATIONS HEREUNDER. IT IS UNDERSTOOD AND AGREED BY LESSEE (FOR ITSELF OR ANY PERSON CLAIMING BY, THROUGH OR UNDER IT) THAT IT HAS ITSELF BEEN, AND WILL CONTINUE TO BE, SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF, AND INVESTIGATION INTO, THE FINANCIAL CONDITION, CREDIT WORTHINESS, CONDITION, AFFAIRS, STATUS AND NATURE OF ANY PERSON UNDER THE LEASE AND THE LEASED PREMISES.

## 6.2 Permitted Uses.

Lessee covenants and agrees that it shall use and occupy the Leased Premises, including the Hotel Project, solely for the following purposes, but not the Prohibited Uses (collectively, the “Permitted Uses”):

(a) During construction of the Hotel Project, Lessee covenants and agrees that it shall use and occupy the Leased Premises solely for the purposes of designing, developing, constructing, furnishing and opening the Hotel Project pursuant to the terms and conditions of this Lease and the Economic Development Performance Agreement, and

(b) The use of the Leased Premises and the Hotel Project as a convention- class hotel on a full-service basis with at least 500 keys, together with the right to provide additional facilities and incidental uses then found in convention-class hotels or reasonably related to a convention hotel operation, including without limitation, commercial retail operations, restaurant uses, health club and spas, and business and communication centers; and maintain such in a manner that the Hotel Project is operated under one of the hotel trade names listed on the “Upper Upscale” or higher category of the then current STR Chain Scales published by STR, Inc. commencing on the date of Initial Occupancy (as that term is defined in the Economic Development Performance Agreement). If STR, Inc. ceases to publish a “Upper Upscale” category list or ceases to publish the STR Chain Scales, the parties shall mutually agree upon a replacement publication;

(c) Maintenance and Repair Work pursuant to Section 7.1 hereof; and

(d) Construction of Additional Improvements after the Hotel Project is completed, subject to the limitations and requirements contained elsewhere in this Lease, and provided such Additional Improvements are made at the sole cost and expense of Lessee.

### 6.3 Prohibited Uses.

Lessee shall not use, nor knowingly permit the use of, the Leased Premises, including the Hotel Project, for any other or additional purpose that is not a Permitted Use, without first obtaining the Consent of Lessor, which Consent, may be granted, withheld, conditioned or delayed in Lessor's sole and absolute discretion. Lessee acknowledges that the Permitted Uses are subject to all Applicable Laws at any time applicable to the Hotel Project and the Leased Premises and that nothing in this Section 6 or elsewhere in this Lease or in the Economic Development Performance Agreement shall constitute or be deemed to constitute a waiver by Lessor of the performance of its governmental functions or of any such Applicable Laws or of the duty of Lessee to comply with such Applicable Laws. Notwithstanding the Permitted Uses hereunder, Tenant agrees that it shall not (collectively, the "**Prohibited Uses**"):

(a) cause or permit obnoxious or offensive odors or fumes to emanate or be dispelled from the Leased Premises in violation in any material respect of Applicable Laws;

(b) cause or permit undue accumulations of garbage, trash, rubbish or any other refuse in, on or about the Leased Premises;

(c) create, cause, maintain or knowingly permit any public or private nuisance in, on or about the Leased Premises;

(d) use or knowingly allow the Leased Premises to be used for the sale or display of any pornographic material or material which is obscene under standards set forth in any Applicable Laws or operate, or allow any Person to operate, in, on or about the Leased Premises any store or other facility a principal or significant portion of the business of which is a "sexually oriented business" as such term is defined in the City of Arlington Code of Ordinances (*provided* that the foregoing shall not preclude in-room pay per view adult videos consistent with industry practices);

(e) use or knowingly allow the Leased Premises to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs (or their equivalent);

(f) use or knowingly permit the Leased Premises to be used for the public display or public or private sale of guns or other weapons, ammunition, explosives or fireworks;

(g) use or knowingly permit the Leased Premises to be used as a gentlemen's club (or other establishment which allows full or partial nudity of its employees), a massage parlor (*provided* that massage services offered by a licensed massage therapist as part of a health, beauty or fitness operation in the Hotel Project which is otherwise a Permitted Use shall be permitted).

(h) use or permit the Leased Premises to be used for a shooting gallery, target range, vehicle repair facility, car wash facility, warehouse (but any area for the storage of goods intended to be sold at any permitted retail establishment within the Hotel Project or use in operation of the Hotel Project shall not be deemed to be a warehouse), convalescent care facility or mortuary, or use or knowingly permit it to be used for any assembly, manufacture, distillation, refining, smelting or other industrial or commercial agricultural operation or use;

(i) except during the course of constructing Additional Improvements, and then only if kept in a neat and orderly condition, use any portion of the Leased Premises (other than portions inside the Hotel Project) for storage other than areas designated as storage of goods intended to be sold at any permitted retail establishment within the Hotel Project or use in operation of the Hotel Project;

(j) engage in (or permit any Subtenants or other occupant of the Hotel Project to engage in) activities on or in the Leased Premises that create dust, noise, traffic hazards or other effects that unreasonably disturb the use and enjoyment of the Convention Center by its owner, guests, invitees, patrons, or the general public; and

(k) use, generate, manufacture, produce, store, treat or dispose of contaminated materials (other than the use, storage and disposal of contaminated materials customarily used, stored or disposed of in the operation or cleaning of hotels, so long as such contaminated materials are used, stored and disposed of in compliance in all material respects with all Applicable Laws).

The provisions of this Section 6.3 shall inure to the benefit of and be enforceable by Lessor and its successors and assigns. No other person, including any transient guest or patron of the Hotel Project, the Leased Premises or the Convention Center shall have any right to enforce the prohibitions as to the Prohibited Uses.

#### **6.4 Covenant to Operate.**

Subject to the provisions of Section 6.5 hereof, commencing on the first day of the Initial Occupancy (as that term is defined in the Economic Development Performance Agreement) and continuing thereafter (except for Down Times) during the remainder of the Term, Lessee covenants, at Lessee's sole cost and expense to:

(a) operate the Hotel Project, and cause the same to be operated, diligently and continuously as a convention class hotel on a full-service basis without interruption for any reason other than Down Times;

(b) perform all Maintenance and Repair Work in accordance with Section 7.1; and

(c) possess all Personalty necessary for the operation of the Hotel Project and maintain all spare parts and inventory.

## 6.5 Down Times.

Lessee may temporarily cease to operate areas or all or substantially all of the Hotel Project during the Term for, and only for, limited periods of down time (“**Down Times**”) for the limited purpose of, and only for the limited purpose of, one or more of the following circumstances for the applicable period specified below:

(a) During the period following any fire or other casualty or condemnation or other exercise by a Governmental Authority of the power of eminent domain to the extent, and only to the extent, necessary in order to repair and restore the Hotel Project in accordance with the terms of this Lease; *provided* that any portion of the Hotel Project taken by eminent domain shall no longer be subject to the terms and provisions of this Lease including the operation covenant in Section 6.4;

(b) During any period of construction of Additional Improvements, but only to the extent necessary to make such Additional Improvements;

(c) As a result of such other commercially reasonable interruptions as are incidental to the normal operation of the Hotel Project;

(d) As a result of any remodeling or renovation of the Hotel Project; or

(e) To the extent and only to the extent the same is not the result of Lessee’s failure to timely fulfill its obligation under this Lease, including its obligations to comply with Applicable Laws as provided in this Lease, during any period required by Applicable Law;

*provided, however* that during all Down Times Lessee shall (x) use its commercially reasonable efforts to minimize the disruption of such Down Time, (y) use its commercially reasonable efforts to minimize the disruption to the areas of the Hotel Project which remain open to the public, if any, and the services, aesthetic appearances and public and guest access to and in such portions of the Hotel Project.

## 6.6 Continuing Obligation.

No cessation of operations pursuant to Down Times shall relieve Lessee of any obligations under this Lease (including the obligation to pay Rent unless expressly provided otherwise pursuant to the terms of this Lease) other than the relevant portions of the covenant of continuous operation contained in Section 6.4. Lessee acknowledges and agrees that (a) its continuous use and occupancy of the Leased Premises and operation of the Hotel Project (other than during Down Times) and its payment of Rent provide a significant benefit on which Lessor in part economically depends, (b) violation of the covenants of continuous operation in Section 6.4 shall each be a default by Lessee subject to the terms and conditions of Section 12.1(c) and (c) Lessor considers such covenants of continuous operation a valuable contractual interest.

## 6.7 Governmental Authorizations.

Before commencement of any construction work on the Hotel Project or any Additional Improvements, Lessee shall at its expense secure or cause to be secured any and all Governmental

Authorizations, which may be required by the City of Arlington or other Governmental Authority having jurisdiction over such development, demolition, construction, alteration or reconstruction work to begin such work and as necessary during the course of the construction work. The approval or consent by the Lessor of any matter submitted to Lessor pursuant to this Lease, which matter is specifically provided herein to be approved or consented to Lessor, shall not constitute a replacement or substitute for, or otherwise excuse Lessee from, such permitting, licensing or approval processes; and, conversely, no permit so obtained shall constitute a replacement or substitute for, or otherwise excuse the Lessee from any requirement hereunder for the approval or consent of Lessor.

## **6.8 Naming Rights; Marketing.**

Lessee shall name and market the Hotel as “[\_\_\_\_\_]” (but may include such other derivations thereof as Lessee may determine *provided* that the word “**Arlington**” is also included) or, following any Disposition, any other brand in the “**Upper Upscale**” category provided the word “**Arlington**” remains. Lessee shall refer to the Hotel Project in all marketing and advertising efforts that contain the location of the Hotel Project as being located in Arlington, Texas and shall not use any other proper geographic name (i.e. Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to describe the Hotel Project’s location except that Lessee may reference the distance of the Hotel Project from other locations.

## **7. Repairs and Maintenance; Utilities.**

### **7.1 Lessee’s Obligation.**

Lessee shall, from the Initial Occupancy throughout the remainder of the Term, at its own expense and at no cost or expense to Lessor, do the following (collectively, the “**Maintenance and Repair Work**”):

(a) Keep and maintain, or cause to be kept and maintained, the Leased Premises, including the Hotel Project and any Additional Improvements, in good working repair and order, ordinary wear and tear, casualty and condemnation excepted;

(b) Promptly make, or cause to be made, all necessary repairs, interior and exterior, structural and non-structural, foreseen as well as unforeseen, to the Leased Premises, including the Hotel Project and any Additional Improvements, to keep them clean and in a condition such that they may be operated in compliance in all material respects with all Applicable Laws;

(c) Perform all alterations, upgrades, improvements, renovations or refurbishments to the Hotel Project necessary to keep the Hotel Project in the “**Upper Upscale**” category of the then current STR Chain Scales published by STR, Inc. (or such replacement publication agreed to by the parties as provided in Section 6.2(b)); and

(d) Maintain a balance in a reserve fund (the “**FF&E Reserve**”) in an amount equal to (i) for the period of time from the Initial Occupancy until the end of the first (1<sup>st</sup>) full calendar year following the calendar year in which Initial Occupancy occurs, one percent (1%) of Total Operating Revenue per month, (ii) for the period of time from the second (2<sup>nd</sup>) full

calendar year following the calendar year in which Initial Occupancy occurs, two percent (2%) of Total Operating Revenue per month, (iii) for the period of time during the third (3<sup>rd</sup>) full calendar year following the calendar year in which Initial Occupancy occurs, three percent (3%) of Total Operating Revenue per month, and (iv) for the period of time during the fourth (4<sup>th</sup>) full calendar year following the calendar year in which Initial Occupancy occurs and thereafter, four percent (4%) of Total Operating Revenue per month, to fund expenditures designed to maintain the Hotel Project in the “**Upper Upscale**” category of the then current STR Chain Scales published by STR, Inc. (or such replacement publication agreed to by the parties as provided in Section 6.2(b)). Developer shall make available to the Lessor an accounting of the FF&E Reserve on an annual basis.

## **7.2 No Services Provided by Landlord; Tenant’s Sole Responsibility.**

Lessor shall not be required to furnish any services or facilities or to perform any maintenance, repair or alterations in or to the Leased Premises, including the Hotel Project and any Additional Improvements. Lessee hereby assumes the full and sole responsibility for the condition, operation, security, repair, replacement, maintenance and management of the Leased Premises, including the Hotel Project and any Additional Improvements, throughout the Term.

## **7.3 Utilities.**

Lessor shall not be obligated to furnish or pay for any utilities for the Hotel Project. Lessee shall cause the necessary mains, conduits, and other facilities to be provided and maintained to supply water, gas, telephone, electricity, chilled water, steam and other utility services commonly supplied to and within comparable hotel properties similar to the Hotel Project, and Lessee shall, at Lessee’s sole cost and expense, subject to the obligations of the applicable utility provider, maintain and repair all water pipes, conduits, electric lines, gas pipes, steam pipes and other transmission facilities in, on or servicing the Hotel Project during the Term. No interruption or malfunction of any utility services shall constitute an eviction or disturbance of Lessee’s possession of the Leased Premises or a breach of the covenant of quiet enjoyment, and no such interruption or malfunction shall result in any abatement or reduction in the Rent. No interruption or malfunction of any utility services not caused by Lessee shall be an Event of Default or an occurrence that would lead to an Event of Default by Lessor upon the giving of notice or passage of time.

## **8. Damage or Destruction.**

### **8.1 Obligation to Reconstruct.**

In the event of damage or destruction to the Hotel Project during the thirty (30) year period that commences on Initial Occupancy (as that term is defined in the Economic Development Performance Agreement), Lessee shall promptly secure or cause to be secured the area of damage or destruction to safeguard against injury to persons or property and, promptly thereafter, remediate any hazard and restore the Hotel Project thereon to a presentable condition whether by repair or by demolition, removal of debris and screening from public view. Lessee shall, to the extent allowed by Applicable Law promptly commence and thereafter proceed with reasonable diligence to repair, restore, replace or rebuild the Hotel Project as nearly as practicable to a

condition substantially equivalent to that existing immediately prior to such damage or destruction (as the same may be modified by Lessee at the time of such repair or restoration, *provided* that such modification is of equal or greater value), whether done by application of insurance proceeds or other financial means. On or after the expiration of such thirty (30) year period that commences on Initial Occupancy, in the event the Hotel Project is damaged or destroyed by fire or other casualty, Lessee shall have the right to determine whether, and to what extent the Hotel Project should be restored or replaced. Notwithstanding the above, a Mortgagee and any person or entity that acquires title to the Improvements as a result of a foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 8.

## **8.2 No Obligation of Landlord.**

Under no circumstances shall Lessor be obligated to make any payment, disbursement or contribution toward the cost of the repairing, remediating, replacing, or rebuilding any damage or destruction to the Hotel Project.

## **9. Condemnation.**

### **9.1 General.**

If, at any time during the Term, the Leased Premises, the Hotel Project or any part thereof shall be condemned and taken by the United States of America, the State or any other authority or Person having the power of eminent domain, then the provisions of this Section 9 shall apply to such condemnation proceedings and the distribution of any awards pertaining thereto.

### **9.2 Entire Leased Premises Taken by Eminent Domain/Partial Taking Resulting in Termination.**

If the fee simple title in, or permanent possession of, all of the Leased Premises is taken by a governmental or other authority under the power of eminent domain, then this Lease shall terminate (or be suspended for the duration of the temporary taking) as of the taking date, and any Rent shall be prorated and paid by Lessee to the date of such taking. In the event that less than all of the Leased Premises is taken by a governmental or the authority under the power of eminent domain and if reconstruction of the Hotel Project is not feasible, or if the Hotel Project remaining after such taking is no longer economically viable, in each case as determined by Lessee in its sole and absolute discretion within one year after the date of the taking, then this Lease, at the election of Lessee, shall terminate as to the Leased Premises not so taken as of the date of such taking. The condemnation award shall be promptly paid as follows, in the following order of priorities:

(a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by Lessor and Lessee in such condemnation suit or conveyance (except that nothing contained in this Section 9 shall require payment to Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages, to the extent that the Leasehold Mortgages require such payments; and



(c) The balance, if any, shall be applied and distributed to pay each Subtenant any amount of which such Subtenant is entitled for its leasehold improvements, and the value of such Subtenant's leasehold interests, but only to the extent required in such Subtenant's lease; and

(d) The balance, if any, shall be applied and distributed to Lessee up to the amount of the value of the Hotel Project, as reasonably determined by Lessee; and

(e) The balance, if any, shall be divided and paid fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is Lessor, the entire balance shall be paid to Lessee.

### **9.3 Partial Taking of Leased Premises by Condemnation.**

In the event that less than all of the Leased Premises (or only an interest therein) is taken for any public use or purpose by the exercise of the power of eminent domain, or shall be conveyed by the Parties acting jointly to avoid proceedings of such taking, then, subject to the exceptions expressly set forth in Section 9.2 above for a partial taking where reconstruction of the Hotel Project is not feasible or where the Hotel Project remaining after such partial taking is no longer economically viable: (i) this Lease and all the covenants, conditions, and provisions hereunder shall be and remain in full force and effect as to all of the Leased Premises not so taken or conveyed, and (ii) Lessee shall remodel, repair, and restore the Hotel Project as nearly as practicable to a condition substantially equivalent to that existing immediately prior to such taking, taking into consideration the fact of the condemnation.

The condemnation award shall be promptly paid as follows, in the following order of priorities:

(a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by each Party in such condemnation suit or conveyance (except that nothing contained in this Section 9 shall require payment of Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages to the extent that the Mortgages require such payments; and

(c) The balance, if any, remaining shall be applied and distributed to pay each Subtenant whose space is taken any amount to which such Subtenant is entitled for its leasehold improvements and the value of such Subtenant is entitled for its leasehold improvements and the value of such Subtenant's leasehold interest, but only to the extent required in such Subtenant's lease; and

(d) There shall be paid to Lessee out of the balance, if any, remaining, the amount required to enable Lessee to remodel, repair, and restore any improvements to such condition as Lessee determines in its sole and absolute discretion to be appropriate, taking into consideration the fact of the condemnation; and

(e) The balance, if any, shall be applied and distributed to Lessee up to the amount of the value of the Hotel Project taken, as reasonably determined by Lessee; and

(f) The balance, if any, shall be divided and paid over fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is owner, the entire balance shall be paid to Lessor.

#### **9.4 Temporary Taking.**

If the whole or any part of the Leased Premises or the Hotel Project or of Lessee's interest in this Lease shall be taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full the Rent without reduction or abatement in the manner and at the times herein specified. Except only to the extent that Lessee is prevented from so doing pursuant to the terms of any order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred.

#### **9.5 Condemnation Proceedings.**

Lessee, Lessor and Leasehold Mortgagee shall each have the right, as its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials and appeals therein.

#### **9.6 Notice Condemnation.**

In the event Lessor or Lessee shall receive notification of any proposed or pending condemnation proceeding affecting the Leased Premises or the Hotel Project, the Party receiving such notification shall promptly notify, by Notice, the other Party.

### **10. Assignments; Subleases.**

#### **10.1 Restriction Against Dispositions.**

Lessee shall be entitled to make or create or suffer to be made or created without the consent of Lessor any Disposition of the Hotel Project to an Affiliate of Lessee or to any Alternative Hotel Developer at any time. Prior to the fifteenth (15th) anniversary of the Initial Occupancy, Lessee shall not make or create, or suffer to be made or created, any Disposition of the Hotel Project to any Person that is not an Alternative Hotel Developer, without the prior written approval of Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. Any such approval or disapproval shall be made within thirty (30) Business Days of Lessor's receipt of such request, time being of the essence. On or any time after the fifteenth (15th) anniversary of the Initial Occupancy, Lessee shall be entitled to make or create or suffer to be made or created any Disposition of the Hotel Project to any Person, whether or not such Person is an Alternative Hotel Developer without the consent of Lessor.

## **10.2 Assumption Agreement.**

In connection with any Disposition made during the Term, the counterparty to such Disposition shall assume all obligations of Lessee under this Lease accruing from and after the execution date of such Disposition by a written agreement (the “**Assumption Agreement**”) to which the Lessor is either a party or in which the Lessor is specified to be a beneficiary, a copy of which Assumption Agreement shall be promptly provided to the Lessor following the Disposition to evidence the assignment and assumption in question. Upon Lessee’s delivery of an Assumption Agreement, Lessee shall be relieved of all further liability arising hereunder except for defaults of Lessee under this Lease that accrued before such Disposition which Lessor had notified Lessee of and which remain uncured.

## **10.3 Project Financing and Mortgages.**

The provisions of Section 10.1 and 10.2 are not intended to modify or supersede any of the rights granted by Lessee to any Leasehold Mortgagee and any Subtenant under Sections 11 and 12 hereof. In the event that the provisions of this Section 10 conflict with or are inconsistent with the any of the other provisions of Sections 11 and/or 12 hereof, the provisions of Sections 11 and 12 hereof shall control and the provisions of Sections 10.10 and 10.2 shall be construed and interpreted accordingly.

## **10.4 Permitted Disposition to Subtenants.**

Notwithstanding anything in Sections 10.1 or other sections of this Lease to the contrary, Lessee may enter into Subleases or other contractual agreements with Subtenants for any part of the Hotel Project, at any time and from time to time from and after the Initial Occupancy and during the Term, with such Subtenants and upon such terms and conditions as Lessee shall, in its sole discretion, deem fit and proper consistent with the other provisions of this Lease. Notwithstanding anything in this Section 10 to the contrary, a Sublease or Subleases may not be used as a way to circumvent the disposition or assignment limitations of this Lease. Each Sublease shall be subject and subordinate to this Lease.

## **10.5 Non-disturbance and Attornment.**

(a) Lessor covenants and agrees with Lessee for the benefit of each and every Subtenant from time to time occupying any part of the Leased Premises and the Hotel Project or having rights granted to it by Lessee with regard to the Leased Premises, which Subtenants shall be third party beneficiaries of this Section 10.5 as it may apply to each of them respectively, that in the event of a termination of this Lease, each such Subtenant may continue to occupy its premises under its pre-existing Sublease and enjoy the rights granted to such Subtenant in such Sublease; provided such Subtenant shall then attorn to Lessor (to the extent that such Subtenant occupies any part of the Leased Premises and the Hotel Project) and, if such Subtenant’s Sublease does not provide for such attornment (and such Subtenant occupies any part of the Leased Premises and the Hotel Project), such Subtenant, promptly after the termination of this Lease, provides Lessor with a written statement of such Subtenant whereby such Subtenant attorns to Lessor.

(b) In addition to the provisions of Section 10.5(a) hereof, Lessor covenants and agrees with Lessee that Lessor will, at the request of Lessee made from time to time enter into a non-disturbance and attornment agreement with any Subtenant identified by Lessee, which non-disturbance and attornment agreement shall provide for all terms set forth in Section 10.5(a) hereof and be in commercially reasonable form. Lessor shall execute and deliver to Lessee such a non-disturbance and attornment agreement or specify in writing its objections thereto within twenty (20) Business Days after receipt of the form thereof from Lessee, time being of the essence.

## **11. Leasehold Mortgage Financing.**

### **11.1 Rights to Leasehold Mortgage.**

(a) Notwithstanding any other provision of this Lease, Lessee shall at all times have the right to enter into or grant one or more Leasehold Mortgages. Lessee may encumber, pledge, grant, or convey its rights, title and interest under this Lease by way of a Leasehold Mortgage (or assignment) to secure payment of any loan or loans obtained by Lessee. Such Leasehold Mortgage may also encumber Lessee's right to purchase the Leased Premises.

(b) Lessee, and any Subtenant (to the extent permitted by Lessee), may grant security interests in or place liens upon any equipment or personal property (so long as such equipment or property is not a fixture integrated into the real property, which equipment or property could not be removed without permanent damage to the Leased Premises), without such interest or liens constituting a Disposition. Such equipment and personal property shall not be deemed to be "improvements" under this Lease. During the Term, at the request of Lessee, Lessor will, within thirty (30) days of such a request, execute and deliver a landlord's waivers of liens (including customary terms such as restoration of the premises) to facilitate such security interests and liens upon such equipment and personal property, which landlord's waivers of liens shall be in a form and substance reasonably satisfactory to Lessee.

(c) Each Subtenant (to the extent permitted by Lessee) shall have the right at any time to encumber its sub-leasehold estate by a mortgage or other encumbrance or lien without the necessity of obtaining the consent of Lessor (so long as the deed of trust, mortgage or other primary security instrument creating such Subtenant's mortgage refers to this Section 11 by reference). At the request of Lessee (given by notice), Lessor shall treat a mortgagee of a Subtenant's sub-leasehold estate in the same manner that it treats a Leasehold Mortgagee as to notice rights and shall enter into a non-disturbance agreement with such Subtenant's mortgagee, which agreement shall be in a form and substance that is reasonably acceptable to such Subtenant's mortgagee.

(d) In the event Lessor gives notice to Lessee of a default of its obligations under this Lease, Lessor shall forthwith furnish a copy of the notice to the Leasehold Mortgagees that have been identified to Lessor by Lessee.

## **11.2 Rights of Leasehold Mortgagee**

### **11.2.1 Lessee's Acceptance.**

Lessor agrees to accept performance and compliance by any Leasehold Mortgagee of and with any term, covenant, agreement, provision, or limitation on Lessee's part to be kept, observed, or performed by Lessee hereunder.

### **11.2.2 Cure of Default.**

Following an Event of Default by Lessee, Lessor will exercise no remedies under this Lease, unless it shall first give Leasehold Mortgagee notice after the occurrence of any such Event of Default and stating the intention of Lessor, on a date specified in such notice, to exercise such remedies. Notwithstanding such notice, Lessor shall not exercise any such remedies, if:

(a) such Event of Default can be cured by the payment of a fixed monetary amount and Leasehold Mortgagee shall make such payment within ninety (90) days after the date such notice was given: or

(b) such Event of Default can be cured with the exercise of reasonable diligence by Leasehold Mortgagee after obtaining possession of the Leased Premises and the improvements, and Leasehold Mortgagee or Leasehold Mortgagee's designee, within one hundred eighty (180) days after the date of such notice, obtains the interest of Lessee in this Lease or Leasehold Mortgagee commences such proceedings (including, but not limited to, the filing of a petition for the appointment of a receiver) as it may deem necessary to obtain such possession (except that if Leasehold Mortgagee is precluded, notwithstanding the filing of a petition to the bankruptcy court for a waiver, from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period during which leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure) and thereafter diligently prosecutes such action and promptly upon obtaining such possession (or promptly upon its designee obtaining such possession) thereupon promptly commences (or its designee commence); and thereafter diligently pursues, the curing of such Event of Default; or

(c) such Event of Default is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises and the improvements were obtained by Leasehold Mortgagee or its designee, and Leasehold Mortgagee, within one hundred eighty (180) days after the date such notice is given, either obtains title to all of Lessee's right, title and interest in and to this Lease (or Leasehold Mortgagee's designee obtains such interest) or publishes any required notice of foreclosure or institutes foreclosure proceedings, as the case maybe be, and thereafter proceeds with diligence to acquire (or have its designee acquire) the interest of Lessee in the Lease (except that if Leasehold Mortgagee is precluded from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period during which Leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure), and such Event of Default, to the extent that the same shall have occurred prior to

such acquisition of the interest of Lessee in this Lease by Leasehold Mortgagee or its designee, shall thereupon be deemed to have been waived.

### **11.2.3 Lease Termination; New Lease:**

(a) If this Lease is terminated in connection with a bankruptcy proceeding involving Lessee, Lessor shall give Leasehold Mortgagee notice of such termination and shall enter into a new lease for the Leased Premises that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage or, at the request of Leasehold Mortgagee, with an assignee, designee, or nominee of Leasehold Mortgagee for the remainder of the Term of this Lease effective as of the date of such termination, at the rate and upon the same covenants, Leases, terms, provisions and limitations as are herein contained, *provided* that:

(i) Leasehold Mortgagee makes written request upon Lessor for such new lease within one hundred eighty (180) days after the giving of such notice of termination and such written request is accompanied by payment to Lessor of all amounts then due to Lessor in connection with the Leased Premises and the improvements that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage of which Lessor shall have given Leasehold Mortgagee notice; and

(ii) Leasehold Mortgagee pays or causes to be paid to Lessor at the time of the execution and delivery of such new lease any and all additional sums which would at the time of the execution and delivery thereof due under this Lease but for such termination and pays or causes to be paid any and all expenses, including reasonable attorneys' fees, court costs, and disbursements, incurred by Lessor concerning the Leased Premises and the improvements in connection with any such termination or in connection with the execution and delivery of such new lease and any conveyance of title to the improvements; and

(iii) Leasehold Mortgagee agrees to cure, within sixty (60) days after the execution and delivery of such new lease, all uncured Events of Default of which Lessor shall have given Leasehold Mortgagee notice (except any Event of Default which is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises, or the improvements were obtained, to the extent that same shall have occurred prior to the execution and delivery of such new lease, shall be deemed to have been waived), or if any such Event of Default cannot be cured within such period, Leasehold Mortgagee agrees to commence, within such period, to cure such Event of Default and thereafter pursues the same with due diligence.

(b) Any new lease made pursuant to this subsection 11.2.3 shall (i) have the same relative priority in time and in right as this Lease, and (ii) have the benefit of all of the right, title, powers and privileges of Lessee hereunder in and to the Leased Premises and the

improvements. At Lessee's request, Lessor will enter into an agreement with Leasehold Mortgagee granting to Leasehold Mortgagee the rights set forth in this Section 11.2.

#### **11.2.4 Notice to Lessor and Leasehold Mortgagee.**

If Lessee shall furnish Lessor with a written notice setting forth the name and address of a Leasehold Mortgagee, Lessor shall thereafter send to such Leasehold Mortgagee a copy of any notice given to Lessee under this Lease, and no such notice shall be deemed to have been properly given unless and until a copy thereof shall have been sent to Leasehold Mortgagee at the address specified in such notice.

#### **11.2.5 Performance by Leasehold Mortgagee; Rights and Duties of Leasehold Mortgagee.**

No Leasehold Mortgagee shall have any liability for the performance of any of the covenants, conditions or obligations of Lessee under this Lease unless and until such time as Leasehold Mortgagee acquires title to the leasehold estate created by this Lease. Further, in no event shall any Leasehold Mortgagee be obligated to perform or observe any of the covenants, terms or conditions of this Lease on the part of Lessee to be performed or observed, or be in any way obligated to complete the improvements to be constructed in accordance with this Lease, nor shall it guarantee the completion of improvements as hereinbefore required of Lessee, whether as a result of (i) its having become a Leasehold Mortgagee, (ii) the exercise of any of its rights under the instrument or instruments whereby it became a Leasehold Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (iii) the performance of any of the covenants, terms or conditions on the part of Lessee to be performed or observed under this Lease, or (iii) otherwise, unless such Mortgagee shall either make the election set forth in Section 11.2.3 to assume the obligations of Lessee.

#### **11.3 Non-subordination.**

Nothing contained in this Section 11, or in any other section of this Lease shall be deemed to allow a subordination of Lessor's reversionary estate in any part or portion of the Leased Premises leased to Lessee. In no event will such subordination be made. Lessee and each Subtenant may mortgage only its leased or sub-leasehold interest in the Leased Premises.

#### **11.4 Leasehold Mortgagee's Rights Agreements.**

Lessor covenants and agrees with Lessee that Lessor will, at the request of Lessee made from time to time and at any time, enter into a lender's rights agreement with any Leasehold Mortgagee (or potential Leasehold Mortgagee) identified by Lessee, which lenders' rights agreement shall be consistent with the terms and provisions contained in this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages. Within twenty (20) Business Days of Lessee's request for a Leasehold Mortgagee's rights agreement pursuant to the provisions of this Section 11.4, Lessor shall execute and deliver to Lessee such a lender's rights agreement benefiting the identified Leasehold Mortgagee (or potential Leasehold Mortgagee) and such Leasehold Mortgagee's Leasehold Mortgage (or potential Leasehold Mortgagee's potential Leasehold Mortgage), which executed Leasehold Mortgagee's rights agreement shall be

commercially reasonable and in a form and substance that are reasonably acceptable to such Leasehold Mortgagee (or potential Leasehold Mortgagee) and that is consistent with, and at the option of such Leasehold Mortgagee (or potential Leasehold Mortgagee) incorporates, the terms and provisions of this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages (such as the Leasehold Mortgagee notice provisions and the Leasehold Mortgagee cure rights provisions of this Section 11).

## **12. Defaults/Arbitration.**

### **12.1 Events of Default by Lessee.**

Each of the following shall constitute an Event of Default by Lessee:

(a) The filing by Lessee of a voluntary proceeding or the consent by Lessee to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessee or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessee in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessee to perform or to observe any material covenant, obligation or requirement of Lessee arising under this Lease not specifically named as an Event of Default in this Section 12.1, and the continuation of such failure for thirty (30) days after receipt of written Notice from Lessor specifying the nature and extent of such failure, or if such failure cannot reasonably be cured within such thirty (30) day period, the failure of Lessee to commence to cure such failure within such thirty (30) day period and to diligently pursue same to completion.

### **12.2 Events of Default by Lessor.**

Each of the following shall constitute an Event of Default by Lessor:

(a) The filing by Lessor of a voluntary proceeding or the consent by Lessor to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessor or appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessor in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessor to perform or to observe any material nonmonetary covenant, obligation or requirement of this Lease not specifically named as an Event of Default by Lessor in this Section 12.2, and the continuation of such failure for thirty (30) days after receipt of written Notice from Lessee specifying the nature and extent of any such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of Lessor



to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such effort to cure to completion.

(d) The failure of Lessor to execute and deliver any document, agreement or instrument (such as a non-disturbance, attornment and subordination agreement with a Subtenant, any estoppel certificate, any permit application, any subdivision plan, any agreement with any Leasehold Mortgagee or Subtenant, any deed, lease or lease amendment) requested by Lessee and required to be given by Lessor in accordance with the provisions of this Lease and the continuation of such failure for twenty (20) days after written notice from Lessee specifying the nature and extent of such failure.

### **12.3 Remedies.**

Should an Event of Default by Lessee occur hereunder, Lessor may, by written notice to Lessee, initiate the procedures contained in Section 12.6. Should an Event of Default by Lessor occur hereunder, Lessee may, by written notice to Lessor, initiate the procedures contained in Section 12.6. This Lease may not be terminated by Lessee or Lessor as a result of the occurrence of an Event of Default by the other Party hereunder. Lessor shall not have the right to terminate this Lease and/or the Term of this Lease, nor to re-enter and take possession of the Leased Premises as a result of an Event of Default by Lessee. All remedies under this Lease shall be cumulative and not restrictive of other remedies (except that Lessor does not have the right to terminate this Lease or Lessee's right to possession), including without limitation, specific performance. The initiation of any remedy by Lessor or Lessee shall not constitute or be deemed an election of remedies by it and such Party may invoke two or more remedies hereunder concurrently or consecutively. No Party may seek or obtain an award of consequential or punitive damages against the other Party.

### **12.4 Waiver.**

Failure of Lessor or Lessee to exercise any right or remedy hereunder shall not impair any of its rights nor be deemed a waiver thereof and no waiver of any of its rights shall be deemed to apply to any other such rights, nor shall it be effective unless in writing and signed by the waiving Party.

### **12.5 Attorneys' Fees.**

If either Lessor or Lessee brings suit or other legal proceedings or arbitration proceedings to enforce the provisions of this Lease against the other, then each Party in such suit or proceeding shall bear its own attorneys' fees and litigation and/or arbitration costs and expenses incurred by it in connection with such suit or proceeding.

### **12.6 Arbitration**

In the event any dispute, controversy or claim between or among the Parties hereto arises under this Lease (a "**Dispute or Controversy**"), including a claim that an Event of Default has occurred, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement. In the event a Dispute or Controversy arises, any Party hereto shall have the right to notify the other Party hereto that the notifying Party has elected to implement the procedures set forth in this Section 12.6. Within fifteen (15) days after delivery of any such

notice by one Party to the other Party regarding a Dispute or Controversy, a representative of each of the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained within fifteen (15) days after the meeting of the Parties representatives for such purpose, or such longer period as the Parties may agree upon, then either Party may by notice to the other Party (the “**Arbitration Notice**”) submit the Dispute or Controversy to arbitration in accordance with the provisions of this Section 12.6 and Exhibit “B” attached hereto (the “**Arbitration Procedures**”). The Arbitration Notice must comply with the Arbitration Procedures. Upon receipt of the Arbitration Notice, all Parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section 12.6 and Exhibit “B” without regard to the justiciable character or nature of such Dispute or Controversy. Each Party hereto agrees that any Dispute or Controversy which is not resolved pursuant to this Section 12.6 shall be submitted to binding arbitration hereunder and shall be resolved exclusively and finally through such binding arbitration in accordance with the Arbitration Procedures (the “**Arbitration**”). This Section 12.6 and Exhibit “B” hereto are and hereby constitute a written agreement by the Parties hereto to submit to arbitration any such Dispute or Controversy arising after the Commencement Date within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code. Notwithstanding any provision of this Lease to the contrary, any Party hereto may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Tarrant County, Texas. In the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the Arbitration Procedures, notwithstanding that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the Parties hereto expressly agree that the Arbitration Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

### **13. Representations.**

#### **13.1 Representations by Lessee.**

Lessee represents and warrants to Lessor that Lessee (i) is validly existing limited liability company under the laws of Delaware and is in good standing in the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

#### **13.2 Representations by Lessor.**

Lessor represents and warrants to Lessee that Lessor (a) is a constitutionally chartered city validly existing under the laws of the State of Texas; (b) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; and (c) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

## **14. Insurance; Bonds.**

### **14.1 Insurance.**

During the Term, Lessee, at no cost or expense to Lessor, will keep and maintain, or cause the Subtenants to keep and maintain, the insurance set forth below. Lessee shall not commence work on the Hotel Project until Lessee has obtained or caused to be obtained all the insurance required under this Lease, nor shall Lessee allow any work on the Hotel Project to commence until all similar insurance of the contractor or subcontractor performing work on the Hotel Project has been obtained. All insurance policies provided under this Lease will be written on an “occurrence” basis, if available in the market at commercially reasonable rates. The insurance requirements shall remain in effect throughout the Term. The insurance required by this Lease consists of the following:

(a) Worker’s Compensation Insurance, statutory policy as required by law; Employers Liability Insurance of not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease-each employee, \$1,000,000.00 disease-policy limit.

(b) All Risk Property, insuring all buildings and structures on the Leased Premises against all direct physical loss or damage; including by fire, windstorm, hail, explosion and terrorism, in an amount at least equal to one hundred percent (100%) of the then full cost of replacing the buildings and structures on the Leased Premises and all Personalty.

(c) Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, fully insuring Lessor's liability for injury to or death of employees of Lessee and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

(d) Commercial Automobile Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.

(e) Umbrella Insurance, combined single limit bodily injury and property damage liability insurance, including death, in excess of the primary coverage required herein for an amount equal to \$2,000,000.00 per occurrence and \$2,000,000.00 aggregate.

### **14.2 Conditions.**

Each insurance policy to be furnished by Lessee, or its contractors or subcontractors, shall include the following conditions by endorsement to the policy:

(a) Name Lessor, as an additional insured as to all applicable coverage, except worker’s compensation. For general liability purposes, this requirement extends to premises/operations as well as products/completed operations.

(b) Each policy will require that thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, a Notice thereof shall be given to Lessor by certified mail to:

City of Arlington  
Attn: Risk Management  
Post Office Box 90231 MS# 63-0790  
Arlington, Texas 76004-3231

However, if the policy does not require notice of non-renewal or any material change in coverage, Lessee will provide Lessor with thirty (30) days prior written notice thereof. However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written Notice to Lessor is required. Lessee shall also notify Lessor within twenty-four (24) hours after receipt of any Notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s).

#### **14.3 Miscellaneous Insurance Provisions.**

(a) For purposes of this Section 14, the term “**Lessor**” shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of Lessor and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of Lessor.

(b) All insurance prescribed by this Section 14 shall (i) be procured from financially sound and reputable insurers licensed to do business in the State of Texas and have an A.M. Best rating of not less than A VII or, if not rated with A.M. Best, the equivalent of A.M. Best’s surplus size of A VII or better, (ii) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved, and (iii) be evidenced by a certificate of insurance naming Lessor as an additional insured, as its interest may appear.

(c) The General and Automobile liability policies required herein shall be written with an “occurrence” basis coverage trigger.

#### **14.4 Waiver of Subrogation.**

Lessee agrees to the following:

(a) Lessee hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against Lessor, it being the intention that the insurance policies shall protect all Parties to this lease and be primary coverage for all losses covered by the policies; and

(b) Companies issuing the insurance policies and Lessee shall have no recourse against Lessor for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of Lessee; and

(c) Approval, disapproval or failure to act by Lessor regarding any insurance supplied by Lessee (or any subcontractors) shall not relieve Lessee of full responsibility

or liability for damages and accidents as set forth in the lease documents. Neither shall the insolvency or denial of liability by the insurance company exonerate Lessee from liability.

#### **14.5 Lessor May Procure Insurance.**

If at any time and for any reason Lessee fails to provide, maintain, keep in force and effect, or deliver to Lessor proof of, any of the insurance required under this Section 14 and such failure continues for five (5) Business Days after Notice thereof from Lessor to Lessee, Lessor may, but shall have no obligation to, procure single interest insurance for such risks covering Lessor, within five (5) Business Days following Lessor's demand and Notice, pay and reimburse Lessor therefor with interest from the date of payment by Lessor until repayment of Lessor in full by Lessee.

#### **14.6 Bonds.**

Lessee shall be obligated, or cause its general contractor on the Hotel Project, to put all reasonable procedures in place to assure payment and performance by the general contractor's subcontractors, including payment and performance bonds, prior to the commencement of any work on the Hotel Project or any Additional Improvements.

### **15. Miscellaneous Provisions.**

#### **15.1 Force Majeure.**

For the purpose of any of the provisions of this Lease, neither Lessor, nor Lessee, as the case may be, nor any successor in interest, shall be considered in breach of or default in any of its obligations, in the event of forced delay in the performance of such obligations due to Force Majeure. For purposes of this Lease, Force Majeure shall mean acts of God (including storms, floods or other casualty), war, invasion, insurrection, taking by eminent domain laws, the lack of labor or supplies due to an act of God, strike or labor disputes or delays beyond the control of the affected Party, or order of government authorities. In the event of the occurrence of any such forced delays, the time or times for the performance of the covenants, provisions, and agreements of this Lease shall be extended for the period of the forced delay (including any time reasonably required to recommence performance due to such forced delay). The affected Party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements and *provided further*, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected Party, and the affected Party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected Party, unfavorable to the affected Party. Notwithstanding the above (a) Lessee may not rely on its own acts or omissions as grounds for delay in its performance and (b) the absence of immediately available funds shall not be grounds for delay.

#### **15.2 Estoppel Certificates.**

Lessor and Lessee, at any time and from time to time, upon not less than twenty (20) Business Days prior written Notice from a Party hereto, or to a person designated by such Party, such as a tenant or a mortgagee or lender of Lessee, shall execute, acknowledge, and deliver to the Party requesting such statement, a statement in reasonably acceptable form to the requesting Party

certifying, among other matters, (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating whether or not, to the best of knowledge of the signer of such certificate, Lessor and Lessee are in breach and/or default in performance of any covenant, agreement, or condition contained in this Lease and, if so, other factual matters reasonably requested in such estoppel certificate concerning this Lease, the Leased Premises, the Hotel Project and/or the Economic Development Performance Agreement, it being intended that any such statement delivered hereunder may be relied upon by the Party requesting such statement and/or any person not a Party to this Lease (if such other person is identified at the time such certificate was requested).

### **15.3 Lessor's Rights of Access.**

Lessee agrees that Lessor and Lessor's duly authorized agents shall have the right to all reasonable times during normal business hours and following reasonable prior Notice to enter upon the Leased Premises and the Hotel Project and to examine and inspect the same, provided, however, (i) Lessor and Lessor's duly authorized agents shall not have the right to enter or inspect portions of the Leased Premises and the Hotel Project deemed off limits by Lessee, unless accompanied by a representative of Lessee, and (ii) Lessor and Lessor's duly authorized agents shall use good faith efforts to minimize any interference in Lessee's use of the Leased Premises during any entry upon or inspection of the Leased Premises.

### **15.4 Notices.**

All Notices or statements given pursuant to or concerning this Lease shall be in writing and sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any Notice sent by (a) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (b) personal messenger shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the Business Day following the date the notice is deposited with the overnight delivery service addressed as specified below:

Lessee:	[ _____ ] c/o Loews Hotels Holding Corporation 9 West 57 <sup>th</sup> Street, 20 <sup>th</sup> Floor New York, New York 10019 Attention: Corporate Secretary
With a copy to:	Latham & Watkins LLP 330 North Wabash Avenue, Suite 2800 Chicago, Illinois 60611 Attention: Gary E. Axelrod, Esq.
Lessor:	City of Arlington City Manager's Office c/o City Manager

101 W. Abram Street  
Arlington, Texas 76004-3231

With a copy to      Arlington City Attorney's Office  
                                 c/o City Attorney  
                                 101 S. Mesquite Street  
                                 Arlington, Texas 76004- 3231

Such addresses may be changed by giving the other Party ten (10) days' Notice in writing. Lessee, by Notice to the Lessor, may add additional Notice addressees.

**15.5 No Broker Fees.**

Lessor and Lessee each represent and warrant for itself that it has not dealt with any broker or agent in connection with this Lease and each covenants and agrees, to the extent allowed by law, to indemnify and hold the other harmless from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this representation and warranty.

**15.6 No Waiver.**

No failure on the part of Lessor or Lessee to enforce any covenant or provision contained in this Lease nor any waiver of any right under this Lease shall discharge or invalidate such covenant or provision or affect the right of the other Party to enforce the same in the event of any subsequent default.

**15.7 Severability.**

If any provision of this Lease or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to any other Person or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law. In the event any provision of this Lease is illegal, invalid or unenforceable under present or future laws, each Party reserves the right to pursue any and all remedies available to them at law or equity (including arbitration proceedings). The provisions of this Section 15.7 shall survive the termination of this Lease.

**15.8 Amendment.**

Neither the Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge, or termination is sought.

**15.9 Terminology.**

All personal pronouns used in this Lease, whether used in the masculine, feminine or neutral gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Unless otherwise expressly state, titles of Sections, Subsections and Paragraphs of this Lease are for convenience only, and neither limit nor amplify the provisions of

this Lease, and all references in the Lease of Sections, Subsections or Paragraphs shall refer to the corresponding Section, Subsection or Paragraph of this Lease unless specific reference is made to the articles, sections or subdivisions of another document or instrument.

#### **15.10 Counterparts.**

This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

#### **15.11 Binding Agreement.**

Subject to the restrictions on Dispositions set forth herein, this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors and assigns. Whenever in this Lease a reference to Lessor, Lessee or any Person is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Lessor, Lessee or such Person.

#### **15.12 Interpretation.**

No provision of this Lease shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

#### **15.13 Governing Law/Venue.**

This Lease and the obligations of Lessor and Lessee hereunder shall be interpreted, construed and enforced in accordance with the Applicable Laws of the State, including conflicts of laws. Subject to the provisions of Section 12.6, venue shall lie in Tarrant County, Texas.

#### **15.14 Relationship of Parties.**

No express or implied term, provision or condition of this Lease shall or shall be deemed to constitute Lessor and Lessee as partners or joint venturers.

#### **15.15 Indemnity.**

**LESSEE IS AND SHALL BE IN EXCLUSIVE CONTROL OF THE LEASED PREMISES, AND LESSOR SHALL NOT IN ANY WAY WHATSOEVER BE LIABLE FOR ANY INJURY OR DAMAGE TO ANY PERSON OR PROPERTY HAPPENING ON, ABOUT OR IN CONNECTION WITH THE LEASED PREMISES OR ANY PART THEREOF. LESSEE SHALL INDEMNIFY AND HOLD HARMLESS LESSOR AND ALL ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR FROM ALL CLAIMS, SUITS, ACTIONS AND PROCEEDINGS WHATSOEVER WHICH MAY BE BROUGHT OR INSTITUTED ON ACCOUNT OF, GROWING OUT OF, OCCURRING FROM, INCIDENT TO OR RESULTING FROM, DIRECTLY OR INDIRECTLY, ANY AND ALL INJURIES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, DEATH) TO PERSONS OR PROPERTY (INCLUDING ANY CLAIMS, SUITS, ACTIONS AND PROCEEDINGS RELATING TO CONTAMINATED MATERIALS (DEFINED BELOW))**



**AND ENVIRONMENTAL CLAIMS (DEFINED BELOW)) ARISING OUT OF THE USE OR OCCUPATION OF THE LEASED PREMISES, ANY ENVIRONMENTAL EVENT (DEFINED BELOW) OR ANY EXERCISE BY LESSEE OF ANY LESSEE POWER OF ATTORNEY OR LESSEE PROXY GRANTED PURSUANT TO THE TERMS OF THIS LEASE, OR WHICH MAY BE BROUGHT OR INSTITUTED UNDER ANY CC&RS, AND ALL LOSSES, COSTS, DAMAGES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENDING AGAINST SUCH CLAIMS, SUITS, ACTIONS AND PROCEEDINGS), WHETHER OR NOT SUCH INJURIES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, DEATH) RESULT FROM, OR ARE CLAIMED TO HAVE RESULTED FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LESSOR OR ANY PERSON CLAIMING BY, THROUGH OR UNDER LESSOR. LESSEE SHALL ASSUME ON BEHALF OF LESSOR AND ALL ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR, AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH, THE DEFENSE OF ALL SUCH CLAIMS, SUITS, ACTIONS AND PROCEEDINGS AGAINST LESSOR OR ANY PERSON CLAIMING BY, THROUGH OR UNDER LESSOR, WHETHER OR NOT LESSEE IS JOINED THEREIN, EVEN IF SUCH CLAIMS, SUITS, ACTIONS OR PROCEEDINGS BE GROUNDLESS, FALSE OR FRAUDULENT, AND LESSEE SHALL BEAR THE COSTS OF ALL JUDGMENTS AND SETTLEMENTS IN CONNECTION THEREWITH. THIS INDEMNITY SHALL APPLY WITHOUT LIMITATION TO ANY LIABILITIES IMPOSED ON ANY PARTY INDEMNIFIED HEREUNDER AS A RESULT OF ANY STATUTE, RULE, REGULATION OR THEORY OF STRICT LIABILITY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. NOTWITHSTANDING THE FOREGOING, THIS INDEMNITY SHALL NOT APPLY TO INJURY OR DAMAGE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL ACTS OR OMISSIONS OF LESSOR OR ANY ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR OR ITS AGENTS, EMPLOYEES AND CONTRACTORS, OR TO CLAIMS ASSERTED AGAINST OR LIABILITIES IMPOSED ON LESSOR OR ANY ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR OR ITS AGENTS, EMPLOYEES AND CONTRACTORS IN CONNECTION WITH OR AS A RESULT OF THEIR PERFORMANCE OF GOVERNMENTAL FUNCTIONS.**

**“CONTAMINATED MATERIALS” AS USED IN THIS SECTION 15.15 MEANS (A) ANY PETROLEUM OR PETROLEUM PRODUCTS, METALS, GASES, CHEMICAL COMPOUNDS, RADIOACTIVE MATERIALS, ASBESTOS, UREA FORMALDEHYDE FOAM INSULATION, TRANSFORMERS OR OTHER EQUIPMENT THAT CONTAIN DIELECTRIC FLUID CONTAINING POLYCHLORINATED BIPHENYLS, LEAD PAINT, PUTRESCIBLE AND INFECTIOUS MATERIALS, AND RADON GAS; (B) ANY CHEMICALS OR SUBSTANCES DEFINED AS OR INCLUDED IN THE DEFINITION OF “HAZARDOUS SUBSTANCES”, “HAZARDOUS WASTES”, “HAZARDOUS MATERIALS”, “EXTREMELY HAZARDOUS WASTES”, “RESTRICTED HAZARDOUS WASTES”, “TOXIC SUBSTANCES”, “TOXIC POLLUTANTS”, “CONTAMINANTS” OR “POLLUTANTS”, OR WORDS OF SIMILAR IMPORT, UNDER ANY APPLICABLE ENVIRONMENTAL LAW; AND (C) ANY OTHER**

**CHEMICAL, MATERIAL OR SUBSTANCE, EXPOSURE TO WHICH IS PROHIBITED, LIMITED OR REGULATED BY ANY APPLICABLE ENVIRONMENTAL LAW OR GOVERNMENTAL AUTHORITY OR WHICH IS REGULATED BECAUSE OF ITS ADVERSE EFFECT OR POTENTIAL ADVERSE EFFECT ON HEALTH AND THE ENVIRONMENT, INCLUDING SOIL AND CONSTRUCTION DEBRIS THAT MAY CONTAIN ANY OF THE MATERIALS DESCRIBED IN THIS DEFINITION.**

**“ENVIRONMENTAL EVENT” AS USED IN THIS SECTION 15.15 MEANS THE OCCURRENCE OF ANY OF THE FOLLOWING: (I) ANY NONCOMPLIANCE WITH AN ENVIRONMENTAL LAW; (II) AN ENVIRONMENTAL CONDITION REQUIRING RESPONSIVE ACTION, INCLUDING AN ENVIRONMENTAL CONDITION CAUSED BY A THIRD PERSON; (III) ANY EVENT ON, AT OR FROM THE PROPERTY IN QUESTION OR RELATED TO THE OPERATION THEREOF OF SUCH A NATURE AS TO REQUIRE REPORTING TO APPLICABLE GOVERNMENTAL AUTHORITIES UNDER ANY ENVIRONMENTAL LAW, (IV) AN EMERGENCY ENVIRONMENTAL CONDITION, (V) THE EXISTENCE OR DISCOVERY OF ANY SPILL, DISCHARGE, LEAKAGE, PUMPAGE, DRAINAGE, POURAGE, INTERMENT, EMISSION, EMPTYING, INJECTING, ESCAPING, DUMPING, DISPOSING, MIGRATION OR OTHER RELEASE OR ANY KIND OF CONTAMINATED MATERIALS ON, AT OR FROM THE PROPERTY IN QUESTION WHICH MAY CAUSE A THREAT OR ACTUAL INJURY TO HUMAN HEALTH, THE ENVIRONMENT, PLANT OR ANIMAL LIFE OR (VI) ANY THREATENED OR ACTUAL ENVIRONMENTAL CLAIM.**

**“ENVIRONMENTAL CLAIMS” AS USED IN THIS SECTION 15.15 MEANS ANY AND ALL CLAIMS THAT ANY PERSON MAY NOW OR HEREAFTER HAVE IN CONNECTION WITH OR AS A RESULT OF THE CONDITION OF ANY PROPERTY, ANY EXISTING OR PAST ENVIRONMENTAL RELEASE OF ANY CONTAMINATED MATERIALS FROM ANY PROPERTY OR INTO THE GROUND, GROUND WATER OR SURFACE WATER OF ANY PROPERTY, THE EXISTENCE OF ANY ENVIRONMENTAL PROCEEDINGS WITH RESPECT TO ANY PROPERTY OR ITS OPERATION OR THE VIOLATION OF ANY ENVIRONMENTAL LAWS WITH RESPECT TO ANY PROPERTY OR ITS OPERATION.**

**“ENVIRONMENTAL LAW(S)” AS USED IN THIS SECTION 15.15 MEANS ANY APPLICABLE FEDERAL, STATE OR LOCAL STATUTE, LAW (INCLUDING COMMON LAW TORT LAW, COMMON LAW NUISANCE LAW AND COMMON LAW IN GENERAL), RULE, REGULATION, ORDINANCE, CODE, PERMIT, CONCESSION, GRANT, FRANCHISE, LICENSE, POLICY OR RULE OF COMMON LAW NOW IN EFFECT OR ADOPTED IN THE FUTURE, AND IN EACH CASE AS MAY BE AMENDED OR REPLACED, AND ANY JUDICIAL OR ADMINISTRATIVE INTERPRETATION THEREOF (INCLUDING ANY JUDICIAL OR ADMINISTRATIVE ORDER, CONSENT DECREE OR JUDGMENT) RELATING TO (I) THE ENVIRONMENT, HEALTH, SAFETY OR CONTAMINATED MATERIALS, (II) THE STORAGE, HANDLING, EMISSION, DISCHARGE, RELEASE AND USE OF CHEMICALS AND OTHER CONTAMINATED MATERIALS, (III) THE GENERATION, PROCESSING, TREATMENT, STORAGE, TRANSPORT, DISPOSAL, INVESTIGATION, REMEDIATION OR OTHER MANAGEMENT OF WASTE**

**MATERIALS OF ANY KIND, AND (IV) THE PROTECTION OF ENVIRONMENTALLY SENSITIVE AREAS, INCLUDING CERCLA; THE HAZARDOUS MATERIALS TRANSPORTATION ACT, AS AMENDED, 49 U.S.C. § 5101 ET SEQ.; THE RESOURCE CONSERVATION AND RECOVERY ACT, AS AMENDED, 42 U.S.C. § 6901 ET SEQ.; THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED, 33 U.S.C. § 1251 ET SEQ.; THE TOXIC SUBSTANCES CONTROL ACT, 15 U.S.C. § 2601 ET SEQ.; THE CLEAN AIR ACT, 42 U.S.C. § 7401 ET SEQ.; THE SAFE DRINKING WATER ACT, 42 U.S.C. § 300F ET SEQ.; THE ENDANGERED SPECIES ACT, AS AMENDED, 16 U.S.C. § 1531 ET SEQ.; THE TEXAS SOLID WASTE DISPOSAL ACT, TEX. HEALTH & SAFETY CODE ANN. CH. 361 (VERNON 1990); THE TEXAS CLEAN AIR ACT, TEX. HEALTH & SAFETY CODE ANN. CH. 382 (VERNON 1990); THE TEXAS WATER CODE, TEX. WATER CODE ANN. (VERNON 1988 AND SUPP. 1990); THE TEXAS HAZARDOUS SUBSTANCES SPILL PREVENTION AND CONTROL ACT, TEX. WATER CODE ANN. (VERNON 1988 AND SUPP. 1990); THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT, 7 U.S.C. § 136 ET. SEQ.; AND THE EMERGENCY PREPAREDNESS AND RESPONSE COMMUNITY RIGHT-TO-KNOW ACT, 42 U.S.C. § 11001.**

**“ENVIRONMENTAL PROCEEDING” AS USED IN THIS SECTION 15.15 MEANS (I) ANY NOTICE OF ANY INVESTIGATION, RESPONSE ACTION, SPILL, PROCEEDING, WHETHER EXECUTIVE, ADMINISTRATIVE OR JUDICIAL, OR LITIGATION OR LITIGATION THREATENED IN WRITING RELATING TO ENVIRONMENTAL LAWS OR OTHER ENVIRONMENTAL MATTERS CONCERNING A PROPERTY INsofar AS SUCH INVESTIGATION, RESPONSE ACTION, SPILL, LITIGATION, LITIGATION THREATENED IN WRITING OR PROCEEDING RELATES TO SUCH PROPERTY; OR (II) RECEIPT OF ANY NOTICE FROM ANY PERSON OF: (X) ANY VIOLATION OR ALLEGED VIOLATION OF ANY ENVIRONMENTAL LAW RELATING TO A PROPERTY OR ANY PART THEREOF OR ANY ACTIVITY AT THE TIME CONDUCTED ON ANY PROPERTY, (Y) THE COMMENCEMENT OF ANY CLEAN-UP, ABATEMENT OR CONTROL PURSUANT TO OR IN ACCORDANCE WITH ANY ENVIRONMENTAL LAW OF ANY CONTAMINATED MATERIALS ON OR ABOUT ANY SUCH PROPERTY OR ANY PART THEREOF OR (Z) ANY VIOLATION OF ANY APPLICABLE LAWS OR HARM TO PERSON OR PROPERTY IN EACH CASE WITH RESPECT TO WORKER SAFETY AT OR IN CONNECTION WITH SUCH PROPERTY OR ANY PART THEREOF.**

#### **15.16 Representatives Not Individually Liable.**

No member, official, representative, or employee of Lessor shall be personally liable to Lessee or any successor in interest in the event of any default or breach by Lessor for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease. No partner, member, representative, or employee of Lessee or any of its members shall be personally liable to Lessor in the event any default or breach by Lessee for any amount which may become due to Lessor or on any obligations under the terms of this Lease.

### **15.17 Entire Agreement.**

This Lease and the Economic Development Performance Agreement (and all agreements executed pursuant to the terms of the Economic Development Performance Agreement by Lessee and Lessor, including the Convention Center Lease (as that term is defined in the Economic Development Performance Agreement, provided the Lessee hereunder is also the “lessee” under such lease) and the Parking Facility Lease (as that term is defined in the Economic Development Performance Agreement, provided the Lessee hereunder is also the “lessee” under such lease)) incorporate all prior negotiations and discussions between the Parties regarding the subject matter and represent the entire agreement of Lessor and Lessee for the Hotel Project.

### **15.18 Third Party Beneficiary.**

Except as otherwise specifically provided for in this Lease, nothing contained in this Lease shall be construed to confer upon any other party the rights of a third-party beneficiary.

### **15.19 Payment or Performance on Saturday, Sunday or Holiday.**

Whenever the provisions of this Lease call for any payment or the performance of any act on or by a date that is not a Business Day, including the expiration date of any cure periods herein, then such payment or such performance shall be required on or by the immediately succeeding Business Day.

### **15.20 Incorporate into Agreement.**

All exhibits, schedules, and recitals form a part of this Lease.

### **15.21 Applicable Laws.**

Nothing in this Lease shall be construed to (a) limit or prevent Lessee from challenging at law or in equity the applicability of any Applicable Law and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (b) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Lease, no provision of this Lease shall be construed to require Lessee to comply with any Applicable Law during the period that Lessee may be pursuing a bona fide challenge of this applicability, lawfulness, and/or enforceability of such Applicable Law (unless such law requires compliance during any such challenge). If Lessee’s challenge is successful, Lessee shall not be required by the provisions of this Lease to comply with such Applicable Law.

### **15.22 Consents and Approvals.**

Lessor and Lessee commit to work harmoniously with each other, and except in instances (if any) where a consent or approval is specified to be within the sole discretion of either Party, any consent or approval contemplated under this Lease shall not be unreasonably withheld, conditioned or delayed. Unless a shorter or longer time period is specified in this Lease, Lessor shall give or withhold (provided such withholding is reasonable under the circumstances, unless a sole discretion standard expressly applies) such approvals, certifications, or consents within twenty (20) Business Days.

### **15.23 Good Faith and Fair Dealing.**

The Parties covenant and agree each to the other that its conduct under this Lease and the interpretation and enforcement of the provisions hereof, shall be characterized by good faith and fair dealings so that the objectives of each Party as set forth in this Lease may be achieved.

### **15.24 Further Assurances.**

In connection with the execution and delivery of this Lease and the execution, delivery and recordation of any other instrument or agreement, provided for or contemplated by this Lease, Lessor or Lessee, at the written request of the other Party hereto, shall, within twenty (20) Business Days of such written request, execute and deliver to the requesting Party such other documents, certifications or agreements that are reasonably necessary to effectuate the intent of this Lease, such as bills of sale, assignments of leases, or certifications required by Applicable Law in connection with the recordation of instrument or agreements among the Land Records.

### **15.25 Waiver of Immunity.**

Lessor hereby waives its governmental immunity from suit and immunity from liability and/or legal action brought by Lessee resulting from an uncured default by Lessee. To effectuate such waiver, the Parties hereby agree, for purposes of this Lease only, that this Lease is a contract subject to Subchapter I, Chapter 271, Texas Local Government Code, as amended.

### **15.26 Assignment by Lessor.**

This Lease may not be transferred or assigned by Lessor unless and until Lessee and its Leasehold Mortgagees are provided with assurances that all Grants (as that term is defined in the Economic Development Performance Agreement) will be timely paid and that Lessor is not being released from its obligations under Section 4 of the Economic Development Performance Agreement to cause such Grants to be timely paid.

**SIGNATURES ON NEXT PAGE**

**IN WITNESS WHEREOF**, Lessor and Lessee executed this Lease under seal, the day and year first about written.

LESSOR:  
CITY OF ARLINGTON

ATTEST:

By: \_\_\_\_\_  
ALEX BUSKEN, City Secretary

By: \_\_\_\_\_  
TREY YELVERTON, City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
MOLLY SHORTALL, City Attorney

WITNESS:

LESSEE:  
[ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
  §  
COUNTY OF TARRANT   §

**CITY OF ARLINGTON**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **TREY YELVERTON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON**, a municipal corporation of Tarrant County, Texas, and as a **City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:

STATE OF \_\_\_\_\_           §  
  §  
  §  
COUNTY OF \_\_\_\_\_   §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as the Authorized Person of \_\_\_\_\_, a \_\_\_\_\_, organized under the laws of \_\_\_\_\_.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:

**Exhibit "A"**

**Leased Premises**



## **Exhibit “B”**

### **Arbitration Procedures**

B.1 In the event a Party, pursuant to the provisions of Section 12.6, has elected to provide the other Party with an Arbitration Notice, such Arbitration Notice shall include such Party’s determinations of the applicable issues of the Dispute and Controversy subject to such Arbitration. In the event that the Arbitration Notice has been sent in accordance with the provisions hereof and the Lease, the Parties shall mutually agree, within fifteen (15) Business Days of the deemed delivery date of the Arbitration Notice to the appointment of a single arbitrator (the “**Arbitrator**”) to handle the Arbitration. If the Parties are unable to mutually agree upon the Arbitrator within the fifteen (15) Business Days described above, any Party may request the American Arbitration Association to independently select, within thirty (30) Business Days after such Arbitration Notice, an Arbitrator who has the qualifications to serve as the single Arbitrator to resolve this Arbitration. The Arbitration must take place in Tarrant County and be conducted by an Arbitrator that has no conflict of interest.

B.2 Within fifteen (15) Business Days after the appointment of the Arbitrator, each Party shall supply the Arbitrator with such documents, materials or other evidence or written arguments as it or the Arbitrator desires, including such Party’s proposed determinations of the applicable issues subject to such Arbitration. Each Party shall thereafter have an additional period of ten (10) Business Days to supply any rebuttal or other information it desires. The Arbitrator, in his/her sole discretion, may also request in writing, specific information and/or a hearing and shall alone otherwise determine the conduct of the Arbitration. Any information delivered or communicated during Arbitration by a Party shall be simultaneously delivered or communicated to (i) the other Party and (ii) the Arbitrator. The Arbitration shall be confidential, and the Parties shall maintain the confidential nature of the arbitration proceeding, arbitration hearing and award, except to the extent disclosure is required to regulators, to insurers, pursuant to an enforcement proceeding, or as otherwise required by applicable law.

B.3 The Arbitrator shall determine all matters necessary to resolve the dispute, including matters beyond the expertise of the Arbitrator. The Arbitrator shall be permitted to employ other professional advisors or experts as the Arbitrator deems reasonably necessary, at the expense of the Parties.

B.4 All costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in connection with an Arbitration shall be borne equally by the Parties, subject to reimbursement as set forth herein. Within forty-five (45) Business Days after the selection of an Arbitrator, the Arbitrator shall select one of the proposed determinations submitted by one of the Parties (and the Arbitrator shall not have the power to add to, modify, or change any of proposed determinations of the Parties). For purposes of this provision, the Party whose position is adopted by the Arbitrator will be deemed the prevailing Party. While each Party shall advance 1/2 of the costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in connection with the Arbitration, the prevailing Party will be reimbursed by the non-prevailing party the 1/2 of the costs and expenses referenced herein within 30 days of the Arbitrator’s final decision. All other costs and expenses incurred by the Parties shall be borne by the Party incurring same.

B.5 The Parties agree to act in good faith with respect to any communication with the Arbitrator and the Arbitration process.

B.6 Time shall be of the essence with respect to these Arbitration Procedures, and the Parties shall take all reasonable actions necessary to cause any necessary Arbitration hearing to occur promptly, and the Arbitrator shall be directed to arbitrate the dispute and issue its decision as soon as reasonably practicable, but in no event later than forty-five (45) Business Days after the appointment of the Arbitrator.

B.7 The Arbitration shall not relieve any Party from any of its respective obligations under this Lease during the term of any such Arbitration (other than in respect of the subject matter of the dispute that is being arbitrated).

B.8 In the event of a dispute between one or more of the Parties concerning this Lease and the Economic Development Performance Agreement, and one or more of the Parties have elected to resolve such dispute pursuant to the Arbitration Procedures contained herein or in the Economic Development Performance Agreement, there shall only be one Arbitration proceeding concerning such dispute (and not separate proceedings under this Lease and the Economic Development Performance Agreement or under any of the other leases executed pursuant to the terms of the Economic Development Performance Agreement). If more than one Arbitration proceeding has been initiated, such proceedings shall be consolidated.

**Exhibit “C”**

**Optional Development Site**

Exhibit "E"  
Hotel Site

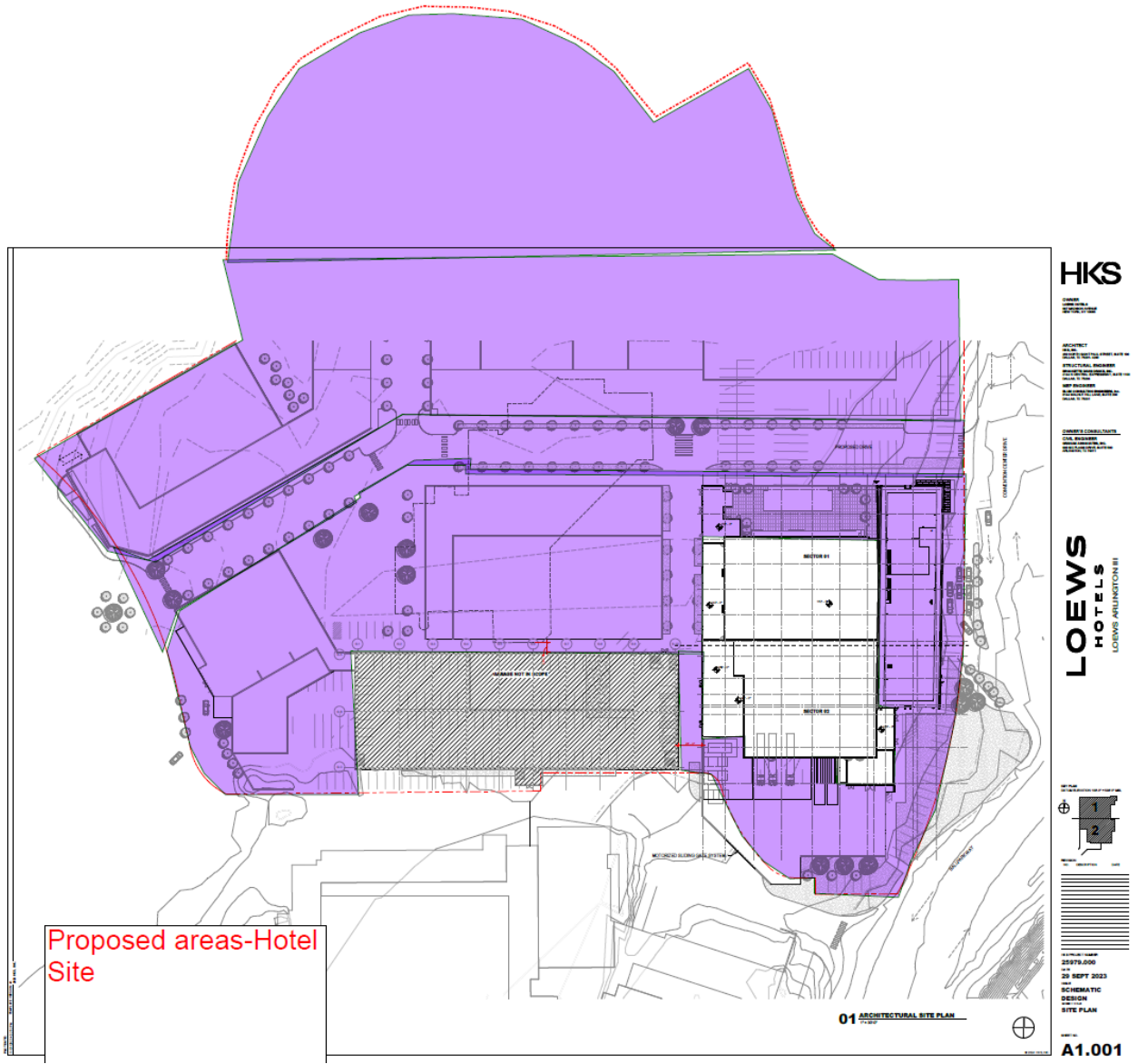


Exhibit "F"  
Parking Facility Site

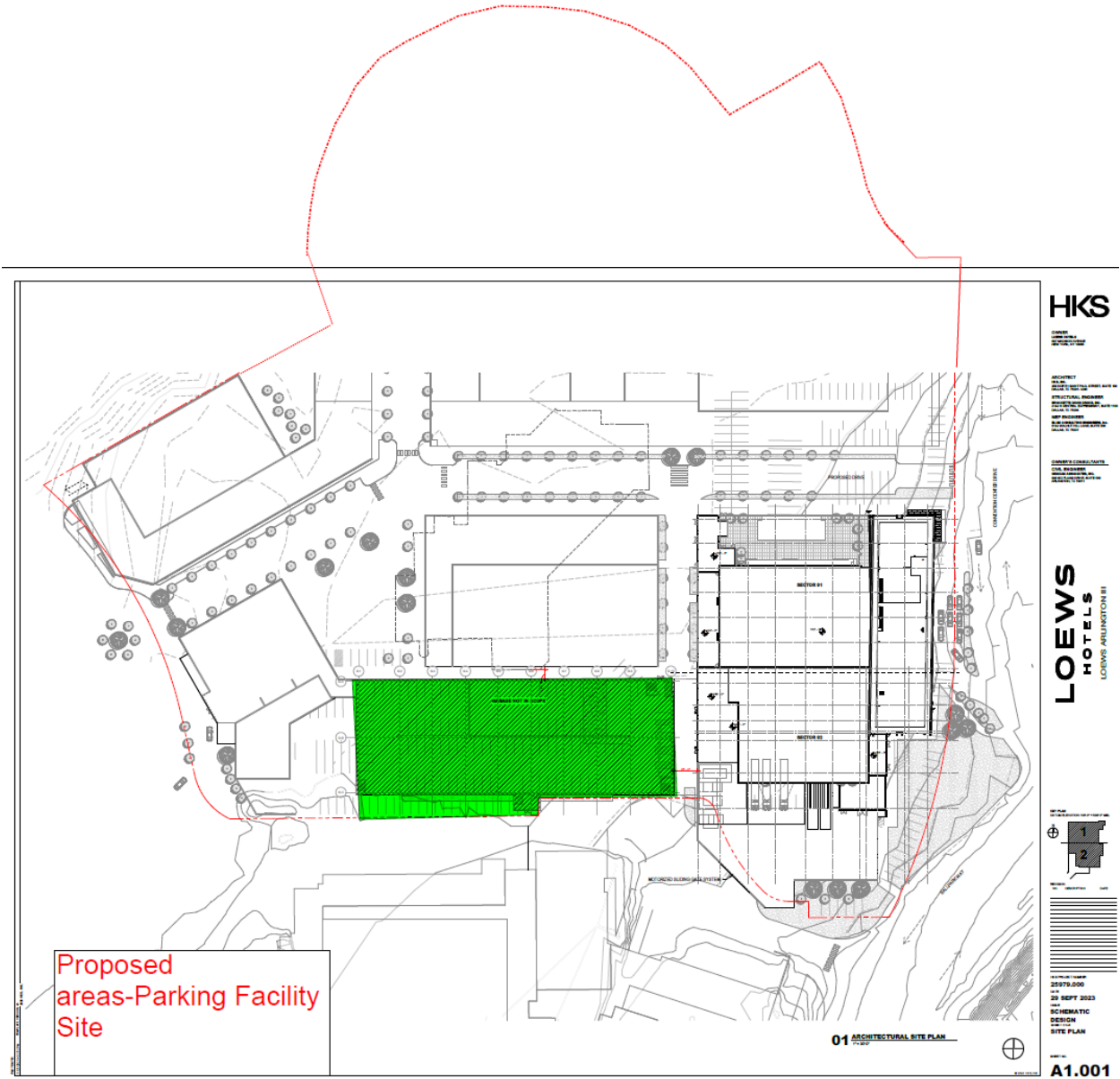


Exhibit "G"  
Parking Facility Lease

## LEASE AGREEMENT FOR PARKING FACILITY

THIS LEASE AGREEMENT FOR PARKING FACILITY (“Lease”) is made and entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between THE CITY OF ARLINGTON, a home-rule city and municipal corporation of Tarrant County, Texas (“Lessor”) and \_\_\_\_\_, a Delaware limited liability company (“Lessee”).

### RECITALS

**WHEREAS**, Lessor owns the Leased Premises (as that term is defined herein). The City of Arlington, Arlington Economic Development Corporation, and an Affiliate of Lessee have entered into the Economic Development Performance Agreement (as that term is defined herein) concerning, among other matters, the development, construction, leasing, and operation of the Parking Facility (as that term is defined herein); and

**WHEREAS**, Pursuant to Section 7 of the Economic Development Performance Agreement, Lessee is obligated to lease the Leased Premises from Lessor as a condition precedent to the payment of the Economic Development Grants and the Parking Facility Contributions, as those terms are defined in the Economic Development Performance Agreement; and

**WHEREAS**, Lessor, by Resolution \_\_\_\_ adopted on \_\_\_\_\_, 2023, among other things, authorized the City Manager to execute this Lease;

**NOW, THEREFORE**, in consideration of the payment of Ten and 00/100 Dollars (\$10.00) and the mutual covenants, conditions and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

#### **1. Definitions.**

Unless the context or use clearly indicates another or different meaning or intent, for purposes of this Lease, and in addition to terms defined elsewhere in this Lease, the following definitions shall generally apply to the following capitalized words or terms:

“**Additional Improvements**” means additional improvements constructed on the Leased Premises after the Parking Facility is completed.

“**Affiliate**” means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, controlled by, or is under common control with the specified Person. For the purpose of this definition, “**control**” means the ability to directly or indirectly, by voting securities, partnership or member interests, contract or otherwise, direct or cause the direction of the policies or management of the specified Person. Two persons may be Affiliates even if such Persons have different minority equity owners that each have the right to approve certain actions of such Person, such as the sale, financing or leasing of an asset of such Person.

“**Alternative Hotel Developer**” means a Person (and/or a direct or indirect Affiliate of such Person) that, as of the effective date of any Disposition, (i) owns or operates, or has engaged

a manager or operator that owns or operates, on a full service basis, either directly or through subsidiaries or Affiliates hotel properties comparable to the Hotel Project, and (ii) has a net worth equal to at least Fifty Million Dollars (\$50,000,000).

**“Applicable Law”** means, subject to the provisions of Section 15.21 hereof, any law, ordinance, regulation, properly adopted requirement or order of any Governmental Authority, court, or other Governmental Authority, applicable from time to time to the acquisition, leasing, design, construction, equipping, financing, ownership, or operation of the Leased Premises or the performance of any obligations under any agreement entered into in connection with this Lease.

**“Assumption Agreement”** shall have the meaning set forth in Section 10.2.

**“Arbitration”** shall have the meaning set forth in Section 12.6.

**“Arbitration Notice”** shall have the meaning set forth in Section 12.6.

**“Arbitration Procedures”** shall have the meaning set forth in Section 12.6.

**“Arbitrator”** shall have the meaning set forth in Section B.1 of the Arbitration Procedures.

**“Business Day”** means any day except Saturday, Sunday, or any other day on which banking institutions are legally authorized to close in the City of New York or Tarrant County, Texas.

**“CC&Rs”** means any declaration, reciprocal easement agreements, covenant agreements and parking easements affecting the Leased Premises, as the same may be amended from time to time.

**“CC&R Lot Owner”** shall have the meaning set forth in Section 2.5(a).

**“CC&R Owner(s)”** shall have the meaning set forth in Section 2.5(a).

**“Commencement Date”** means the date of this Lease.

**“Consent”** means a written instrument executed by Lessor or the Lessor Representative as applicable, delivered to Lessee, and shall not include any implied or imputed consent and no consent by Lessor or the Lessor Representative pursuant to this Lease shall be deemed to constitute or include any consent required under any Applicable Law.

**“Convention Center”** shall have the meaning set forth in the Economic Development Performance Agreement.

**“Default Rate”** means the lesser of (i) fifteen percent (15%) and (ii) the maximum lawful rate of interest under Texas law.

**“Disposition”** means a sale, lease, assignment or other transaction by which all or a part of Lessee’s interest in the Leased Premises (or any portion thereof) is passed on to another Person; but such term shall not include Operation Agreements (as defined in the Economic Development



Performance Agreement), Subleases, Leasehold Mortgages or transfers from a foreclosure or deed in lieu of foreclosure of a Leasehold Mortgage.

**“Down Time”** shall have the meaning set forth in Section 6.5.

**“Economic Development Performance Agreement”** means that certain Economic Development Performance Agreement, dated \_\_\_\_\_, 2023, by and among Lessor, Lessee and Arlington Economic Development Corporation, as amended, modified, supplemented or restated from time to time.

**“Encumbrances”** mean those matters of record which do not render title of the land unmarketable or uninsurable at ordinary rates by a title insurance company licensed in the State of Texas, as selected by Lessee, and which do not materially interfere with or materially increase the cost of the development of and/or operation of the Leased Premises as contemplated by the this Lease and the Economic Development Performance Agreement.

**“Event of Default by Lessee”** means any of those events, occurrences and circumstances so designated in Section 12.1 hereof.

**“Event of Default by Lessor”** means any of those events, occurrences and circumstances so designated in Section 12.2 hereof.

**“GAAP”** means those conventions, rules, procedures and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States.

**“Governmental Authority”** means any Federal, State or local governmental entity (including a local government corporation, whether formed under Section 431 of the Subchapter D of the Texas Transportation Code or otherwise), authority (including any taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof).

**“Governmental Authorization”** means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right-of-ways, and similar items from any Governmental Authority, including a liquor license from the Texas Alcohol and Beverage Commission.

**“Hotel”** shall have the meaning set forth in the Economic Development Performance Agreement.

**“Impositions”** means, collectively, all real estate taxes and assessments imposed by the State or any subdivision thereof, including Lessor or any other tax imposed upon or levied against real estate or upon owners of real estate as such rather than persons generally, including taxes imposed on leasehold improvements which are assessed against Lessee under this Lease, payable with respect to or allocable to the Leased Premises and any buildings or improvements situated thereon, including the Parking Facility and any Additional Improvements.

**“Land”** shall mean that certain parcel of land located in the City of Arlington, Texas, owned by Lessor and described by metes and bounds in **Exhibit “A”** attached hereto and made part hereof.

**“Land Records”** means the records of the County Clerk of Tarrant County, Texas.

**“Lease”** means this Lease Agreement for Parking Facility, together with any amendments, modifications, supplements, restatements or replacements thereof.

**“Leased Premises”** shall mean the entire premises leased pursuant to the terms hereof, including (i) the Parking Facility, (ii) the Land, and (iii) Additional Improvements, if any.

**“Leasehold Mortgage”** means, with respect to the Leased Premises, a mortgage or any other instrument securing the payment of a debt that encumbers Lessee’s interest, if any, in this Lease and/or the Economic Development Performance Agreement. “Leasehold Mortgage” shall not include a mortgage or any other instrument securing payment of a debt of a Subtenant and/or any or all of its Affiliates that encumbers the interests of such Subtenant in any Sublease of a part of the Leased Premises.

**“Leasehold Mortgagee”** means the Person to which all or any part of the interest of the Lessee in the Economic Development Performance Agreement and/or this Lease is transferred as security under a Leasehold Mortgage.

**“Lessee”** means Arlington Convention Center Parking Owner, LLC, a Delaware limited liability company, as the lessee under this Lease, and the successors in title and assigns thereof permitted under the terms of this Lease.

**“Lessee Power of Attorney”** means a power of attorney granted by Lessor to Lessee pursuant to the terms of Section 2.5.

**“Lessee Proxy”** means a proxy, agency and power of attorney granted by Lessor to Lessee pursuant to Section 2.6.

**“Lessor”** means the City of Arlington, home-rule city and municipal corporation of Tarrant County, Texas, as the Lessor under this Lease, and the successors, successors-in-title and assigns thereof.

**“Lessor Representative”** means the City Manager for the City of Arlington, or his or her designee.

**“Maintenance and Repair Work”** shall have the meaning set forth in Section 7.1.

**“Notice”** means a written advice or notification required or permitted by this Lease, as more particularly provided in Section 15.4.

**“Parking Facility”** means any of the buildings or other improvements constructed on the Land by Lessee that make up the Parking Facility, as that term is defined in the Economic Development Performance Agreement.

**“Parties”** means Lessor and Lessee.

**“Party”** means Lessor or Lessee.

**“Permitted Uses”** shall have the meaning set forth in Section 6.2.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, unincorporated organization or other entity or any government or any agency or political subdivision thereof.

**“Personalty”** shall have the meaning set forth in Section 5.1.

**“Prohibited Uses”** shall have the meaning set forth in Section 6.3.

**“Purchase Price”** shall have the meaning set forth in Section 2.3.

**“Rent”** shall have the meaning set forth in Section 3.

**“State”** means the State of Texas.

**“Sublease”** means a lease, license or other occupancy agreement between Lessee and a Subtenant for a portion of the Leased Premises.

**“Subleases”** means two or more Subleases.

**“Subtenant”** means any Person that is or may hereafter be the sublessee or subtenant under any Sublease and the occupant of a portion of the Leased Premises.

**“Term”** means the term of this Lease described in Section 2.2.

## **2. Lease of Leased Premises; Term of Lease; Option to Purchase; Grant of Easements; Lessee Power of Attorney; Lessee Proxy; Quiet Enjoyment; and Recordation.**

### **2.1 Lease.**

Lessor, in consideration of the rents, covenants, agreements and conditions herein set forth, which Lessee hereby agrees shall be paid, kept and performed by Lessee, does hereby lease, let, demise and rent to Lessee, and Lessee does hereby rent and lease from Lessor, all right, title and interest of Lessor in and to the Leased Premises. The interest in the Leased Premises created hereby shall be deemed to be an estate for years under the Applicable Laws of the State.

**TO HAVE AND TO HOLD** the Leased Premises and all rights, privileges and appurtenances thereunto appertaining unto Lessee, for and during the Term, unless sooner terminated in accordance with any of the provisions of this Lease, subject to the Encumbrances and Impositions neither delinquent nor in default.

### **2.2 Term.**

The term of this Lease (the “**Term**”) shall commence on the Commencement Date and expires at midnight on the date immediately preceding the ninety-ninth (99<sup>th</sup>) year of the Initial Occupancy (as that term is defined in the Economic Development Performance Agreement).

### **2.3 Option to Purchase.**

During the Term, Lessee shall have the right, any time after the thirtieth (30<sup>th</sup>) anniversary of the Initial Occupancy (and whether or not an Event of Default exists) to purchase Lessor’s interest in the Leased Premises (as same is encumbered by this Lease) by providing Lessor with a Notice of the exercise of such right to purchase for an amount (the “**Purchase Price**”) equal to the difference between (i) Thirty Five Million and 00/100 Dollars (\$35,000,000.00), and (ii) the sum of (X) all Rent paid by Lessee under this Lease through the date of calculation of the Purchase Price, (Y) all operating costs paid by Lessee and its Affiliates in respect of operating the Leased Premises, the Hotel Project and the Convention Center and verified to Lessor’s reasonable satisfaction through the date of calculation of the Purchase Price, and (Z) all Project Costs (as defined in the Economic Development Performance Agreement) in respect of the Leased Premises, the Hotel Project and the Convention Center paid by Lessee and its Affiliates through the date of calculation of the Purchase Price; provided, however, that in no event shall the Purchase Price be less than Zero and 00/100 Dollars (\$0.00). Closing on such sale shall occur in the City of Arlington, Texas within sixty (60) days of the date of such Notice (but no earlier than thirty (30) days of the date of such Notice) on a Business Day, time and place selected by Lessee. Lessee shall prepare the closing documents, at its expense, including the deed and the assignment of this Lease, which all shall be in a commercially reasonable form. The City Manager is hereby authorized by Lessor to execute and deliver such closing documents, in recordable form. Lessee shall pay the cost of recording the deed. Upon the expiration or earlier termination of this Lease, Lessee shall automatically be deemed to have exercised its option to purchase Lessor’s interest in the Leased Premises and any tangible personal property sold to Lessor by Lessee pursuant to Section 5.2 of this Lease unless Lessee waives such option to purchase by written Notice delivered to Lessor no later than thirty (30) Business Days prior to expiration or the effective date of an earlier termination of the Term. Before the closing, Lessor shall remove (or cause to be removed) any liens or encumbrances affecting the Leased Premises that result from any intentional and voluntary act committed by Lessor in violation of Section 2.5.

### **2.4 Easements.**

Throughout the Term, within twenty (20) Business Days after receipt of written request from Lessee, time being of the essence, Lessor shall execute and join in any CC&Rs and any other grants, licenses, franchises or easements within the Leased Premises for improvements and for electric, telephone, gas, water, sewer, and other public and private utilities and similar facilities necessary to the construction, alteration, operation, or maintenance or support of all or any part of the Leased Premises, as reasonably determined by Lessee, any other grants, licenses, franchises or easements, such as reciprocal easement and operating agreements or rights of way, that Lessee reasonably deems necessary for the leasing, construction and/or operation or support of the Leased Premises, any amendments and/or terminations of any such grants, licenses, franchises or easements that Lessee reasonably deems necessary for the leasing, construction and/or operation or support of the Leased Premises.

## 2.5 Lessee Power of Attorney under the CC&Rs.

(a) Lessor, its successors and assigns hereby grant Lessee a power of attorney to exercise all of the rights and powers under any CC&Rs of Lessor as owner of the Leased Premises (the “**CC&R Lot Owner**”). The Lessee Power of Attorney granted to Lessee pursuant to this Section 2.5(a) shall be conclusively deemed to be on the terms set forth in Section 2.5(b) below. While Lessee holds the Lessee Power of Attorney, any owners under any CC&Rs (“**CC&R Owner(s)**”) will deal exclusively with Lessee on all such matters pertaining to Lessor as CC&R Lot Owner under any CC&Rs.

(b) The following apply to Lessee’s Power of Attorney:

(i) Effect. The grant of any Lessee Power of Attorney shall, except to the extent of any limitations on the extent or exercise of the Lessee Power of Attorney expressly set forth in this Lease or other document by which such Lessee Power of Attorney is granted, conclusively constitute the designation of Lessee as the exclusive agent and attorney in fact of Lessor as CC&R Lot Owner, and the grant to Lessee of an exclusive power of attorney.

(ii) Irrevocable and perpetual. The Lessee Power of Attorney (A) shall conclusively be deemed to be coupled with an interest, and (B) except as otherwise expressly provided in (iii) below, shall be (x) irrevocable and (y) perpetual.

(iii) Termination. Any Lessee Power of Attorney shall conclusively be deemed to be effective for the entire Term of this Lease, except that any Lessee Power of Attorney shall automatically terminate upon the expiration of such Term or any earlier termination of this Lease, including, but not limited to, termination as a result of Lessor's transfer of its rights, title and interest in the Leased Premises to Lessee.

(c) No Effect on Power to Convey a Unit or Amend Governing Documents. Except as may otherwise expressly provided in the terms of any CC&Rs or an amendment thereto, a Lessee Power of Attorney:

(i) shall not include the power to sell, lease, convey, mortgage or otherwise encumber the fee simple reversion in and to the Leased Premises under this Lease, or the power to join in or consent to, on Lessor's behalf as CC&R Lot Owner under any CC&Rs, any amendment to any CC&Rs; and

(ii) shall not affect Lessor's right to convey the title to or any interest in the Leased Premises, or grant a mortgage thereon, but no such conveyance or mortgage shall alter the legal effect of any Lessee Power of Attorney granted pursuant to this Section 2.5 or any other Lessee Power of Attorney granted to Lessee by Lessor, and except as Lessee may otherwise agree, expressly and in writing, any Lessee Power of Attorney shall remain in full force and effect on its own terms notwithstanding such conveyance, and shall bind Lessor's heirs, personal representatives, successors, and assigns. Notwithstanding the immediately preceding sentence, such heirs, personal representatives, successors and assigns shall, promptly upon notice from Lessee requesting such action, provide such further written assurances of the continued effect of the Lessee Power of Attorney as Lessee may reasonably request in such notice.

(d) Persons Exercising. Lessee, as holder of a Lessee Power of Attorney, may permit its rights, powers and duties thereunder to be exercised and performed on its behalf by its officers, directors, employees and agents. A Lessee Power of Attorney may be transferred, pledged or collaterally assigned by Lessee as a part of a loan transaction.

## **2.6 Lessee Proxy under the CC&Rs.**

(a) Lessor, its successors and assigns hereby grant Lessee a proxy to (i) cast all of Lessor's votes as CC&R Lot Owner at any meetings of CC&R Owners, and (ii) exercise, as Lessor's agent and attorney in fact, Lessor's right to give or withhold Lessor's approval or consent in connection with (1) any decision to be taken by the Owners or without the holding of a meeting, or (2) any other consent or action to be given, withheld or taken by Lessor or in its capacity as CC&R Lot Owner. The Lessee Proxy (i) shall collectively constitute a proxy for purposes of any CC&Rs, (ii) shall conclusively be deemed to be coupled with an interest, and (iii) except as otherwise expressly provided in this Lease or in a separate document signed by Lessor and Lessee, shall be (1) irrevocable and (2) perpetual until the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary, the Lessee Proxy shall conclusively be deemed to be effective for the entire Term of this Lease, except that the Lessee Proxy shall automatically terminate upon the expiration of such Term or any earlier termination of this Lease, including, but not limited to, termination as a result of Lessor's transfer of its rights, title and interest in the Leased Premises to Lessee. While Lessee holds the Lessee Proxy, the CC&R Owners shall deal exclusively with Lessee on matters concerning the casting of votes or the giving of consent by the CC&R Owners under the terms of any CC&Rs.

(b) Lessee may permit the Lessee Proxy to be exercised on its behalf by its officers, directors, employees or agents. A Lessee Proxy may be transferred, pledged or collaterally assigned by Lessee as a part of a loan transaction.

(c) Nothing in this Section 2.6 shall affect Lessor's right to convey the title to or any interest in the Leased Premises, but no such conveyance shall affect the legal effect of the Lessee Proxy granted by Lessor, and except as Lessee may otherwise have agreed, expressly and in writing, the Lessee Proxy shall remain in full force and effect notwithstanding such conveyance, and shall bind the heirs, personal representatives, successors and assigns of Lessor. Notwithstanding the immediately preceding sentence, such heirs, personal representatives, successors and assigns shall, promptly upon notice from Lessee requesting such action, provide such further written assurances of the continued effect of the Lessee Proxy as Lessee may reasonably request in such notice.

## **2.7 Quiet Enjoyment.**

Lessor covenants and agrees that Lessee, while paying the Rent and other sums payable under this Lease and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the full Term without hindrance or molestation from Lessor or any other Person claiming by, through or under Lessor, subject to the terms, conditions and provisions of this Lease, and to the Encumbrances. Lessor shall not, without the prior approval of Lessee, which approval Lessee may withhold in its sole

and subjective discretion, encumber the Leased Premises with any easements, mortgages, liens or other encumbrances.

## **2.8 Recordation.**

Lessee shall have the right to record this Lease, and/or a memorandum of same prepared by Lessee (which Lessor covenants to execute and deliver in recordable form within ten (10) Business Days of Lessee's request therefore) among the Land Records.

## **2.9 Licenses and Permits.**

Whenever requested by Lessee, Lessor, at no cost to Lessor, shall execute and deliver to Lessee, in its capacity as fee owner of the Leased Premises, within ten (10) Business Days of Lessee's request therefore, subdivision plats, permit applications, building permit applications, liquor license applications, zoning and use related applications and any other type of application, for or concerning the Leased Premises and/or the development, construction, reconstruction and/or operation of the Leased Premises; provided however, that nothing in this Section 2.9 shall obligate Lessor to execute any agreement or do any other act that requires, or that could require, Lessor to pay any sum not reimbursed by Lessee or constitute a waiver or delegation of any of the governmental functions of Lessor or constitute approval by Lessor in its capacity as a Governmental Authority to such applications.

## **3. Rent.**

Commencing on the Commencement Date and continuing thereafter throughout the remainder of the Term, Lessee shall pay to Lessor annually the sum of Ten and 00/100 Dollars (\$10.00) (the "**Rent**") payable on or before the ninetieth (90th) day following each anniversary of the Commencement Date.

## **4. Impositions; Lessor Obligations.**

### **4.1 Impositions.**

From and after the Commencement Date, Lessee shall pay all Impositions that accrue and are payable for any part of the period that commences on the Commencement Date and ends on the expiration or earlier termination of this Lease before same are past due. Lessee shall provide Lessor with reasonable evidence of each such payment. Lessor shall promptly provide Lessee with a copy of all bills for Impositions that it receives. Lessee may collect from a Subtenant any of the Impositions as part of the rent under a Sublease or may have any Subtenant pay directly any of the Impositions; provided, however, Lessee remains primarily liable for the timely payment of the Impositions. Notwithstanding anything to the contrary contained herein, but subject to the terms of Section 4.2, in the event Lessee fails to pay any Imposition payable by Lessee pursuant to the provisions of this Lease before the date the same becomes delinquent, Lessor may, after giving Lessee ten (10) Business Days' Notice of its intention to do so, pay or cause to be paid any such Imposition which is delinquent and Lessee shall, within thirty (30) Business Days following Lessor's demand and Notice, pay and reimburse Lessor therefor with interest at the Default Rate from the date of payment by Lessor until repayment in full by Lessee.

#### **4.2 Contests.**

Lessee may, at its expense, contest any of the Imposition and/or attempt to obtain a lowering of the assessed valuation of the Leased Premises. Lessor shall not be required to join any such contest unless required by application Applicable Law in order to make such contest effective, in which event any such contest may be taken by Lessee in the name of, but without expense to Lessor, **LESSEE HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD LESSOR HARMLESS FROM ALL COSTS, FEES, EXPENSES, CLAIMS, LOSSES OR DAMAGES BY REASON OF, IN CONNECTION WITH, OR IN ACCOUNT OF, GROWING OUT OF, RESULTING FROM, ANY SUCH CONTEST. THIS REQUIREMENT TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SHALL EXPRESSLY SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE.** To the extent such cooperation is required by Applicable Law or any applicable Governmental Authority for such contest, Lessor shall cooperate in any such action or proceeding as reasonably requested by Lessee, at Lessee's sole cost and expense, whether or not Lessor is joined pursuant thereto and Lessor agrees to take no action that would be adverse to Lessee in any such contest where Lessee seeks to reduce its obligation to pay Impositions. Upon request by Lessee, Lessor shall execute in its capacity as fee owner and promptly deliver to Lessee any documents or pleadings associated with such contest that Lessee may reasonably request.

#### **4.3 Ad Valorem Taxes, Exemptions.**

Lessor and Lessee intend that the Leased Premises presently are and shall continue to be (for so long as the Leased Premises is owned by Lessor and used as a public parking facility for the Hotel, the Convention Center, and other public users) exempt from ad valorem taxes as exempt properties under applicable provisions of the Texas Constitution, the Texas Tax Code, and other Applicable Laws. Lessee is authorized to assert, insist upon, continue, and restate this joint intent in any agency, forum, or court having jurisdiction and at which the question may arise or be presented, and Lessor, at the request of Lessee and at Lessee's sole expense, shall jointly take and pursue such lawful actions with Lessee, including if necessary, judicial actions, as may be available and appropriate, to protect and defend the Leased Premises and the leasehold interest of Lessee therein against the levy, assessment, or collection of ad valorem taxes by any Governmental Authority asserting the power to levy, assess, and collect such taxes under currently Applicable Law. In the event of any proposed or actual change in the Texas Constitution, the Texas Tax Code, and other Applicable Law, which threatens to alter the ad valorem tax status of the Leased Premises, Lessor shall reasonably cooperate with Lessee (which cooperation may include joining any legal proceeding deemed appropriate by Lessee) to maintain all possible ad valorem tax exemptions available to the Leased Premises. Notwithstanding anything to the contrary, if Lessor undertakes any action requested by Lessee pursuant to this Section, Lessee shall pay all third-party costs, including outside attorney fees and expenses, reasonably incurred by Lessor, or within thirty (30) Business Days after written demand therefor, reimburse such costs to Lessor.

#### **4.4 No Lessor Obligations.**

For so long as this Lease remains in effect and except for costs that Lessor has specifically agreed to pay pursuant to the express terms of this Lease and the Economic Development



Performance Agreement, Lessor shall not be required to make any expenditure, incur any obligation or incur any liability of any kind whatsoever in connection with this Lease and the Leased Premises which is not reimbursed by or indemnified against by Lessee.

## **5. Improvements.**

### **5.1 Improvements.**

Lessee shall cause the Parking Facility to be constructed and maintained in accordance with the terms of the Economic Development Performance Agreement and the provisions of this Lease. Title to the Parking Facility, as well as any other Additional Improvements constructed on the Land, and all equipment, fixtures, machinery, furniture, furnishings and other personal property therein erected, constructed, installed or placed in or affixed to the Leased Premises by or on behalf of Lessee (collectively, “**Personalty**”), shall be and remain in Lessor. Pursuant to this Lease, Lessee will have use of the Personalty for and during the Term, as applicable. Lessee shall have the right, from time to time to make Additional Improvements, as well as renovate, alter, and modify the Parking Facility provided such do not result in a material reduction of the value of the Parking Facility as same existed prior to such construction, alteration, modification, expansion, reduction or demolition.

### **5.2 Sales Tax During Construction.**

(a) During construction of the Parking Facility, Lessor and Lessee shall cooperate in seeking a determination from the Comptroller of Public Accounts of the State of Texas confirming that items of tangible personal property incorporated or consumed in the construction of the Parking Facility acquired by Lessee and resold to the Lessor for the consideration, the receipt and sufficiency of which is hereby acknowledged shall be exempt from sales and use tax pursuant to Texas Tax Code, Chapter 151.

(b) As additional consideration for Lessee’s receipt of a portion of the Parking Facility Contributions pursuant to the Economic Development Performance Agreement, Lessee is deemed to have sold to Lessor all tangible personal property incorporated into the Parking Facility (including fixtures) prior to incorporation and prior to any use by Lessee, its contractors or subcontractors, as well as all items of tangible personal property used and/or consumed in construction of the Parking Facility pursuant to the Economic Development Performance Agreement prior to any use by Lessee, its contractors or subcontractors. Lessor will take title to same prior to incorporation into the Parking Facility or use by Lessee, its contractors, or subcontractors. By taking possession of the personal property so sold to Lessor for purposes of incorporating the same in, or using or consuming the same in construction of the Parking Facility, Lessee agrees there are no representations or warranties of any kind, express or implied, by Lessor regarding the personal property, AND LESSOR HEREBY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, notwithstanding any provision of this Lease or law to the contrary, and Lessee shall indemnify and hold Lessor harmless for any and all claims with respect to the quality, quantity, or condition of the personal property and agrees not to sue Lessor with respect to the quality, quantity or condition of the personal property.

Nothing in this paragraph shall be construed as a waiver of claims by Lessee against third parties as to the personal property.

Lessor and Lessee shall take appropriate or necessary steps to establish and maintain the foregoing exemption, including without limitation (i) structuring all construction contracts and subcontracts as “separated contracts” within the meaning of the Texas Tax Code and Comptroller Rule 3.291, containing separately stated contract prices for the materials and labor, (ii) structuring all construction contracts to ensure that title to all tangible personal property incorporated or consumed in the construction of the Parking Facility passes to Lessee (and then to Lessor) when it is delivered to the Land prior to incorporation or use by Lessee, contractor, or other party, (iii) Lessee issuing resale certificates to its contractors and requiring that all contractors issues resale certificates to their subcontractors, in each case claiming appropriate exemption from sales and use tax. To be clear, the “passing of title” described in paragraph (b) and clause (ii) above excludes any risk of ownership, all of which shall remain with Lessee, including, without limitation, any risk of loss, which Lessee shall insure against for the full replacement value in accordance with the provisions of this Lease.

### **5.3 Tax Benefits.**

Lessor acknowledges that Lessee may claim any income tax benefit and burden that may be available to it under the Internal Revenue Code of 1986, as amended, as a result of its participation in the Parking Facility, including all depreciation for all improvements located on, or to be located on, the Leased Premises.

### **5.4 Termination or Expiration of Lease.**

Upon the termination or expiration of this Lease, whether by lapse of time or otherwise, Lessee shall vacate and surrender the Leased Premises together with any permanently affixed improvements then existing on the Leased Premises.

### **5.5 No Lessor’s Lien.**

Lessor hereby waives any landlord’s lien Lessor has or ever may have.

## **6. Acceptance and Use.**

### **6.1 Acceptance; Condition of the Leased Premises; Disclaimer of Representations and Warranties.**

**LESSEE ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE OR THE ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT:**

**(a) THAT NEITHER LESSOR NOR ANY AFFILIATE OF LESSOR MAKES OR HAS MADE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, CONCERNING (i) THE PHYSICAL CONDITION OF THE LEASED PREMISES (INCLUDING THE GEOLOGY OR THE CONDITION OF THE SOILS OR OF ANY AQUIFER**

UNDERLYING THE SAME AND ANY ARCHEOLOGICAL OR HISTORICAL ASPECT OF THE SAME), (ii) THE SUITABILITY OF THE LEASED PREMISES OR ITS FITNESS FOR A PARTICULAR PURPOSE AS TO ANY USES OR ACTIVITIES WHICH LESSEE MAY MAKE THEREOF OR CONDUCT THEREON AT ANY TIME DURING THE TERM, (iii) THE LAND USE REGULATIONS APPLICABLE TO THE LEASED PREMISES OR THE COMPLIANCE THEREOF WITH ANY APPLICABLE LAWS, (iv) THE FEASIBILITY OF THE PARKING FACILITY OR ANY ADDITIONAL IMPROVEMENTS, (v) THE EXISTENCE OF ANY CONTAMINATED MATERIALS OR ENVIRONMENTAL CLAIMS, (vi) THE CONSTRUCTION OF ANY IMPROVEMENTS ON THE LEASED PREMISES OR (vii) ANY OTHER MATTER RELATING TO ANY IMPROVEMENTS AT ANY TIME CONSTRUCTED OR TO BE CONSTRUCTED THEREON;

(b) THAT NO REVIEW, APPROVAL, CONSENT OR OTHER ACTION BY LESSOR UNDER THIS LEASE SHALL BE DEEMED OR CONSTRUED TO BE SUCH A REPRESENTATION OR WARRANTY;

(c) THAT LESSEE HAS BEEN AFFORDED FULL OPPORTUNITY TO INSPECT, AND HAS HAD FULL OPPORTUNITY TO BECOME FAMILIAR WITH, THE CONDITION OF THE LEASED PREMISES, THE BOUNDARIES THEREOF, ALL LAND USE REGULATIONS APPLICABLE THERETO AND OTHER MATTERS RELATING TO THE DEVELOPMENT THEREOF; AND

(d) THAT LESSEE ACCEPTS, ON AN "AS IS, WHERE IS" BASIS, THE LEASED PREMISES IN THE CONDITION IN WHICH THEY EXIST ON THE COMMENCEMENT DATE.

(e) NEITHER LESSOR NOR ANY OF ITS AFFILIATES SHALL BE LIABLE AS A RESULT OF ANY FAILURE BY ANY PERSON (OTHER THAN LESSOR) TO PERFORM THEIR RESPECTIVE OBLIGATIONS HEREUNDER. IT IS UNDERSTOOD AND AGREED BY LESSEE (FOR ITSELF OR ANY PERSON CLAIMING BY, THROUGH OR UNDER IT) THAT IT HAS ITSELF BEEN, AND WILL CONTINUE TO BE, SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF, AND INVESTIGATION INTO, THE FINANCIAL CONDITION, CREDIT WORTHINESS, CONDITION, AFFAIRS, STATUS AND NATURE OF ANY PERSON UNDER THE LEASE AND THE LEASED PREMISES.

## **6.2 Permitted Uses.**

Lessee covenants and agrees that it shall use and occupy the Leased Premises, including the Parking Facility, solely for the following purposes, but not the Prohibited Uses (collectively, the "Permitted Uses"):

(a) During construction of the Parking Facility, Lessee covenants and agrees that it shall use and occupy the Leased Premises solely for the purposes of designing, developing, constructing, furnishing and opening the Parking Facility pursuant to the terms and conditions of this Lease and the Economic Development Performance Agreement;

(b) The use of the Leased Premises as a public parking facility for the Hotel Project, the Convention Center Project and other public users;

(c) Maintenance and Repair Work pursuant to Section 7.1 hereof; and

(d) Construction of Additional Improvements after the Parking Facility is completed, subject to the limitations and requirements contained elsewhere in this Lease, and provided such Additional Improvements are made at the sole cost and expense of Lessee.

### **6.3 Prohibited Uses.**

Lessee shall not use, nor knowingly permit the use of, the Leased Premises for any other or additional purpose that is not a Permitted Use, without first obtaining the Consent of Lessor, which Consent, may be granted, withheld, conditioned or delayed in Lessor's sole and absolute discretion. Lessee acknowledges that the Permitted Uses are subject to all Applicable Laws at any time applicable to the Leased Premises and that nothing in this Section 6 or elsewhere in this Lease or in the Economic Development Performance Agreement shall constitute or be deemed to constitute a waiver by Lessor of the performance of its governmental functions or of any such Applicable Laws or of the duty of Lessee to comply with such Applicable Laws. Notwithstanding the Permitted Uses hereunder, Tenant agrees that it shall not (collectively, the **"Prohibited Uses"**):

(a) cause or permit obnoxious or offensive odors or fumes to emanate or be dispelled from the Leased Premises in violation in any material respect of Applicable Laws;

(b) cause or permit undue accumulations of garbage, trash, rubbish or any other refuse in, on or about the Leased Premises;

(c) create, cause, maintain or knowingly permit any public or private nuisance in, on or about the Leased Premises;

(d) use or knowingly allow the Leased Premises to be used for the sale or display of any pornographic material or material which is obscene under standards set forth in any Applicable Laws or operate, or allow any Person to operate, in, on or about the Leased Premises any store or other facility a principal or significant portion of the business of which is a "sexually oriented business" as such term is defined in the City of Arlington Code of Ordinances;

(e) use or knowingly allow the Leased Premises to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in

connection with the taking or use of illegal drugs (or their equivalent);

(f) use or knowingly permit the Leased Premises to be used for the public display or public or private sale of guns or other weapons, ammunition, explosives or fireworks;

(g) use or knowingly permit the Leased Premises to be used as a gentlemen's club (or other establishment which allows full or partial nudity), or a massage parlor;

(h) use or permit the Leased Premises to be used for a shooting gallery, target range, vehicle repair facility, car wash facility, warehouse (but any area for the storage of goods intended to be sold at any permitted retail establishment within the Parking Facility or use in operation of the Parking Facility shall not be deemed to be a warehouse), convalescent care facility or mortuary, or use or knowingly permit it to be used for any assembly, manufacture, distillation, refining, smelting or other industrial or commercial agricultural operation or use;

(i) except during the course of constructing Additional Improvements, and then only if kept in a neat and orderly condition, use any portion of the Leased Premises (other than portions inside the Parking Facility) for storage other than areas designated as storage of goods intended to be sold at any permitted retail establishment within the Parking Facility or use in operation of the Parking Facility;

(j) engage in (or permit any Subtenants or other occupant of the Leased Premises to engage in) activities on or in the Leased Premises that create dust, noise, traffic hazards or other effects that unreasonably disturb the use and enjoyment of the Parking Facility by its owner, guests, invitees, patrons, or the general public; and

(k) use, generate, manufacture, produce, store, treat or dispose of contaminated materials (other than the use, storage and disposal of contaminated materials customarily used, stored or disposed of in the operation or cleaning of parking facilities, so long as such contaminated materials are used, stored and disposed of in compliance in all material respects with all Applicable Laws).

The provisions of this Section 6.3 shall inure to the benefit of and be enforceable by Lessor and its successors and assigns. No other person, including any transient guest or patron of the Leased Premises shall have any right to enforce the prohibitions as to the Prohibited Uses.

#### **6.4 Covenant to Operate.**

Subject to the provisions of Section 6.5 hereof, commencing on the first day of the Initial Occupancy (as that term is defined in the Economic Development Performance Agreement) and continuing thereafter (except for Down Times) during the remainder of the Term, Lessee covenants, at Lessee's sole cost and expense to:

(a) operate the Parking Facility, and cause the same to be operated, diligently and continuously as a parking facility without interruption for any reason other than Down Times;

(b) perform all Maintenance and Repair Work in accordance with Section 7.1; and

(c) possess all Personalty necessary for the operation of the Parking Facility and maintain all spare parts and inventory.

### **6.5 Down Times.**

Lessee may temporarily cease to operate areas or all or substantially all of the Parking Facility during the Term for, and only for, limited periods of down time (“**Down Times**”) for the limited purpose of, and only for the limited purpose of, one or more of the following circumstances for the applicable period specified below:

(a) During the period following any fire or other casualty or condemnation or other exercise by a Governmental Authority of the power of eminent domain to the extent, and only to the extent, necessary in order to repair and restore the Parking Facility in accordance with the terms of this Lease; provided that any portion of the Parking Facility taken by eminent domain shall no longer be subject to the terms and provisions of this Lease including the operation covenant in Section 6.4;

(b) During any period of construction of Additional Improvements, but only to the extent necessary to make such Additional Improvements;

(c) As a result of such other commercially reasonable interruptions as are incidental to the normal operation of the Parking Facility;

(d) As a result of any remodeling or renovation of the Parking Facility; or

(e) To the extent and only to the extent the same is not the result of Lessee's failure to timely fulfill its obligation under this Lease, including its obligations to comply with Applicable Laws as provided in this Lease, during any period required by Applicable Law;

*provided, however* that during all Down Times Lessee shall (x) use its commercially reasonable efforts to minimize the disruption of such Down Time, (y) use its commercially reasonable efforts to minimize the disruption to the areas of the Parking Facility which remain open to the public, if any, and the services, aesthetic appearances and public and guest access to and in such portions of the Parking Facility.

### **6.6 Continuing Obligation.**

No cessation of operations pursuant to Down Times shall relieve Lessee of any obligations under this Lease (including the obligation to pay Rent unless expressly provided otherwise pursuant to the terms of this Lease) other than the relevant portions of the covenant of

continuous operation contained in Section 6.4. Lessee acknowledges and agrees that (a) its continuous use and occupancy of the Leased Premises and operation of the Parking Facility (other than during Down Times) and its payment of Rent provide a significant benefit on which Lessor in part economically depends, (b) violation of the covenants of continuous operation in Section 6.4 shall each be a default by Lessee subject to the terms and conditions of Section 12.1(c) and (c) Lessor considers such covenants of continuous operation a valuable contractual interest.

#### **6.7 Governmental Authorizations.**

Before commencement of any construction work on the Parking Facility or any Additional Improvements, Lessee shall at its expense secure or cause to be secured any and all Governmental Authorizations, which may be required by the City of Arlington or other Governmental Authority having jurisdiction over such development, demolition, construction, alteration or reconstruction work to begin such work and as necessary during the course of the construction work. The approval or consent by the Lessor of any matter submitted to Lessor pursuant to this Lease, which matter is specifically provided herein to be approved or consented to Lessor, shall not constitute a replacement or substitute for, or otherwise excuse Lessee from, such permitting, licensing or approval processes; and, conversely, no permit so obtained shall constitute a replacement or substitute for, or otherwise excuse the Lessee from any requirement hereunder for the approval or consent of Lessor.

#### **6.8 Operation Performance Standards and Shared Parking Agreement.**

The Parking Facility shall be operated in a reasonable and sound businesslike manner, consistent with practices at comparable public parking facilities. Prior to completion of the Parking Facility, Lessor and Lessee shall enter into a shared parking agreement jointly developed and reasonably acceptable to Lessor, acting through Lessor Representative, and Lessee, which agreement may be amended from time to time by joint agreement of Lessor, acting through Lessor Representative, and Lessee. Such shared parking agreement shall address the provision of parking for the Hotel and Convention Center, as well as the Esports Stadium and Expo Hall, National Medal of Honor Museum, and major events in the City of Arlington's Entertainment District through a validation process.

#### **6.9 Ownership of Plans and Specifications.**

Lessee shall own all intellectual property rights in, to and relating to the Parking Facility design documents, whether now in existence or created in the future; provided, however, that Lessor shall have a limited license to use such design documents in connection with the maintenance, repair or demolition of the Leased Premises after the termination of this Lease (unless Lessee has acquired the Leased Premises in accordance with Section 2.3) or at any time as necessary in the performance of the Lessor's governmental functions.

#### **6.10 Additional Requirements.**

Lessee shall be obligated (or cause its general contractor to be obligated) to: (1) provide to the Lessor, upon request therefor, a copy of each construction contract with respect to

the construction of the Leased Premises to which Lessee is a party, (2) provide to Lessor copies of schematic design, design development and construction plans and specifications for all elements of the Leased Premises as such are completed and approved (or accepted) by Lessee, and be available to discuss with the Lessor Representative comments the Lessor may have concerning such plans and specifications (provided that Lessee shall have sole discretion and full right and authority to make decisions regarding such comments), (3) provide to Lessor at least three sets of construction documents once approved (or accepted) by Lessee, signed and sealed by one or more registered professional architects or engineers licensed in the State of Texas, (4) provide Lessee with a copy of the detailed construction schedule outlining the major items of work of each major construction contractor, and revisions to such schedule at reasonable intervals during construction, (5) keep the Lessor Representative reasonably advised and informed regarding the design and construction of the Leased Premises, (6) provide the Lessor with reasonable advance notice of regularly-scheduled construction meetings and permit the Lessor Representative to attend such meetings, (7) maintain reasonable vehicular and pedestrian access to property and buildings on the Land that abut any right-of-way, including the provision of temporary facilities, including pavements and utilities, until permanent facilities are in place or existing facilities are restored, (8) arrange for site security within designated areas under construction, except as otherwise expressly required by its contract with Lessee, (9) require the general contractor to comply with, and its agents and contractors comply in all material respects with, all Applicable Laws regarding the use, removal, storage, transportation, disposal and remediation of hazardous materials; (10) notify Lessor and not proceed without Lessee obtaining the Lessor's approval (which approval shall not be unreasonably withheld, conditioned or delayed) with regard to all field changes that directly result in material changes to preexisting plans for the Leased Premises connections with public streets, storm sewers and utilities, (11) cause all appropriate soils and materials testing to be conducted by certified independent laboratories and furnish to the Lessor copies of reports of such testing, (12) cause the general contractor to promptly repair, restore or correct, on a commercially reasonable basis, all damage caused by the general contractor or its subcontractors to property or facilities of the Lessor, and reimburse the Lessor for out-of-pocket costs actually incurred by Lessor that are directly related to the Lessor's necessary emergency repairs of any such damage, (13) provide reasonable advance notice to the Lessor Representative and allow such designated representative to be present during the scheduled pre-final (if any) and final inspection of the Leased Premises following substantial completion of construction and prior to Initial Occupancy, (14) upon request therefor, cause the correction of defective work or other such warranty work to be performed, within the applicable curative period(s) as required by the applicable contract, (15) provide Lessor with a sufficient number of copies of all manuals relating to fire, safety and other governmentally required building systems for the Leased Premises within a reasonable time following completion of construction, and (16) provide Lessor, within a reasonable time following completion of construction, with as-built drawings for the Leased Premises.

## **7. Repairs and Maintenance; Utilities.**

### **7.1 Lessee's Obligation.**

Lessee shall, from the Initial Occupancy throughout the remainder of the Term, at its own expense and at no cost or expense to Lessor, do the following (collectively, the “**Maintenance and Repair Work**”):



(a) Keep and maintain, or cause to be kept and maintained, the Leased Premises, including the Parking Facility and any Additional Improvements, in good working repair and order, ordinary wear and tear, casualty and condemnation excepted;

(b) Promptly make, or cause to be made, all necessary repairs, interior and exterior, structural and non-structural, foreseen as well as unforeseen, to the Leased Premises, including the Parking Facility and any Additional Improvements, to keep them clean and in a condition such that they may be operated in compliance in all material respects with all Applicable Laws; and

(c) Perform all alterations, upgrades, improvements, renovations or refurbishments to the Parking Facility necessary to meet the requirements of this Lease.

## **7.2 No Services Provided by Landlord; Tenant's Sole Responsibility.**

Lessor shall not be required to furnish any services or facilities or to perform any maintenance, repair or alterations in or to the Leased Premises, including the Parking Facility and any Additional Improvements. Lessee hereby assumes the full and sole responsibility for the condition, operation, security, repair, replacement, maintenance and management of the Leased Premises, including the Parking Facility and any Additional Improvements, throughout the Term.

## **7.3 Utilities.**

Lessor shall not be obligated to furnish or pay for any utilities for the Leased Premises. Lessee shall cause the necessary mains, conduits, and other facilities to be provided and maintained to supply water, gas, telephone, electricity, chilled water, steam and other utility services commonly supplied to and within comparable parking facility properties similar to the Leased Premises, and Lessee shall, at Lessee's sole cost and expense, subject to the obligations of the applicable utility provider, maintain and repair all water pipes, conduits, electric lines, gas pipes, steam pipes and other transmission facilities in, on or servicing the Leased Premises during the Term. No interruption or malfunction of any utility services shall constitute an eviction or disturbance of Lessee's possession of the Leased Premises or a breach of the covenant of quiet enjoyment, and no such interruption or malfunction shall result in any abatement or reduction in the Rent. No interruption or malfunction of any utility services not caused by Lessee shall be an Event of Default or an occurrence that would lead to an Event of Default by Lessor upon the giving of notice or passage of time.

## **8. Damage or Destruction.**

### **8.1 Obligation to Reconstruct.**

In the event of damage or destruction to the Parking Facility during the thirty (30) year period that commences on Initial Occupancy, Lessee shall promptly secure or cause to be secured the area of damage or destruction to safeguard against injury to persons or property and, promptly

thereafter, remediate any hazard and restore the Parking Facility thereon to a presentable condition whether by repair or by demolition, removal of debris and screening from public view. Lessee shall, to the extent allowed by Applicable Law promptly commence and thereafter proceed with reasonable diligence to repair, restore, replace or rebuild the Parking Facility as nearly as practicable to a condition substantially equivalent to that existing immediately prior to such damage or destruction (as the same may be modified by Lessee at the time of such repair or restoration, provided that such modification is of equal or greater value), whether done by application of insurance proceeds or other financial means. On or after the expiration of such thirty (30) year period that commences on Initial Occupancy, in the event the Parking Facility is damaged or destroyed by fire or other casualty, Lessee shall have the right to determine whether, and to what extent the Parking Facility should be restored or replaced. Notwithstanding the above, a Mortgagee and any person or entity that acquires title to the Improvements as a result of a foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 8.

## **8.2 No Obligation of Landlord.**

Under no circumstances shall Lessor be obligated to make any payment, disbursement or contribution toward the cost of the repairing, remediating, replacing, or rebuilding any damage or destruction to the Parking Facility.

## **9. Condemnation.**

### **9.1 General.**

If, at any time during the Term, the Leased Premises, or any part thereof, shall be condemned and taken by the United States of America, the State or any other authority or Person having the power of eminent domain, then the provisions of this Section 9 shall apply to such condemnation proceedings and the distribution of any awards pertaining thereto.

### **9.2 Entire Leased Premises Taken by Eminent Domain/Partial Taking Resulting in Termination.**

If the fee simple title in, or permanent possession of, all of the Leased Premises is taken by a governmental or other authority under the power of eminent domain, then this Lease shall terminate (or be suspended for the duration of the temporary taking) as of the taking date, and any Rent shall be prorated and paid by Lessee to the date of such taking. In the event that less than all of the Leased Premises is taken by a governmental or the authority under the power of eminent domain and if reconstruction of the Parking Facility is not feasible, or if the Parking Facility remaining after such taking is no longer economically viable, in each case as determined by Lessee in its sole and absolute discretion within one year after the date of the taking, then this Lease, at the election of Lessee, shall terminate as to the Leased Premises not so taken as of the date of such taking. The condemnation award shall be promptly paid as follows, in the following order of priorities:

- (a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by Lessor and Lessee in such condemnation suit or conveyance

(except that nothing contained in this Section 9 shall require payment to Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages, to the extent that the Leasehold Mortgages require such payments; and

(c) The balance, if any, shall be applied and distributed to pay each Subtenant any amount of which such Subtenant is entitled for its leasehold improvements, and the value of such Subtenant's leasehold interests, but only to the extent required in such Subtenant's lease; and

(d) The balance, if any, shall be applied and distributed to Lessee up to the amount of the Project Costs actually funded by Lessee with respect to the Parking Facility, as reasonably determined by Lessee; and

(e) The balance, if any, shall be divided and paid fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is Lessor, the entire balance shall be paid to Lessee.

### **9.3 Partial Taking of Leased Premises by Condemnation.**

In the event that less than all of the Leased Premises (or only an interest therein) is taken for any public use or purpose by the exercise of the power of eminent domain, or shall be conveyed by the Parties acting jointly to avoid proceedings of such taking, then, subject to the exceptions expressly set forth in Section 9.2 above for a partial taking where reconstruction of the Parking Facility is not feasible or where the Parking Facility remaining after such partial taking is no longer economically viable: (i) this Lease and all the covenants, conditions, and provisions hereunder shall be and remain in full force and effect as to all of the Leased Premises not so taken or conveyed, and (ii) Lessee shall remodel, repair, and restore the Parking Facility as nearly as practicable to a condition substantially equivalent to that existing immediately prior to such taking, taking into consideration the fact of the condemnation.

The condemnation award shall be promptly paid as follows, in the following order of priorities:

(a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by each Party in such condemnation suit or conveyance (except that nothing contained in this Section 9 shall require payment of Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages to the extent that the Mortgages require such payments; and

(c) The balance, if any, remaining shall be applied and distributed to pay each Subtenant whose space is taken any amount to which such Subtenant is entitled for its leasehold improvements and the value of such Subtenant is entitled for its leasehold

improvements and the value of such Subtenant's leasehold interest, but only to the extent required in such Subtenant's lease; and

(d) There shall be paid to Lessee out of the balance, if any, remaining, the amount required to enable Lessee to remodel, repair, and restore any improvements to such condition as Lessee determines in its sole and absolute discretion to be appropriate, taking into consideration the fact of the condemnation; and

(e) The balance, if any, shall be applied and distributed to Lessee up to the amount of the Project Costs actually funded by Lessee with respect to the Parking Facility, as reasonably determined by Lessee; and

(f) The balance, if any, shall be divided and paid over fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is owner, the entire balance shall be paid to Lessor.

#### **9.4 Temporary Taking.**

If the whole or any part of the Leased Premises or of Lessee's interest in this Lease shall be taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full the Rent without reduction or abatement in the manner and at the times herein specified. Except only to the extent that Lessee is prevented from so doing pursuant to the terms of any order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred.

#### **9.5 Condemnation Proceedings.**

Lessee, Lessor and Leasehold Mortgagee shall each have the right, as its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials and appeals therein.

#### **9.6 Notice Condemnation.**

In the event Lessor or Lessee shall receive notification of any proposed or pending condemnation proceeding affecting the Leased Premises, the Party receiving such notification shall promptly notify, by Notice, the other Party.

### **10. Assignments; Subleases.**

#### **10.1 Restriction Against Dispositions.**

Lessee shall be entitled to make or create or suffer to be made or created without the consent of Lessor any Disposition of the Leased Premises to an Affiliate of Lessee or to any Alternative Hotel Developer at any time. Prior to the fifteenth (15<sup>th</sup>) anniversary of the Initial Occupancy, Lessee shall not make or create, or suffer to be made or created, any Disposition of the Leased Premises to any Person that is not an Alternative Hotel Developer, without the prior written approval of Lessor, acting by and through the Lessor Representative, which approval shall

not be unreasonably withheld, conditioned or delayed. Any such approval or disapproval shall be made within thirty (30) Business Days of Lessor's receipt of such request, time being of the essence. On or any time after the fifteenth (15<sup>th</sup>) anniversary of the Initial Occupancy, Lessee shall be entitled to make or create or suffer to be made or created any Disposition of the Leased Premises to any Person, whether or not such Person is an Alternative Hotel Developer without the consent of Lessor.

### **10.2 Assumption Agreement.**

In connection with any Disposition made during the Term, the counterparty to such Disposition shall assume all obligations of Lessee under this Lease accruing from and after the execution date of such Disposition by a written agreement (the "**Assumption Agreement**") to which the Lessor is either a party or in which the Lessor is specified to be a beneficiary, a copy of which Assumption Agreement shall be promptly provided to the Lessor following the Disposition to evidence the assignment and assumption in question. Upon Lessee's delivery of an Assumption Agreement, Lessee shall be relieved of all further liability arising hereunder except for defaults of Lessee under this Lease that accrued before such Disposition which Lessor had notified Lessee of and which remain uncured.

### **10.3 Project Financing and Mortgages.**

The provisions of Section 10.1 and 10.2 are not intended to modify or supersede any of the rights granted by Lessee to any Leasehold Mortgagee and any Subtenant under Sections 11 and 12 hereof. In the event that the provisions of this Section 10 conflict with or are inconsistent with the any of the other provisions of Sections 11 and/or 12 hereof, the provisions of Sections 11 and 12 hereof shall control and the provisions of Sections 10.10 and 10.2 shall be construed and interpreted accordingly.

### **10.4 Permitted Disposition to Subtenants.**

Notwithstanding anything in Sections 10.1 or other sections of this Lease to the contrary, Lessee may enter into Subleases or other contractual agreements with Subtenants for any part of the Leased Premises, at any time and from time to time from and after the Initial Occupancy and during the Term, with such Subtenants and upon such terms and conditions as Lessee shall, in its sole discretion, deem fit and proper consistent with the other provisions of this Lease. Notwithstanding anything in this Section 10 to the contrary, a Sublease or Subleases may not be used as a way to circumvent the disposition or assignment limitations of this Lease. Each Sublease shall be subject and subordinate to this Lease.

### **10.5 Non-disturbance and Attornment.**

(a) Lessor covenants and agrees with Lessee for the benefit of each and every Subtenant from time to time occupying any part of the Leased Premises or having rights granted to it by Lessee with regard to the Leased Premises, which Subtenants shall be third party beneficiaries of this Section 10.5 as it may apply to each of them respectively, that in the event of a termination of this Lease, each such Subtenant may continue to occupy its premises under its pre-existing Sublease and enjoy the rights granted to such Subtenant in such Sublease; provided such Subtenant shall then attorn to Lessor (to the extent that

such Subtenant occupies any part of the Leased Premises) and, if such Subtenant's Sublease does not provide for such attornment (and such Subtenant occupies any part of the Leased Premises), such Subtenant, promptly after the termination of this Lease, provides Lessor with a written statement of such Subtenant whereby such Subtenant attorns to Lessor.

(b) In addition to the provisions of Section 10.5(a) hereof, Lessor covenants and agrees with Lessee that Lessor will, at the request of Lessee made from time to time enter into a non-disturbance and attornment agreement with any Subtenant identified by Lessee, which non-disturbance and attornment agreement shall provide for all terms set forth in Section 10.5(a) hereof and be in commercially reasonable form. Lessor shall execute and deliver to Lessee such a non-disturbance and attornment agreement or specify in writing its objections thereto within twenty (20) Business Days after receipt of the form thereof from Lessee, time being of the essence.

## **11. Leasehold Mortgage Financing.**

### **11.1 Rights to Leasehold Mortgage.**

(a) Notwithstanding any other provision of this Lease, Lessee shall at all times have the right to enter into or grant one or more Leasehold Mortgages. Lessee may encumber, pledge, grant, or convey its rights, title and interest under this Lease by way of a Leasehold Mortgage (or assignment) to secure payment of any loan or loans obtained by Lessee. Such Leasehold Mortgage may also encumber Lessee's right to purchase the Leased Premises.

(b) Lessee, and any Subtenant (to the extent permitted by Lessee), may grant security interests in or place liens upon any equipment or personal property (so long as such equipment or property is not a fixture integrated into the real property, which equipment or property could not be removed without permanent damage to the Leased Premises), without such interest or liens constituting a Disposition. Such equipment and personal property shall not be deemed to be "improvements" under this Lease. During the Term, at the request of Lessee, Lessor will, within thirty (30) days of such a request, execute and deliver a landlord's waivers of liens (including customary terms such as restoration of the premises) to facilitate such security interests and liens upon such equipment and personal property, which landlord's waivers of liens shall be in a form and substance reasonably satisfactory to Lessee.

(c) Each Subtenant (to the extent permitted by Lessee), shall have the right at any time to encumber its sub-leasehold estate by a mortgage or other encumbrance or lien without the necessity of obtaining the consent of Lessor (so long as the deed of trust, mortgage or other primary security instrument creating such Subtenant's mortgage refers to this Section 11 by reference). At the request of Lessee (given by notice), Lessor shall treat a mortgagee of a Subtenant's sub-leasehold estate in the same manner that it treats a Leasehold Mortgagee as to notice rights and shall enter into a non-disturbance agreement with such Subtenant's mortgagee, which agreement shall be in a form and substance that is reasonably acceptable to such Subtenant's mortgagee.

(d) In the event Lessor gives notice to Lessee of a default of its obligations under this Lease, Lessor shall forthwith furnish a copy of the notice to the Leasehold Mortgagees that have been identified to Lessor by Lessee.

## **11.2 Rights of Leasehold Mortgagee**

### **11.2.1 Lessee's Acceptance.**

Lessor agrees to accept performance and compliance by any Leasehold Mortgagee of and with any term, covenant, agreement, provision, or limitation on Lessee's part to be kept, observed, or performed by Lessee hereunder.

### **11.2.2 Cure of Default.**

Following an Event of Default by Lessee, Lessor will exercise no remedies under this Lease, unless it shall first give Leasehold Mortgagee notice after the occurrence of any such Event of Default and stating the intention of Lessor, on a date specified in such notice, to exercise such remedies. Notwithstanding such notice, Lessor shall not exercise any such remedies, if:

(a) such Event of Default can be cured by the payment of a fixed monetary amount and Leasehold Mortgagee shall make such payment within ninety (90) days after the date such notice was given: or

(b) such Event of Default can be cured with the exercise of reasonable diligence by Leasehold Mortgagee after obtaining possession of the Leased Premises, and Leasehold Mortgagee or Leasehold Mortgagee's designee, within one hundred eighty (180) days after the date of such notice, obtains the interest of Lessee in this Lease or Leasehold Mortgagee commences such proceedings (including, but not limited to, the filing of a petition for the appointment of a receiver) as it may deem necessary to obtain such possession (except that if Leasehold Mortgagee is precluded, notwithstanding the filing of a petition to the bankruptcy court for a waiver, from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period during which leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure) and thereafter diligently prosecutes such action and promptly upon obtaining such possession (or promptly upon its designee obtaining such possession) thereupon promptly commences (or its designee commence); and thereafter diligently pursues, the curing of such Event of Default; or

(c) such Event of Default is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises were obtained by Leasehold Mortgagee or its designee, and Leasehold Mortgagee, within one hundred eighty (180) days after the date such notice is given, either obtains title to all of Lessee's right, title and interest in and to this Lease (or Leasehold Mortgagee's designee obtains such interest) or publishes any required notice of foreclosure or institutes foreclosure proceedings, as the case maybe be, and thereafter proceeds with diligence to acquire (or have its designee acquire) the interest of Lessee in the Lease (except that if Leasehold Mortgagee is precluded from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period

during which Leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure), and such Event of Default, to the extent that the same shall have occurred prior to such acquisition of the interest of Lessee in this Lease by Leasehold Mortgagee or its designee, shall thereupon be deemed to have been waived.

### **11.2.3 Lease Termination; New Lease:**

(a) If this Lease is terminated in connection with a bankruptcy proceeding involving Lessee, Lessor shall give Leasehold Mortgagee notice of such termination and shall enter into a new lease for the Leased Premises that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage or, at the request of Leasehold Mortgagee, with an assignee, designee, or nominee of Leasehold Mortgagee for the remainder of the Term of this Lease effective as of the date of such termination, at the rate and upon the same covenants, Leases, terms, provisions and limitations as are herein contained, provided that:

(i) Leasehold Mortgagee makes written request upon Lessor for such new lease within one hundred eighty (180) days after the giving of such notice of termination and such written request is accompanied by payment to Lessor of all amounts then due to Lessor in connection with the Leased Premises that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage of which Lessor shall have given Leasehold Mortgagee notice; and

(ii) Leasehold Mortgagee pays or causes to be paid to Lessor at the time of the execution and delivery of such new lease any and all additional sums which would at the time of the execution and delivery thereof due under this Lease but for such termination and pays or causes to be paid any and all expenses, including reasonable attorneys' fees, court costs, and disbursements, incurred by Lessor concerning the Leased Premises in connection with any such termination or in connection with the execution and delivery of such new lease and any conveyance of title to the improvements; and

(iii) Leasehold Mortgagee agrees to cure, within sixty (60) days after the execution and delivery of such new lease, all uncured Events of Default of which Lessor shall have given Leasehold Mortgagee notice (except any Event of Default which is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises were obtained, to the extent that same shall have occurred prior to the execution and delivery of such new lease, shall be deemed to have been waived), or if any such Event of Default cannot be cured within such period, Leasehold Mortgagee agrees to commence, within such period, to cure such Event of Default and thereafter pursues the same with due diligence.

(b) Any new lease made pursuant to this subsection 11.2.3 shall (i) have the same relative priority in time and in right as this Lease, and (ii) have the benefit of all of the right, title, powers and privileges of Lessee hereunder in and to the Leased Premises. At Lessee's request, Lessor will enter into an agreement with Leasehold Mortgagee granting to Leasehold Mortgagee the rights set forth in this Section 11.2.

### **11.2.4 Notice to Lessor and Leasehold Mortgagee.**



If Lessee shall furnish Lessor with a written notice setting forth the name and address of a Leasehold Mortgagee, Lessor shall thereafter send to such Leasehold Mortgagee a copy of any notice given to Lessee under this Lease, and no such notice shall be deemed to have been properly given unless and until a copy thereof shall have been sent to Leasehold Mortgagee at the address specified in such notice.

#### **11.2.5 Performance by Leasehold Mortgagee; Rights and Duties of Leasehold Mortgagee.**

No Leasehold Mortgagee shall have any liability for the performance of any of the covenants, conditions or obligations of Lessee under this Lease unless and until such time as Leasehold Mortgagee acquires title to the leasehold estate created by this Lease. Further, in no event shall any Leasehold Mortgagee be obligated to perform or observe any of the covenants, terms or conditions of this Lease on the part of Lessee to be performed or observed, or be in any way obligated to complete the improvements to be constructed in accordance with this Lease, nor shall it guarantee the completion of improvements as hereinbefore required of Lessee, whether as a result of (i) its having become a Leasehold Mortgagee, (ii) the exercise of any of its rights under the instrument or instruments whereby it became a Leasehold Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (iii) the performance of any of the covenants, terms or conditions on the part of Lessee to be performed or observed under this Lease, or (iii) otherwise, unless such Mortgagee shall either make the election set forth in Section 11.2.3 to assume the obligations of Lessee.

#### **11.3 Non-subordination.**

Nothing contained in this Section 11, or in any other section of this Lease shall be deemed to allow a subordination of Lessor's reversionary estate in any part or portion of the Leased Premises leased to Lessee. In no event will such subordination be made. Lessee and each Subtenant may mortgage only its leased or sub-leasehold interest in the Leased Premises.

#### **11.4 Leasehold Mortgagee's Rights Agreements.**

Lessor covenants and agrees with Lessee that Lessor will, at the request of Lessee made from time to time and at any time, enter into a lender's rights agreement with any Leasehold Mortgagee (or potential Leasehold Mortgagee) identified by Lessee, which lenders' rights agreement shall be consistent with the terms and provisions contained in this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages. Within twenty (20) Business Days of Lessee's request for a Leasehold Mortgagee's rights agreement pursuant to the provisions of this Section 11.4, Lessor shall execute and deliver to Lessee such a lender's rights agreement benefiting the identified Leasehold Mortgagee (or potential Leasehold Mortgagee) and such Leasehold Mortgagee's Leasehold Mortgage (or potential Leasehold Mortgagee's potential Leasehold Mortgage), which executed Leasehold Mortgagee's rights agreement shall be commercially reasonable and in a form and substance that are reasonably acceptable to such Leasehold Mortgagee (or potential Leasehold Mortgagee) and that is consistent with, and at the option of such Leasehold Mortgagee (or potential Leasehold Mortgagee) incorporates, the terms and provisions of this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages (such

as the Leasehold Mortgagee notice provisions and the Leasehold Mortgagee cure rights provisions of this Section 11).

## **12. Defaults/Arbitration.**

### **12.1 Events of Default by Lessee.**

Each of the following shall constitute an Event of Default by Lessee:

(a) The filing by Lessee of a voluntary proceeding or the consent by Lessee to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessee or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessee in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessee to perform or to observe any material covenant, obligation or requirement of Lessee arising under this Lease not specifically named as an Event of Default in this Section 12.1, and the continuation of such failure for thirty (30) days after receipt of written Notice from Lessor specifying the nature and extent of such failure, or if such failure cannot reasonably be cured within such thirty (30) day period, the failure of Lessee to commence to cure such failure within such thirty (30) day period and to diligently pursue same to completion.

### **12.2 Events of Default by Lessor.**

Each of the following shall constitute an Event of Default by Lessor:

(a) The filing by Lessor of a voluntary proceeding or the consent by Lessor to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessor or appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessor in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessor to perform or to observe any material nonmonetary covenant, obligation or requirement of this Lease not specifically named as an Event of Default by Lessor in this Section 12.2, and the continuation of such failure for thirty (30) days after receipt of written Notice from Lessee specifying the nature and extent of any such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of Lessor to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such effort to cure to completion.

(d) The failure of Lessor to execute and deliver any document, agreement or instrument (such as a non-disturbance, attornment and subordination agreement with a Subtenant, any estoppel certificate, any permit application, any subdivision plan, any agreement with any Leasehold Mortgagee or Subtenant, any deed, lease or lease amendment) requested by Lessee and required to be given by Lessor in accordance with the provisions of this Lease and the continuation of such failure for twenty (20) days after written notice from Lessee specifying the nature and extent of such failure.

### **12.3 Remedies.**

Should an Event of Default by Lessee occur hereunder, Lessor may, by written notice to Lessee, initiate the procedures contained in Section 12.6. Should an Event of Default by Lessor occur hereunder, Lessee may, by written notice to Lessor, initiate the procedures contained in Section 12.6. This Lease may not be terminated by Lessee or Lessor as a result of the occurrence of an Event of Default by the other Party hereunder. Lessor shall not have the right to terminate this Lease and/or the Term of this Lease, nor to re-enter and take possession of the Leased Premises as a result of an Event of Default by Lessee. All remedies under this Lease shall be cumulative and not restrictive of other remedies (except that Lessor does not have the right to terminate this Lease or Lessee's right to possession), including without limitation, specific performance. The initiation of any remedy by Lessor or Lessee shall not constitute or be deemed an election of remedies by it and such Party may invoke two or more remedies hereunder concurrently or consecutively. No Party may seek or obtain an award of consequential or punitive damages against the other Party.

### **12.4 Waiver.**

Failure of Lessor or Lessee to exercise any right or remedy hereunder shall not impair any of its rights nor be deemed a waiver thereof and no waiver of any of its rights shall be deemed to apply to any other such rights, nor shall it be effective unless in writing and signed by the waiving Party.

### **12.5 Attorneys' Fees.**

If either Lessor or Lessee brings suit or other legal proceedings or arbitration proceeding to enforce the provisions of this Lease against the other, then each Party in such suit or proceeding shall bear its own attorneys' fees and litigation and/or arbitration costs and expenses incurred by it in connection with such suit or proceeding.

### **12.6 Arbitration**

In the event any dispute, controversy or claim between or among the Parties hereto arises under this Lease (a "**Dispute or Controversy**"), including a claim that an Event of Default has occurred, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement. In the event a Dispute or Controversy arises, any Party hereto shall have the right to notify the other Party hereto that the notifying Party has elected to implement the procedures set forth in this Section 12.6. Within fifteen (15) days after delivery of any such notice by one Party to the other Party regarding a Dispute or Controversy, a representative of each of the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good

faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained within fifteen (15) days after the meeting of the Parties representatives for such purpose, or such longer period as the Parties may agree upon, then either Party may by notice to the other Party (the “**Arbitration Notice**”) submit the Dispute or Controversy to arbitration in accordance with the provisions of this Section 12.6 and Exhibit "B" attached hereto (the “**Arbitration Procedures**”). The Arbitration Notice must comply with the Arbitration Procedures. Upon receipt of the Arbitration Notice, all Parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section 12.6 and Exhibit "B" without regard to the justiciable character or nature of such Dispute or Controversy. Each Party hereto agrees that any Dispute or Controversy which is not resolved pursuant to this Section 12.6 shall be submitted to binding arbitration hereunder and shall be resolved exclusively and finally through such binding arbitration in accordance with the Arbitration Procedures (the “**Arbitration**”). This Section 12.6 and Exhibit "B" hereto are and hereby constitute a written agreement by the Parties hereto to submit to arbitration any such Dispute or Controversy arising after the Commencement Date within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code. Notwithstanding any provision of this Lease to the contrary, any Party hereto may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Tarrant County, Texas. In the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the Arbitration Procedures, notwithstanding that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the Parties hereto expressly agree that the Arbitration Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

### **13. Representations.**

#### **13.1 Representations by Lessee.**

Lessee represents and warrants to Lessor that Lessee (i) is validly existing limited liability company under the laws of Delaware and is in good standing in the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

#### **13.2 Representations by Lessor.**

Lessor represents and warrants to Lessee that Lessor (a) is a constitutionally chartered city validly existing under the laws of the State of Texas; (b) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; and (c) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

### **14. Insurance; Bonds.**

#### **14.1 Insurance.**

During the Term, Lessee, at no cost or expense to Lessor, will keep and maintain, or cause the Subtenants to keep and maintain, the insurance set forth below. Lessee shall not commence any work on the Leased Premises until Lessee has obtained or caused to be obtained all the

insurance required under this Lease, nor shall Lessee allow any work on the Leased Premises to commence until all similar insurance of the contractor or subcontractor performing work on the Leased Premises has been obtained. All insurance policies provided under this Lease will be written on an “occurrence” basis, if available in the market at commercially reasonable rates. The insurance requirements shall remain in effect throughout the Term. The insurance required by this Lease consists of the following:

(a) Worker's Compensation Insurance, statutory policy as required by law; Employers Liability Insurance of not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease-each employee, \$1,000,000.00 disease-policy limit.

(b) All Risk Property, insuring all buildings and structures on the Leased Premises against all direct physical loss or damage; including by fire, windstorm, hail, explosion and terrorism, in an amount at least equal to one hundred percent (100%) of the then full cost of replacing the buildings and structures on the Leased Premises and all Personalty.

(c) Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, fully insuring Lessor's liability for injury to or death of employees of Lessee and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

(d) Commercial Automobile Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.

(e) Umbrella Insurance, combined single limit bodily injury and property damage liability insurance, including death, in excess of the primary coverage required herein for an amount equal to \$2,000,000.00 per occurrence and \$2,000,000.00 aggregate.

## **14.2 Conditions.**

Each insurance policy to be furnished by Lessee, or its contractors or subcontractors, shall include the following conditions by endorsement to the policy:

(a) Name Lessor as an additional insured as to all applicable coverage, except worker's compensation. For general liability purposes, this requirement extends to premises/operations as well as products/completed operations.

(b) Each policy will require that thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, a Notice thereof shall be given to Lessor by certified mail to:

City of Arlington  
Attn: Risk Management

Post Office Box 90231 MS# 63-0790  
Arlington, Texas 76004-3231

However, if the policy does not require notice of non-renewal or any material change in coverage, Lessee will provide Lessor with thirty (30) days prior written notice thereof. However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written Notice to Lessor is required. Lessee shall also notify Lessor within twenty-four (24) hours after receipt of any Notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s).

### **14.3 Miscellaneous Insurance Provisions.**

(a) For purposes of this Section 14, the term “Lessor” shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of Lessor and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of Lessor.

(b) All insurance prescribed by this Section 14 shall (i) be procured from financially sound and reputable insurers licensed to do business in the State of Texas and have an A.M. Best rating of not less than A VII or, if not rated with A.M. Best, the equivalent of A.M. Best’s surplus size of A VII or better, (ii) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved, and (iii) be evidenced by a certificate of insurance naming Lessor as an additional insured, as its interest may appear.

(c) The General and Automobile liability policies required herein shall be written with an “occurrence” basis coverage trigger.

### **14.4 Waiver of Subrogation.**

Lessee agrees to the following:

(a) Lessee hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against Lessor, it being the intention that the insurance policies shall protect all Parties to this lease and be primary coverage for all losses covered by the policies; and

(b) Companies issuing the insurance policies and Lessee shall have no recourse against Lessor for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of Lessee; and

(c) Approval, disapproval or failure to act by Lessor regarding any insurance supplied by Lessee (or any subcontractors) shall not relieve Lessee of full responsibility or liability for damages and accidents as set forth in the lease documents. Neither shall the insolvency or denial of liability by the insurance company exonerate Lessee from liability.

### **14.5 Lessor May Procure Insurance.**

If at any time and for any reason Lessee fails to provide, maintain, keep in force and effect, or deliver to Lessor proof of, any of the insurance required under this Section 14 and such failure continues for five (5) Business Days after Notice thereof from Lessor to Lessee, Lessor may, but shall have no obligation to, procure single interest insurance for such risks covering the Lessor, within five (5) Business Days following Lessor's demand and Notice, pay and reimburse Lessor therefor with interest from the date of payment by Lessor until repayment of Lessor in full by Lessee.

#### **14.6 Bonds.**

Lessee shall be obligated, or cause its general contractor on the Parking Facility and any Additional Improvements, to put all reasonable procedures in place to assure payment and performance by the general contractor's subcontractors, including payment and performance bonds, prior to the commencement of any work on the Parking Facility or any Additional Improvements.

### **15. Miscellaneous Provisions.**

#### **15.1 Force Majeure.**

For the purpose of any of the provisions of this Lease, neither Lessor, nor Lessee, as the case may be, nor any successor in interest, shall be considered in breach of or default in any of its obligations, in the event of forced delay in the performance of such obligations due to Force Majeure. For purposes of this Lease, Force Majeure shall mean acts of God (including storms, floods or other casualty), war, invasion, insurrection, taking by eminent domain laws, the lack of labor or supplies due to an act of God, strike or labor disputes or delays beyond the control of the affected Party, or order of government authorities. In the event of the occurrence of any such forced delays, the time or times for the performance of the covenants, provisions, and agreements of this Lease shall be extended for the period of the forced delay (including any time reasonably required to recommence performance due to such forced delay). The affected Party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements and provided further, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected Party, and the affected Party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected Party, unfavorable to the affected Party. Notwithstanding the above (a) Lessee may not rely on its own acts or omissions as grounds for delay in its performance and (b) the absence of immediately available funds shall not be grounds for delay.

#### **15.2 Estoppel Certificates.**

Lessor and Lessee, at any time and from time to time, upon not less than twenty (20) Business Days prior written Notice from a Party hereto, or to a person designated by such Party, such as a tenant or a mortgagee or lender of Lessee, shall execute, acknowledge, and deliver to the Party requesting such statement, a statement in reasonably acceptable form to the requesting Party certifying, among other matters, (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the

modifications), (b) stating whether or not, to the best of knowledge of the signer of such certificate, Lessor and Lessee are in breach and/or default in performance of any covenant, agreement, or condition contained in this Lease and, if so, other factual matters reasonably requested in such estoppel certificate concerning this Lease, the Leased Premises, the Parking Facility and/or the Economic Development Performance Agreement, it being intended that any such statement delivered hereunder may be relied upon by the Party requesting such statement and/or any person not a Party to this Lease (if such other person is identified at the time such certificate was requested).

### **15.3 Lessor's Rights of Access.**

Lessee agrees that Lessor and Lessor's duly authorized agents shall have the right to all reasonable times during normal business hours and following reasonable prior Notice to enter upon the Leased Premises to examine and inspect the same, provided, however, (i) Lessor and Lessor's duly authorized agents shall not have the right to enter or inspect portions of the Leased Premises deemed off limits by Lessee, unless accompanied by a representative of Lessee, and (ii) Lessor and Lessor's duly authorized agents shall use good faith efforts to minimize any interference in Lessee's use of the Leased Premises during any entry upon or inspection of the Leased Premises.

### **15.4 Notices.**

All Notices or statements given pursuant to or concerning this Lease shall be in writing and sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any Notice sent by (a) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (b) personal messenger shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the Business Day following the date the notice is deposited with the overnight delivery service addressed as specified below:

Lessee:                   Arlington Convention Center Parking Owner, LLC  
                                  c/o Loews Hotels Holding Corporation  
                                  9 West 57<sup>th</sup> Street, 20<sup>th</sup> Floor  
                                  New York, New York 10019  
                                  Attention: Corporate Secretary

With a copy to:       Latham & Watkins LLP  
                                  330 North Wabash Avenue, Suite 2800  
                                  Chicago, Illinois 60611  
                                  Attention: Gary E. Axelrod, Esq.

Lessor:                   City of Arlington  
                                  City Manager's Office  
                                  c/o City Manager  
                                  101 W. Abram Street  
                                  Arlington, Texas 76004-3231

With a copy to       Arlington City Attorney's Office



c/o City Attorney  
101 S. Mesquite Street  
Arlington, Texas 76004- 3231

Such addresses may be changed by giving the other Party ten (10) days' Notice in writing. Lessee, by Notice to the Lessor, may add additional Notice addressees.

#### **15.5 No Broker Fees.**

Lessor and Lessee each represent and warrant for itself that it has not dealt with any broker or agent in connection with this Lease and each covenants and agrees, to the extent allowed by law, to indemnify and hold the other harmless from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this representation and warranty.

#### **15.6 No Waiver.**

No failure on the part of Lessor or Lessee to enforce any covenant or provision contained in this Lease nor any waiver of any right under this Lease shall discharge or invalidate such covenant or provision or affect the right of the other Party to enforce the same in the event of any subsequent default.

#### **15.7 Severability.**

If any provision of this Lease or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to any other Person or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law. In the event any provision of this Lease is illegal, invalid or unenforceable under present or future laws, each Party reserves the right to pursue any and all remedies available to them at law or equity (including arbitration proceedings). The provisions of this Section 15.7 shall survive the termination of this Lease.

#### **15.8 Amendment.**

Neither the Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge, or termination is sought.

#### **15.9 Terminology.**

All personal pronouns used in this Lease, whether used in the masculine, feminine or neutral gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Unless otherwise expressly state, titles of Sections, Subsections and Paragraphs of this Lease are for convenience only, and neither limit nor amplify the provisions of this Lease, and all references in the Lease of Sections, Subsections or Paragraphs shall refer to the corresponding Section, Subsection or Paragraph of this Lease unless specific reference is made to the articles, sections or subdivisions of another document or instrument.

### **15.10 Counterparts.**

This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

### **15.11 Binding Agreement.**

Subject to the restrictions on Dispositions set forth herein, this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors and assigns. Whenever in this Lease a reference to Lessor, Lessee or any Person is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Lessor, Lessee or such Person.

### **15.12 Interpretation.**

No provision of this Lease shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

### **15.13 Governing Law/Venue.**

This Lease and the obligations of Lessor and Lessee hereunder shall be interpreted, construed and enforced in accordance with the Applicable Laws of the State, including conflicts of laws. Subject to the provisions of Section 12.6, venue shall lie in Tarrant County, Texas.

### **15.14 Relationship of Parties.**

No express or implied term, provision or condition of this Lease shall or shall be deemed to constitute Lessor and Lessee as partners or joint venturers.

### **15.15 Indemnity.**

**LESSEE IS AND SHALL BE IN EXCLUSIVE CONTROL OF THE LEASED PREMISES, AND LESSOR SHALL NOT IN ANY WAY WHATSOEVER BE LIABLE FOR ANY INJURY OR DAMAGE TO ANY PERSON OR PROPERTY HAPPENING ON, ABOUT OR IN CONNECTION WITH THE LEASED PREMISES OR ANY PART THEREOF. LESSEE SHALL INDEMNIFY AND HOLD HARMLESS LESSOR AND ALL ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR FROM ALL CLAIMS, SUITS, ACTIONS AND PROCEEDINGS WHATSOEVER WHICH MAY BE BROUGHT OR INSTITUTED ON ACCOUNT OF, GROWING OUT OF, OCCURRING FROM, INCIDENT TO OR RESULTING FROM, DIRECTLY OR INDIRECTLY, ANY AND ALL INJURIES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, DEATH) TO PERSONS OR PROPERTY (INCLUDING ANY CLAIMS, SUITS, ACTIONS AND PROCEEDINGS RELATING TO CONTAMINATED MATERIALS (DEFINED BELOW) AND ENVIRONMENTAL CLAIMS (DEFINED BELOW)) ARISING OUT OF THE USE OR OCCUPATION OF THE LEASED PREMISES, ANY ENVIRONMENTAL EVENT (DEFINED BELOW) OR ANY EXERCISE BY LESSEE OF ANY LESSEE POWER OF ATTORNEY OR LESSEE PROXY GRANTED PURSUANT TO THE TERMS OF THIS**

**LEASE, OR WHICH MAY BE BROUGHT OR INSTITUTED UNDER ANY CC&RS, AND ALL LOSSES, COSTS, DAMAGES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENDING AGAINST SUCH CLAIMS, SUITS, ACTIONS AND PROCEEDINGS), WHETHER OR NOT SUCH INJURIES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, DEATH) RESULT FROM, OR ARE CLAIMED TO HAVE RESULTED FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LESSOR OR ANY PERSON CLAIMING BY, THROUGH OR UNDER LESSOR. LESSEE SHALL ASSUME ON BEHALF OF LESSOR AND ALL ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR, AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH, THE DEFENSE OF ALL SUCH CLAIMS, SUITS, ACTIONS AND PROCEEDINGS AGAINST LESSOR OR ANY PERSON CLAIMING BY, THROUGH OR UNDER LESSOR, WHETHER OR NOT LESSEE IS JOINED THEREIN, EVEN IF SUCH CLAIMS, SUITS, ACTIONS OR PROCEEDINGS BE GROUNDLESS, FALSE OR FRAUDULENT, AND LESSEE SHALL BEAR THE COSTS OF ALL JUDGMENTS AND SETTLEMENTS IN CONNECTION THEREWITH. THIS INDEMNITY SHALL APPLY WITHOUT LIMITATION TO ANY LIABILITIES IMPOSED ON ANY PARTY INDEMNIFIED HEREUNDER AS A RESULT OF ANY STATUTE, RULE, REGULATION OR THEORY OF STRICT LIABILITY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. NOTWITHSTANDING THE FOREGOING, THIS INDEMNITY SHALL NOT APPLY TO INJURY OR DAMAGE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL ACTS OR OMISSIONS OF LESSOR OR ANY ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR OR ITS AGENTS, EMPLOYEES AND CONTRACTORS, OR TO CLAIMS ASSERTED AGAINST OR LIABILITIES IMPOSED ON LESSOR OR ANY ENTITIES CLAIMING BY, THROUGH OR UNDER LESSOR OR ITS AGENTS, EMPLOYEES AND CONTRACTORS IN CONNECTION WITH OR AS A RESULT OF THEIR PERFORMANCE OF GOVERNMENTAL FUNCTIONS.**

**“CONTAMINATED MATERIALS” AS USED IN THIS SECTION 15.15 MEANS (A) ANY PETROLEUM OR PETROLEUM PRODUCTS, METALS, GASES, CHEMICAL COMPOUNDS, RADIOACTIVE MATERIALS, ASBESTOS, UREA FORMALDEHYDE FOAM INSULATION, TRANSFORMERS OR OTHER EQUIPMENT THAT CONTAIN DIELECTRIC FLUID CONTAINING POLYCHLORINATED BIPHENYLS, LEAD PAINT, PUTRESCIBLE AND INFECTIOUS MATERIALS, AND RADON GAS; (B) ANY CHEMICALS OR SUBSTANCES DEFINED AS OR INCLUDED IN THE DEFINITION OF “HAZARDOUS SUBSTANCES”, “HAZARDOUS WASTES”, “HAZARDOUS MATERIALS”, “EXTREMELY HAZARDOUS WASTES”, “RESTRICTED HAZARDOUS WASTES”, “TOXIC SUBSTANCES”, “TOXIC POLLUTANTS”, “CONTAMINANTS” OR “POLLUTANTS”, OR WORDS OF SIMILAR IMPORT, UNDER ANY APPLICABLE ENVIRONMENTAL LAW; AND (C) ANY OTHER CHEMICAL, MATERIAL OR SUBSTANCE, EXPOSURE TO WHICH IS PROHIBITED, LIMITED OR REGULATED BY ANY APPLICABLE ENVIRONMENTAL LAW OR GOVERNMENTAL AUTHORITY OR WHICH IS REGULATED BECAUSE OF ITS**

**ADVERSE EFFECT OR POTENTIAL ADVERSE EFFECT ON HEALTH AND THE ENVIRONMENT, INCLUDING SOIL AND CONSTRUCTION DEBRIS THAT MAY CONTAIN ANY OF THE MATERIALS DESCRIBED IN THIS DEFINITION.**

**“ENVIRONMENTAL EVENT” AS USED IN THIS SECTION 15.15 MEANS THE OCCURRENCE OF ANY OF THE FOLLOWING: (I) ANY NONCOMPLIANCE WITH AN ENVIRONMENTAL LAW; (II) AN ENVIRONMENTAL CONDITION REQUIRING RESPONSIVE ACTION, INCLUDING AN ENVIRONMENTAL CONDITION CAUSED BY A THIRD PERSON; (III) ANY EVENT ON, AT OR FROM THE PROPERTY IN QUESTION OR RELATED TO THE OPERATION THEREOF OF SUCH A NATURE AS TO REQUIRE REPORTING TO APPLICABLE GOVERNMENTAL AUTHORITIES UNDER ANY ENVIRONMENTAL LAW, (IV) AN EMERGENCY ENVIRONMENTAL CONDITION, (V) THE EXISTENCE OR DISCOVERY OF ANY SPILL, DISCHARGE, LEAKAGE, PUMPAGE, DRAINAGE, POURAGE, INTERMENT, EMISSION, EMPTYING, INJECTING, ESCAPING, DUMPING, DISPOSING, MIGRATION OR OTHER RELEASE OR ANY KIND OF CONTAMINATED MATERIALS ON, AT OR FROM THE PROPERTY IN QUESTION WHICH MAY CAUSE A THREAT OR ACTUAL INJURY TO HUMAN HEALTH, THE ENVIRONMENT, PLANT OR ANIMAL LIFE OR (VI) ANY THREATENED OR ACTUAL ENVIRONMENTAL CLAIM.**

**“ENVIRONMENTAL CLAIMS” AS USED IN THIS SECTION 15.15 MEANS ANY AND ALL CLAIMS THAT ANY PERSON MAY NOW OR HEREAFTER HAVE IN CONNECTION WITH OR AS A RESULT OF THE CONDITION OF ANY PROPERTY, ANY EXISTING OR PAST ENVIRONMENTAL RELEASE OF ANY CONTAMINATED MATERIALS FROM ANY PROPERTY OR INTO THE GROUND, GROUND WATER OR SURFACE WATER OF ANY PROPERTY, THE EXISTENCE OF ANY ENVIRONMENTAL PROCEEDINGS WITH RESPECT TO ANY PROPERTY OR ITS OPERATION OR THE VIOLATION OF ANY ENVIRONMENTAL LAWS WITH RESPECT TO ANY PROPERTY OR ITS OPERATION.**

**“ENVIRONMENTAL LAW(S)” AS USED IN THIS SECTION 15.15 MEANS ANY APPLICABLE FEDERAL, STATE OR LOCAL STATUTE, LAW (INCLUDING COMMON LAW TORT LAW, COMMON LAW NUISANCE LAW AND COMMON LAW IN GENERAL), RULE, REGULATION, ORDINANCE, CODE, PERMIT, CONCESSION, GRANT, FRANCHISE, LICENSE, POLICY OR RULE OF COMMON LAW NOW IN EFFECT OR ADOPTED IN THE FUTURE, AND IN EACH CASE AS MAY BE AMENDED OR REPLACED, AND ANY JUDICIAL OR ADMINISTRATIVE INTERPRETATION THEREOF (INCLUDING ANY JUDICIAL OR ADMINISTRATIVE ORDER, CONSENT DECREE OR JUDGMENT) RELATING TO**

**(I) THE ENVIRONMENT, HEALTH, SAFETY OR CONTAMINATED MATERIALS,**

**(II) THE STORAGE, HANDLING, EMISSION, DISCHARGE, RELEASE AND USE OF CHEMICALS AND OTHER CONTAMINATED MATERIALS, (III) THE GENERATION, PROCESSING, TREATMENT, STORAGE, TRANSPORT, DISPOSAL, INVESTIGATION, REMEDIATION OR OTHER MANAGEMENT OF WASTE MATERIALS OF ANY KIND, AND (IV) THE PROTECTION OF ENVIRONMENTALLY**

**SENSITIVE AREAS, INCLUDING CERCLA; THE HAZARDOUS MATERIALS TRANSPORTATION ACT, AS AMENDED, 49 U.S.C. § 5101 ET SEQ.; THE RESOURCE CONSERVATION AND RECOVERY ACT, AS AMENDED, 42 U.S.C. § 6901 ET SEQ.; THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED, 33 U.S.C. § 1251 ET SEQ.; THE TOXIC SUBSTANCES CONTROL ACT, 15 U.S.C. § 2601 ET SEQ.; THE CLEAN AIR ACT, 42 U.S.C. § 7401 ET SEQ.; THE SAFE DRINKING WATER ACT, 42 U.S.C. § 300F ET SEQ.; THE ENDANGERED SPECIES ACT, AS AMENDED, 16 U.S.C. § 1531 ET SEQ.; THE TEXAS SOLID WASTE DISPOSAL ACT, TEX. HEALTH & SAFETY CODE ANN. CH. 361 (VERNON 1990); THE TEXAS CLEAN AIR ACT, TEX. HEALTH & SAFETY CODE ANN. CH. 382 (VERNON 1990); THE TEXAS WATER CODE, TEX. WATER CODE ANN. (VERNON 1988 AND SUPP. 1990); THE TEXAS HAZARDOUS SUBSTANCES SPILL PREVENTION AND CONTROL ACT, TEX. WATER CODE ANN. (VERNON 1988 AND SUPP. 1990); THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT, 7 U.S.C. § 136 ET. SEQ.; AND THE EMERGENCY PREPAREDNESS AND RESPONSE COMMUNITY RIGHT-TO-KNOW ACT, 42 U.S.C. § 11001.**

**“ENVIRONMENTAL PROCEEDING” AS USED IN THIS SECTION 15.15 MEANS (I) ANY NOTICE OF ANY INVESTIGATION, RESPONSE ACTION, SPILL, PROCEEDING, WHETHER EXECUTIVE, ADMINISTRATIVE OR JUDICIAL, OR LITIGATION OR LITIGATION THREATENED IN WRITING RELATING TO ENVIRONMENTAL LAWS OR OTHER ENVIRONMENTAL MATTERS CONCERNING A PROPERTY INsofar AS SUCH INVESTIGATION, RESPONSE ACTION, SPILL, LITIGATION, LITIGATION THREATENED IN WRITING OR PROCEEDING RELATES TO SUCH PROPERTY; OR (II) RECEIPT OF ANY NOTICE FROM ANY PERSON OF: (X) ANY VIOLATION OR ALLEGED VIOLATION OF ANY ENVIRONMENTAL LAW RELATING TO A PROPERTY OR ANY PART THEREOF OR ANY ACTIVITY AT THE TIME CONDUCTED ON ANY PROPERTY, (Y) THE COMMENCEMENT OF ANY CLEAN-UP, ABATEMENT OR CONTROL PURSUANT TO OR IN ACCORDANCE WITH ANY ENVIRONMENTAL LAW OF ANY CONTAMINATED MATERIALS ON OR ABOUT ANY SUCH PROPERTY OR ANY PART THEREOF OR (Z) ANY VIOLATION OF ANY APPLICABLE LAWS OR HARM TO PERSON OR PROPERTY IN EACH CASE WITH RESPECT TO WORKER SAFETY AT OR IN CONNECTION WITH SUCH PROPERTY OR ANY PART THEREOF.**

#### **15.16 Representatives Not Individually Liable.**

No member, official, representative, or employee of Lessor shall be personally liable to Lessee or any successor in interest in the event of any default or breach by Lessor for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease. No partner, member, representative, or employee of Lessee or any of its members shall be personally liable to Lessor in the event any default or breach by Lessee for any amount which may become due to Lessor or on any obligations under the terms of this Lease.

#### **15.17 Entire Agreement.**

This Lease and the Economic Development Performance Agreement (and all agreements executed pursuant to the terms of the Economic Development Performance Agreement by Lessee and Lessor, including the Convention Center Lease (as that term is defined in the Economic Development Performance Agreement, provided the Lessee hereunder is also the “lessee” under such lease) and the Hotel Ground Lease (as that term is defined in the Economic Development Performance Agreement, provided the Lessee hereunder is also the “lessee” under such lease)) incorporate all prior negotiations and discussions between the Parties regarding the subject matter and represent the entire agreement of Lessor and Lessee for the Leased Premises.

**15.18 Third Party Beneficiary.**

Except as otherwise specifically provided for in this Lease, nothing contained in this Lease shall be construed to confer upon any other party the rights of a third-party beneficiary.

**15.19 Payment or Performance on Saturday, Sunday or Holiday.**

Whenever the provisions of this Lease call for any payment or the performance of any act on or by a date that is not a Business Day, including the expiration date of any cure periods herein, then such payment or such performance shall be required on or by the immediately succeeding Business Day.

**15.20 Incorporate into Agreement.**

All exhibits, schedules, and recitals form a part of this Lease.

**15.21 Applicable Laws.**

Nothing in this Lease shall be construed to (a) limit or prevent Lessee from challenging at law or in equity the applicability of any Applicable Law and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (b) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Lease, no provision of this Lease shall be construed to require Lessee to comply with any Applicable Law during the period that Lessee may be pursuing a bona fide challenge of this applicability, lawfulness, and/or enforceability of such Applicable Law (unless such law requires compliance during any such challenge). If Lessee’s challenge is successful, Lessee shall not be required by the provisions of this Lease to comply with such Applicable Law.

**15.22 Consents and Approvals.**

Lessor and Lessee commit to work harmoniously with each other, and except in instances (if any) where a consent or approval is specified to be within the sole discretion of either Party, any consent or approval contemplated under this Lease shall not be unreasonably withheld, conditioned or delayed. Unless a shorter or longer time period is specified in this Lease, Lessor shall give or withhold (provided such withholding is reasonable under the circumstances, unless a sole discretion standard expressly applies) such approvals, certifications, or consents within twenty (20) Business Days.

**15.23 Good Faith and Fair Dealing.**

The Parties covenant and agree each to the other that its conduct under this Lease and the interpretation and enforcement of the provisions hereof, shall be characterized by good faith and fair dealings so that the objectives of each Party as set forth in this Lease may be achieved.

**15.24 Further Assurances.**

In connection with the execution and delivery of this Lease and the execution, delivery and recordation of any other instrument or agreement, provided for or contemplated by this Lease, Lessor or Lessee, at the written request of the other Party hereto, shall, within twenty (20) Business Days of such written request, execute and deliver to the requesting Party such other documents, certifications or agreements that are reasonably necessary to effectuate the intent of this Lease, such as bills of sale, assignments of leases, or certifications required by Applicable Law in connection with the recordation of instrument or agreements among the Land Records.

**15.25 Waiver of Immunity.**

Lessor hereby waives its governmental immunity from suit and immunity from liability and/or legal action brought by Lessee resulting from an uncured default by Lessee. To effectuate such waiver, the Parties hereby agree, for purposes of this Lease only, that this Lease is a contract subject to Subchapter I, Chapter 271, Texas Local Government Code, as amended.

**15.26 Assignment by Lessor.**

This Lease may not be transferred or assigned by Lessor unless and until Lessee and its Leasehold Mortgagees are provided with assurances that all Grants (as that term is defined in the Economic Development Performance Agreement) will be timely paid and that Lessor is not being released from its obligations under Section 4 of the Economic Development Performance Agreement to cause such Grants to be timely paid.

**SIGNATURES ON NEXT PAGE**

**IN WITNESS WHEREOF**, Lessor and Lessee executed this Lease under seal, the day and year first about written.

LESSOR:  
CITY OF ARLINGTON

ATTEST:

By: \_\_\_\_\_  
ALEX BUSKEN, City Secretary

By: \_\_\_\_\_  
TREY YELVERTON, City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
MOLLY SHORTALL, City Attorney

LESSEE:  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

WITNESS:

By: \_\_\_\_\_



STATE OF TEXAS           §  
                                  §           **CITY OF ARLINGTON**  
                                  §  
COUNTY OF TARRANT   §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **TREY YELVERTON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON**, a municipal corporation of Tarrant County, Texas, and as a **City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:

STATE OF \_\_\_\_\_ §  
                                  §           \_\_\_\_\_  
                                  §           \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as the Authorized Person of \_\_\_\_\_, a \_\_\_\_\_, organized under the laws of \_\_\_\_\_.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:

**Exhibit “A”**

**Land**

## Exhibit "B"

### Arbitration Procedures

B.1 In the event a Party, pursuant to the provisions of Section 12.6, has elected to provide the other Party with an Arbitration Notice, such Arbitration Notice shall include such Party's determinations of the applicable issues of the Dispute and Controversy subject to such Arbitration. In the event that the Arbitration Notice has been sent in accordance with the provisions hereof and the Lease, the Parties shall mutually agree, within fifteen (15) Business Days of the deemed delivery date of the Arbitration Notice to the appointment of a single arbitrator (the "**Arbitrator**") to handle the Arbitration. If the Parties are unable to mutually agree upon the Arbitrator within the fifteen (15) Business Days described above, any Party may request the American Arbitration Association to independently select, within thirty (30) Business Days after such Arbitration Notice, an Arbitrator who has the qualifications to serve as the single Arbitrator to resolve this Arbitration. The Arbitration must take place in Tarrant County and be conducted by an Arbitrator that has no conflict of interest.

B.2 Within fifteen (15) Business Days after the appointment of the Arbitrator, each Party shall supply the Arbitrator with such documents, materials or other evidence or written arguments as it or the Arbitrator desires, including such Party's proposed determinations of the applicable issues subject to such Arbitration. Each Party shall thereafter have an additional period of ten (10) Business Days to supply any rebuttal or other information it desires. The Arbitrator, in his/her sole discretion, may also request in writing, specific information and/or a hearing and shall alone otherwise determine the conduct of the Arbitration. Any information delivered or communicated during Arbitration by a Party shall be simultaneously delivered or communicated to (i) the other Party and (ii) the Arbitrator. The Arbitration shall be confidential, and the Parties shall maintain the confidential nature of the arbitration proceeding, arbitration hearing and award, except to the extent disclosure is required to regulators, to insurers, pursuant to an enforcement proceeding, or as otherwise required by applicable law.

B.3 The Arbitrator shall determine all matters necessary to resolve the dispute, including matters beyond the expertise of the Arbitrator. The Arbitrator shall be permitted to employ other professional advisors or experts as the Arbitrator deems reasonably necessary, at the expense of the Parties.

B.4 All costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in connection with an Arbitration shall be borne equally by the Parties, subject to reimbursement as set forth herein. Within forty-five (45) Business Days after the selection of an Arbitrator, the Arbitrator shall select one of the proposed determinations submitted by one of the Parties (and the Arbitrator shall not have the power to add to, modify, or change any of proposed determinations of the Parties). For purposes of this provision, the Party whose position is adopted by the Arbitrator will be deemed the prevailing Party. While each Party shall advance 1/2 of the costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in connection with the Arbitration, the prevailing Party will be reimbursed by the non-prevailing party the 1/2 of the costs and expenses referenced herein within 30 days of the

Arbitrator's final decision. All other costs and expenses incurred by the Parties shall be borne by the Party incurring same.

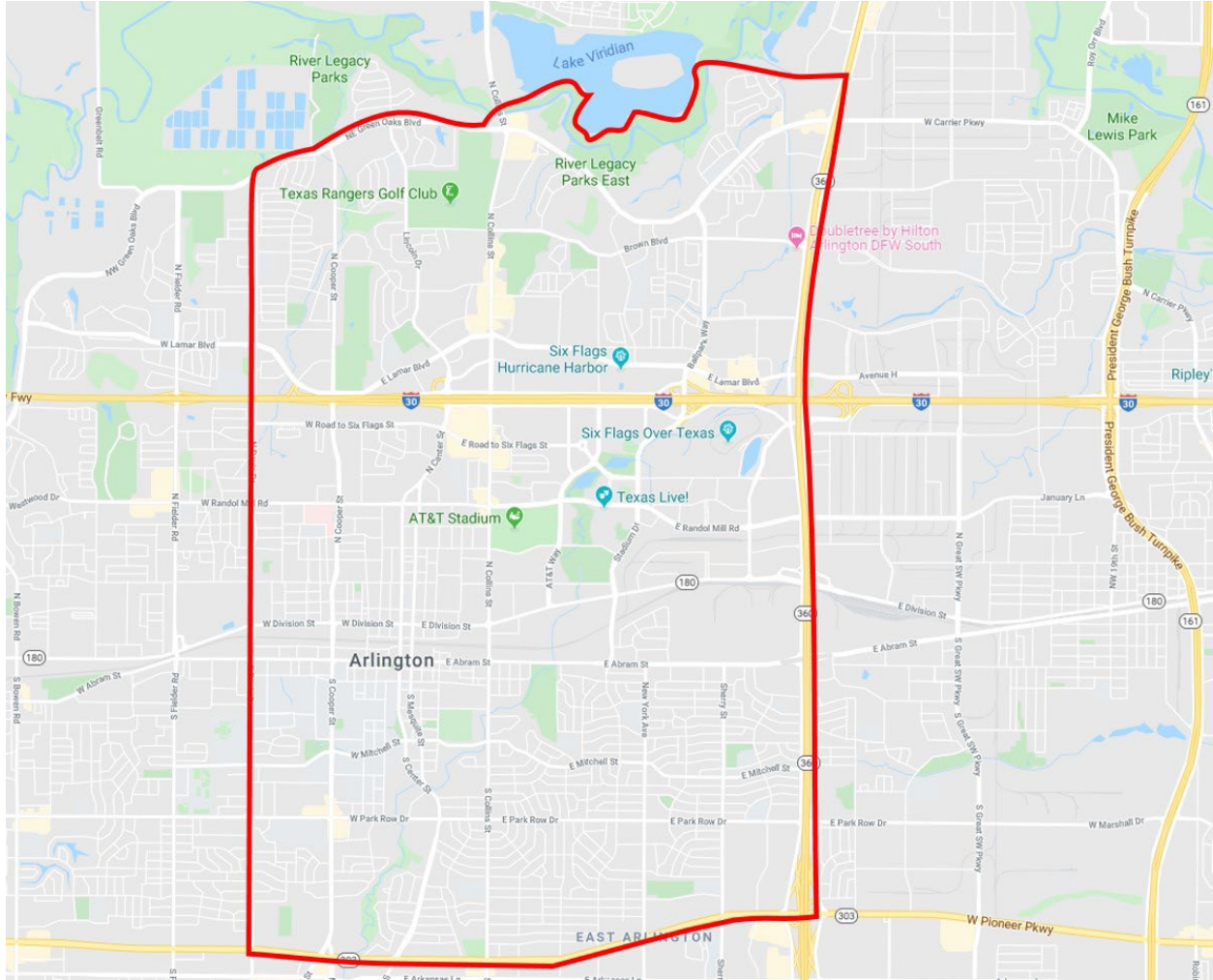
B.5 The Parties agree to act in good faith with respect to any communication with the Arbitrator and the Arbitration process.

B.6 Time shall be of the essence with respect to these Arbitration Procedures, and the Parties shall take all reasonable actions necessary to cause any necessary Arbitration hearing to occur promptly, and the Arbitrator shall be directed to arbitrate the dispute and issue its decision as soon as reasonably practicable, but in no event later than forty-five (45) Business Days after the appointment of the Arbitrator.

B.7 The Arbitration shall not relieve any Party from any of its respective obligations under this Lease during the term of any such Arbitration (other than in respect of the subject matter of the dispute that is being arbitrated).

B.8 In the event of a dispute between one or more of the Parties concerning this Lease and the Economic Development Performance Agreement, and one or more of the Parties have elected to resolve such dispute pursuant to the Arbitration Procedures contained herein or in the Economic Development Performance Agreement, there shall only be one Arbitration proceeding concerning such dispute (and not separate proceedings under this Lease and the Economic Development Performance Agreement or under any of the other leases executed pursuant to the terms of the Economic Development Performance Agreement). If more than one Arbitration proceeding has been initiated, such proceedings shall be consolidated.

# Exhibit "H" Non-Compete Zone



## Exhibit "I" Grant Example

EXHIBIT "I" TAX INCENTIVES Hotel Grants, Convention Center Grants and Parking Facility Contributions			
GO FOR THREE			
	Start	Term	Rate*
<b>Rooms Sales</b>			
State HOT - Chapter 156 of the Texas Tax Code	Initial Occupancy	10 years	6.00%
CITY HOT - Chapter 351 of the Texas Tax Code	Initial Occupancy	30 years	7.00%
<b>Food, Non-Mixed Beverage, Parking &amp; Other Taxable Sales</b>			
State Sales Tax - Chapter 151 of the Texas Tax Code	Initial Occupancy	10 years	6.25%
City Sales Tax - Chapter 321 of the Texas Tax Code	Initial Occupancy	30 years	1.00%
<b>Mixed Beverage Sales</b>			
City Share of the 183 Tax Revenue - *City receives 10.7143% of total tax revenue collected by the State under Chapter 183, sales tax and gross receipts. City will rebate amount of tax revenue received from State.	Initial Occupancy	30 years	1.60%
<b>Ad Valorem Tax Credit</b>			
City Property Tax Credit (~24% of total real estate bill)	1st full year after Commencement of Parking Facility	30 years	100%
<b>Parking Facility Contribution</b>			
Up to \$35M City (\$20M) and AEDC (\$15M) Contribution	2025	15 years	~\$2.33M
<b>Hotel Contributions</b>			
\$5M City Site Improvement Contribution	Building Permits		\$5M
\$38M City Annual Grant	Initial Occupancy	10 years	\$3.8M
\$19.5M City Annual Grant	11th Anniversary of Initial Occupancy	15 years	\$1.3M
*All tax rates listed above are as of 2023 and are subject to change			

Exhibit "J"  
Optional Development Site

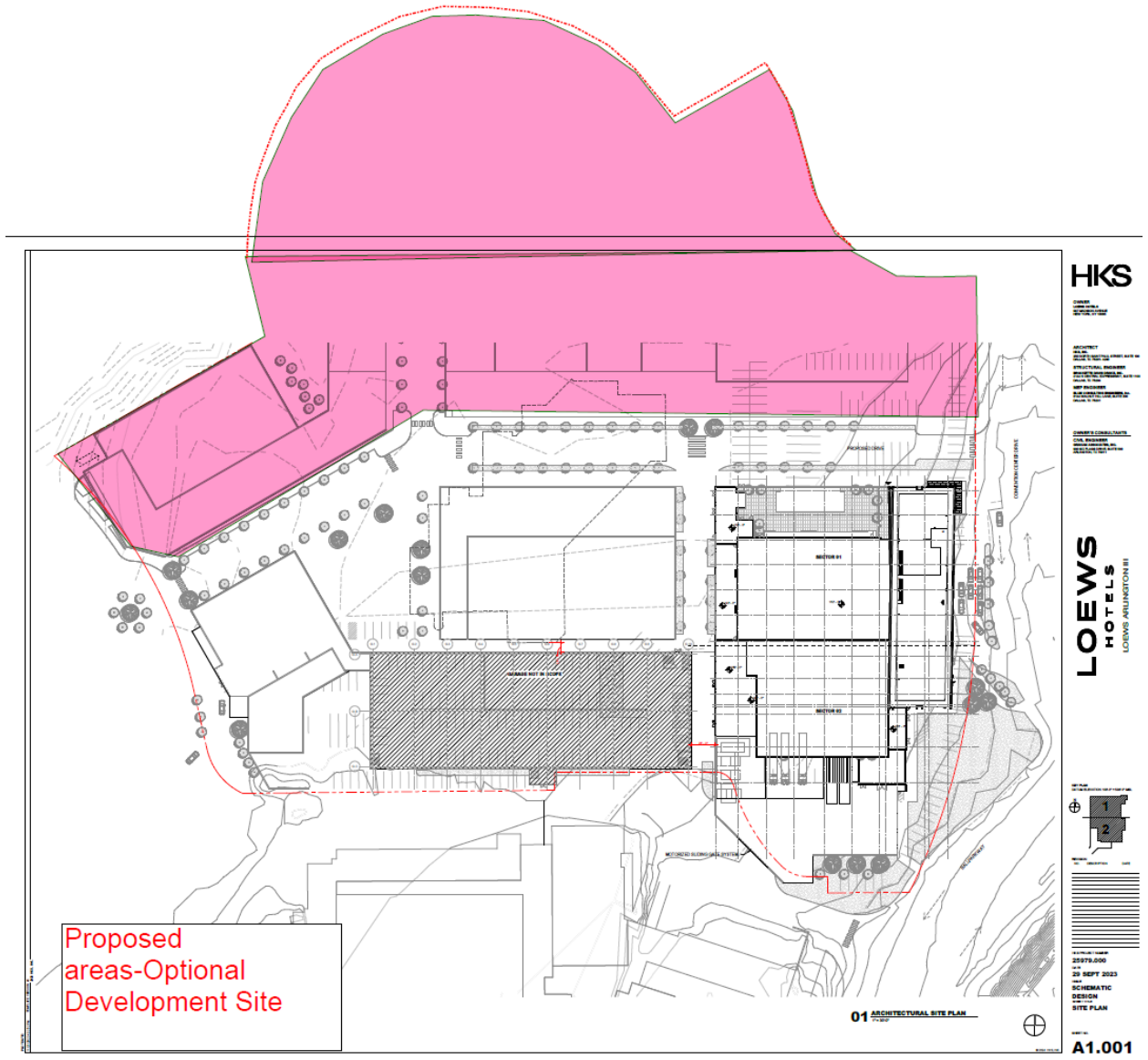


Exhibit "K"  
City Completion Guaranty

**GUARANTY OF SUBSTANTIAL COMPLETION**

THIS GUARANTY OF SUBSTANTIAL COMPLETION (this "Guaranty") is made this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ by [\_\_\_\_\_], a [\_\_\_\_\_] (the "Guarantor") for the benefit of the CITY OF ARLINGTON, TEXAS, a home-rule city and municipal corporation of Tarrant County, Texas (the "City").

**RECITALS**

The City, Arlington Economic Development Corporation and Go For Three, LLC, a Delaware limited liability company (the "Developer") entered into that certain Economic Development Performance Agreement, dated as of \_\_\_\_\_, (as the same may be amended, restated, replaced, supplemented and/or otherwise modified from time to time, collectively, the "EDPA"). All defined terms not expressly defined in this Guaranty shall have the meanings provided to such terms in the EDPA. [Section 3(b)/ Section 7(e)] of the EDPA obligates the Developer to provide a guaranty of completion of the [Parking Facility / [the Hotel and the Convention Center] from the Guarantor or such other person or persons who has provided the completion guaranty to the Mortgagee that is extending the construction loan to the Developer to finance all or a portion of the Project Costs for the Project.

The Guarantor is executing and delivering this Guaranty for the benefit of the City in order to satisfy the requirements of [Section 3(b) / Section 7(e)] of the EDPA.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, the Guarantor agrees as follows:

1. Guaranty. Subject to and conditioned upon the compliance by the City with all of its material obligations (the "City's Obligations") under the EDPA, the Guarantor guarantees to the City substantial completion of the [Parking Facility/Hotel and Convention Center], which substantial completion shall be evidenced by [the issuance of a temporary certificate of occupancy for the Parking Facility / the earlier to occur of (i) the issuance of a temporary certificate of occupancy for the Hotel and Convention Center, and (ii) the occurrence of Initial Occupancy] ("Substantial Completion"). Without limitation to the foregoing, in the event that the Developer fails to achieve Substantial Completion, and conditioned upon the performance by the City of the City's Obligations, upon the demand of the City the Guarantor shall perform and pay the costs for such planning, development, construction, equipping, tenanting, operating and other activities as may be necessary to obtain Substantial Completion. The obligations of the Guarantor under this Guaranty shall automatically terminate upon achieving Substantial Completion and the Guarantor shall have no further liability hereunder from and after such date. Within thirty (30) Business Days after the request of the Guarantor made after the termination of the Guarantor's obligations under this Guaranty in accordance with the foregoing provision, the City shall provide the Guarantor with a written acknowledgment that the Guarantor's obligations under this Guaranty have terminated and are of no further force or effect.



2. City Need Not Pursue Rights Against Developer. The City shall be under no obligation to pursue any of the City's rights and remedies against the Developer before pursuing the City's rights and remedies under this Guaranty against the Guarantor.

3. Waivers By Guarantor. The Guarantor hereby expressly waives any defenses to the enforcement of this Guaranty to which the Guarantor may otherwise be entitled under any applicable suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require the City to take prior recourse or proceedings against the Developer or any other Person. The Guarantor waives: (i) notice of the City's acceptance of this Guaranty; (ii) notice of any default by the Developer under the EDPA; (iii) notice of any modification, change, or alteration to the terms of the EDPA; and (iv) notice of any demand made by the City to the Developer for the performance by the Developer of its obligations under the EDPA. The Guarantor waives any rights to assert against the City any defense (whether legal or equitable), claim, counter-claim or right of setoff or recoupment which the Guarantor may have at any time against the Developer.

4. Certain Rights of City. The Guarantor hereby assents to any terms and agreements between the City and the Developer concerning the EDPA and all amendments and modifications thereof, whether presently existing or hereafter made and whether oral or in writing. Without limitation to the foregoing, the City may, without compromising, impairing or in any way releasing the Guarantor from its obligations under this Guaranty and without notifying or obtaining the prior approval of the Guarantor, at any time: (a) waive or excuse a default by the Developer under the EDPA; or (b) grant extensions of time or performance by the Developer under the EDPA.

5. Attorneys' Fees. In the event any legal action or process is commenced to enforce or interpret this Guaranty, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action in accordance with Section 271.153 of Texas Local Government Code.

6. Representations of Guarantor. The Guarantor represents to the City that: (a) the Guarantor is a corporation, validly existing and in good standing under the laws of the State of Delaware; (b) the Guarantor has the c power and authority to enter into and perform its obligations under this Guaranty; and (c) this Guaranty has been duly executed and delivered by the Guarantor and constitutes the valid and binding obligation of the Guarantor enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and further subject to the effect of general principles of equity.

7. Assignability. This Guaranty may not be assigned by the City unless and until the restrictions upon the assignment of the EDPA by the City set forth in Section 15(c) of the EDPA have been satisfied. The Guarantor may not assign any of its rights or responsibilities under this Guaranty without the express written permission of the City.

8. Enforcement During Bankruptcy of Developer. The enforcement of this Guaranty by the City against the Guarantor shall not be stayed or delayed as a result of a filing of a petition under the United States Bankruptcy Code, as amended, by or against the Developer.

9. Choice of Law. The laws of the State of Texas shall govern and be applied to determine all issues relating to this Guaranty and the rights and obligations of the City and the Guarantor hereunder.

10. Consent to Jurisdiction: Agreement as to Venue. The Guarantor and the City each consent to the non-exclusive jurisdiction of the United States District Court for the Northern District of Texas (to the extent that federal jurisdiction exists) and to any court of competent jurisdiction in Tarrant County, Texas for any actions or proceedings brought to enforce, construe, or interpret this Guaranty. The City and the Guarantor each agree that venue shall be proper in any of such courts for any of such actions or proceedings.

11. Notices. All notices given or provided with respect to this Guaranty shall be in writing and sent by certified mail, return receipt requested, personal messenger, or overnight delivery via recognized overnight delivery service. Any notice sent by: (a) certified mail, return receipt requested, shall be deemed delivered 2 days after being deposited in the United States mail, (b) delivery by personal messenger shall be deemed to have occurred when such delivery has been made; and (c) delivery by overnight delivery service shall be deemed delivered on the Business Day following the date notice is deposited for expedited delivery with the overnight delivery service. Delivery shall be made to the parties at the following notice addresses:

City: City of Arlington  
City Manager's Office  
c/o City Manager  
101 W. Abram Street  
Arlington, TX 76004-3231

Guarantor: [\_\_\_\_\_] ]  
c/o Loews Hotels Holding Corporation  
9 West 57<sup>th</sup> Street, 20<sup>th</sup> Floor  
New York, NY 10019  
Attn: Corporate Secretary

with a copy to:

Latham & Watkins LLP  
330 N. Wabash Avenue, Suite 2800  
Chicago, Illinois 60611  
Attn: Gary E. Axelrod

12. Final Agreement. This Guaranty constitutes the final and entire agreement between the City and the Guarantor with respect to the Guaranty by the Guarantor of Substantial Completion. There are no separate oral or written understandings between the City and the Guarantor with respect to this Guaranty or the obligations of the Guarantor hereunder.

13. Waiver of Jury Trial. The Guarantor and the City by their respective execution and acceptance of this Guaranty agree that any action, suit or proceeding, whether claim or counter-

claim brought or instituted by either party or any successor or assign thereof on or with respect to this Guaranty or which in any way relates directly or indirectly to this Guaranty shall be tried only be a court and not be a jury. Each party expressly waives any right to a trial by jury in any such suit, action or proceeding.

IN WITNESS WHEREOF, the Guarantor executes and delivers this Guaranty to be effective as of the above stated date.

**GUARANTOR:**

[ \_\_\_\_\_ ], a [ \_\_\_\_\_ ]

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_