

LEASE AGREEMENT

BETWEEN

MCKINNEY COMMUNITY DEVELOPMENT CORPORATION,

LANDLORD,

AND

_____,

TENANT

DATE: _____, 2012

PROPERTY ADDRESS:

MCKINNEY, TEXAS

LEASE AGREEMENT

This Lease Agreement (this "Lease") made as of _____, 2012 (the "Effective Date"), between MCKINNEY COMMUNITY DEVELOPMENT CORPORATION, a Texas nonprofit corporation ("Landlord"), and _____, a _____ ("Tenant").

WITNESSETH:

ARTICLE 1 DEMISED PROPERTY AND TERM

Section 1.1 Lease Grant. Landlord, for and in consideration of the rents, covenants, and agreements hereinafter reserved, mentioned, and contained on the part of the Tenant, its successors, and assigns, to be paid, kept, and performed, has leased, rented, let, and demised, and by these presents does lease, rent, let, and demise unto Tenant, and Tenant does hereby take and hire, upon and subject to the covenants, agreements, provisions, limitations, and conditions hereinafter expressed, the Hotel Unit, as created and defined in the Condominium Declaration for the McKinney Condominium, recorded in the Official Records of Collin County, Texas, as Document No. 20080229000237480, as amended by the Amended and Restated Condominium Declaration of even date therewith (the "Condominium Declaration") and the percentage share in general and limited common elements appurtenant thereto (collectively, the "Property"), to be used and occupied only for the Permitted Use (as defined herein) and pursuant to all laws, rules, and regulations of the State of Texas, and all restrictive covenants pertaining thereto as to which Landlord, Tenant and the Property may be bound. "Hotel Complex" means the Hotel, the Event Center and all shared common elements. "Event Center" means a facility for conferences, banquets, business meetings and other events as described in the Event Center Lease and Management Agreement dated _____, executed by _____ and _____.

Section 1.2 Term. Tenant shall enjoy the tenancy of the Property subject to the provisions hereof, for a term (the "Term") commencing on the Effective Date (such date is referred to herein as the "Commencement Date"), and ending at 11:59 p.m. on December 31 during the year which is ninety-nine (99) years after the year in which the Commencement Date occurs (the "Expiration Date"), subject to adjustment as provided in this Lease.

Section 1.3 Acceptance of Property. Tenant represents and warrants to Landlord that, (a) Tenant has examined, inspected, and investigated to the full satisfaction of Tenant, the physical nature and condition of the Property, (b) neither Landlord nor any agent, officer, partner, joint venturer, employee, or representative of Landlord has made any representation whatsoever regarding the subject matter of this Lease or any part thereof, including (without limiting the generality of the foregoing) representations as to the applicable zoning, the physical nature or condition of the Property (including, without limitation, any latent defect) or operating expenses or carrying charges affecting the Property, or the existence or non-existence of asbestos, hazardous substance or waste, and (c) Tenant, in executing, delivering, and performing this Lease, does not rely upon any statement, information, or representation to whomsoever made or given, whether to Tenant or others, and whether directly or indirectly, verbally or in writing, made by any person, firm or corporation. Without limiting the foregoing, but in addition thereto,

Tenant accepts the Property in its “AS IS,” “WHERE IS” condition on the Effective Date (including, without limitation, all existing violations of law, if any, whether or not of record, the presence of asbestos, hazardous substances or waste (including, without limitation, Hazardous Materials, as hereinafter defined), if any, and the absence of a certificate of occupancy, if such is the case) subject to the existing state of title (without express or implied warranty of Landlord with respect to the condition, quality, repair or fitness of the Property for a particular use or title thereto, all such warranties being hereby waived and renounced by Tenant). No easement for light, air or view is included with or appurtenant to the Property. Any diminution or shutting off of light, air or view by any structure which may hereafter be erected (whether or not constructed by Landlord) shall in no way affect this Lease or impose any liability on Landlord.

ARTICLE 2 **USE OF PROPERTY**

Section 2.1 Use. The Property shall be used solely for a full service hotel consisting of a minimum of 186 guest rooms, a three meal full service restaurant, and a lobby and bar, open to the public and serving the business community and citizens of the City of McKinney, and visitors to the City and adjacent communities (the “Permitted Use”), and for no other use. Tenant will not use or occupy or allow the Property or any part thereof to be used or occupied for any illegal, unlawful, disreputable, or hazardous purpose or use or in violation of any certificate of occupancy or certificate of compliance or certificate of need covering or affecting the use of the Property or any part thereof or in any manner which would cause structural injury to the Property, or any part thereof, or cause the value or usefulness of the Property, or any part thereof, to diminish, and Tenant will not suffer any act to be done or any condition to exist on the Property, or any part thereof, or any action to be brought thereon, which may be illegal, or which may constitute a nuisance, public or private. Tenant shall not use, suffer or permit the Property, or any part thereof, to be used by Tenant, any third party or the public, as such, without restriction or in such manner as might impair Landlord’s title to the Property, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or third parties, or of implied dedication of the Property, or any part thereof. Nothing contained in this Lease and no action by Landlord shall be construed to mean that Landlord has granted to Tenant any authority to do any act or make any agreement that may create any such third party or public right, title, interest, lien, charge or other encumbrance upon the estate of the Landlord in the Property. Tenant shall not at any time leave the Property or any portion thereof vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on the Permitted Use on the entire Property. Tenant shall operate its business in an efficient and reputable manner and shall, except during reasonable periods for repairing, cleaning and decorating, keep the Property open to the public for business with adequate personnel in attendance on a twenty-four (24) hour per day, seven (7) day per week basis throughout the term hereof. The foregoing notwithstanding, Tenant shall not be required to keep the Property open for business during periods of repair or renovation following an event of casualty, condemnation, or force majeure, or while voluntary remodeling or renovation work is completed, provided the Property is re-opened for business within sixty (60) days after the Property is closed due to such voluntary remodeling or renovation work.

ARTICLE 3
RENT

Section 3.1 Rent. Tenant has prepaid to Landlord the sum of Ten Dollars (\$10.00) as Net Rent for the first ten Lease Years of the Term through _____, 2022. Commencing with _____, 2022, the annual Net Rent for the eleventh Lease Year shall be determined by multiplying (a) the number of square feet of land deemed to be in the Hotel Unit (181,699) by (b) the sum of \$5.00 by (c) 8%, for a total annual Net Rent of \$72,679.60 in monthly installments of \$6,056.63 commencing with the first day of the twelfth Lease Year and each subsequent Lease Year, Net Rent shall be determined by multiplying \$72,679.60 by a fraction, the numerator of which shall be the consumer price index for all urban consumers, Dallas metropolitan area (published by the Department of Labor of the United States Government) (the "CPI-Dallas") most recently published prior to the first day of such Lease Year, and the denominator of which shall be the CPI-Dallas most recently published prior to the Commencement Date (adjusted for a constant index year, if the index year for the CPI-Dallas is changed during the period of such comparison). Such Net Rent for the eleventh and subsequent Lease Years hereunder shall be paid in equal monthly installments in advance on the first day of each Lease Year and on the same day of the calendar month of such Lease Year thereafter.

Section 3.2 Net Rent. It is the intention of Landlord and Tenant that the Net Rent payable by Tenant to Landlord during the entire term of this Lease shall be absolutely net of all costs and expenses incurred in connection with or relating to the Property, including, without limitation, in connection with or relating to the management, operation, maintenance and repair of the Property in accordance with this Lease. Landlord shall have no obligations or liabilities whatsoever in connection with or relating to the Property or the management, insurance, operation, maintenance or repair of the Property during the term of this Lease, and Tenant shall be responsible for all obligations of every kind and nature whatsoever in connection with or relating to the Property or any part thereof, including, without limitation, the management, operation, maintenance and repair of the Property in accordance with this Lease and Tenant shall pay all costs and expenses incurred in connection therewith before such costs or expenses become delinquent.

Section 3.3 Payment. The Net Rent shall be paid to Landlord promptly when due without notice or demand therefor, and without any abatement, deduction, set-off, counterclaim, suspension or defense for any reason whatsoever and shall be accompanied by all applicable state and local sales or use taxes.

Section 3.4 Additional Rent. Tenant will also pay to Landlord promptly when due, in lawful money of the United States at the address specified above or such other place as Landlord shall designate by notice to Tenant, without notice or demand therefor and without any abatement, deduction, set-off, counterclaim, suspension or defense for any reason whatsoever, as additional rent (the "Additional Rent"), all sums, Impositions (as defined in Article 4 hereof), costs, expenses and other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay or which shall become due and payable from Tenant to Landlord under this Lease (other than Net Rent), and, in the event of any non-payment thereof, Landlord shall have (in addition to all other rights and remedies which Landlord may have hereunder) all the rights

and remedies provided for herein or by law or equity in the case of non-payment of the Net Rent. Net Rent and Additional Rent are sometimes herein collectively referred to as “rent.”

Section 3.5 Late Payments. In the event any monthly installment of Net Rent or any payment of Additional Rent is not received by the Landlord within three (3) days after the day when due, a late fee of 5% per month of the amount due shall be due and payable until the full amount of the Net Rent installment or Additional Rent payment is received by Landlord. In no event shall such late fee be deemed to grant to Tenant a grace period or extension of time within which to pay any rent or prevent Landlord from exercising any right or enforcing any remedy available to Landlord upon Tenant’s failure to pay all Net Rent or Additional Rent due under this Lease in a timely fashion, including, without limitation, the right to terminate this Lease. All amounts of money payable by Tenant to Landlord hereunder, if not paid when due, shall bear Interest from the due date until paid. Notwithstanding anything herein to the contrary, (a) in no event shall the charges permitted under this Section 3.5 or elsewhere in this Lease, to the extent they are considered to be interest under applicable law, exceed the maximum lawful rate of interest, and (b) the late fees and Interest referenced above shall not be charged with respect to the first or second occurrences (but not any subsequent occurrence) during any 12-month period that Tenant fails to make payment when due, until five days after Landlord delivers written notice of such delinquency to Tenant.

Section 3.6 Partial Payments. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the correct Net Rent or Additional Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance or pursue any other remedy in this Lease or at law or equity provided.

Section 3.7 Manner of Payment. Tenant shall pay Net Rent and Additional Rent, as above and as herein provided, by good and sufficient check drawn on a national banking association or by wire transfer.

ARTICLE 4 **PAYMENT OF TAXES, ASSESSMENTS, ETC.**

Section 4.1 Payment of Impositions by Tenant. Except as hereinafter provided in Section 4.2, Tenant covenants and agrees to pay, not later than the first day on which any interest or penalty will accrue or be assessed for the non-payment thereof, all of the following items applicable to or effecting the Property or any part thereof accruing or payable from and after the Commencement Date and during the term of this Lease or applicable thereto: all real estate taxes and assessments (including, without limitation, assessments for special business improvement or assessment districts), personal property taxes, occupancy and rent taxes, water and sewer rents, rates and charges, and vault taxes, county real estate taxes and charges, charges for public utilities, license and permit fees, any taxes, assessments or governmental levies, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or during or applicable to the term of this Lease or any part thereof may be assessed, levied, confirmed, imposed upon, or grow or accrue or become due and payable out of, or charged with respect to, or become a lien on, the Property or any part thereof,

or the sidewalks or streets in front of or adjoining the Property, or any vault, passageway or space in, over or under such sidewalk or street, or any other appurtenances to the Property, or any personal property, equipment or other facility used in the operation thereof, or the rent or income received therefrom, or any use or occupation of the Property, or the Net Rent and Additional Rent payable hereunder, or any document to which Tenant is a party creating or transferring an interest or estate in the Property, and any fines or penalties or similar governmental charges applicable with respect to any of the foregoing, together with interest and costs thereon (collectively, "Impositions," individually, an "Imposition"); provided, however, that

(a) if, by law, any Imposition which is an assessment not related to general real estate taxes may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments plus interest as may become due during the term of this Lease, provided that all such payments shall be made before any fine, penalty, further interest or other charge for non-payment of any installment may be added thereto and provided further that all such installments for any such Imposition imposed or becoming a lien during the term of this Lease shall be paid in full on or before the Expiration Date subject to apportionment as provided in Section 4.1(b).

(b) any Imposition (including, without limitation, those Impositions which have been converted into installment payments by Tenant as referred to in Section 4.1(a), relating to a fiscal period of the taxing authority, a part of which period is included within the term of this Lease and a part of which is included in a period of time before the commencement or after the expiration of the term of this Lease, shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Property, or shall become payable, during the term of this Lease) be adjusted between Landlord and Tenant as of the commencement and expiration of the term of this Lease, as the case may be, so that Landlord shall pay that portion of such Imposition which that part of such fiscal period included in the period of time after the expiration and prior to the commencement of the term of this Lease bears to such fiscal period, and Tenant shall pay the remainder thereof. Tenant shall exhibit to Landlord paid receipts, if available, or other evidence of payment satisfactory to Landlord for all of the above items in this Section 4.1 not later than 15 days before the date any such Impositions become delinquent.

Section 4.2 New Taxes. Nothing herein contained shall require Tenant to pay municipal, state or federal income, excess profits, capital levy, estate, succession, inheritance, transfer or gift taxes of Landlord, any corporate franchise tax imposed upon Landlord or any tax imposed because of the nature of the business entity of Landlord; provided, however, that if at any time during the term of this Lease, the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy (including, but not limited to, any municipal, state or federal levy), imposition or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Property or any part thereof and shall be imposed upon Landlord, then all such new taxes, assessments, levies, impositions or charges, or the part thereof, shall be deemed to be included within the term "Impositions" to the extent that such Impositions would be payable if the Property were the only property of Landlord subject to such

Impositions, and Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions.

Section 4.3 Contest of Impositions. If permitted by applicable law, and provided no Event of Default (hereinafter defined) is then in existence, Tenant shall have right, at its own expense, to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, but only after payment of such Imposition (which payment may be made under protest, at Tenant's option), unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, notwithstanding the provisions of Section 4.1, Tenant may postpone or defer payment of such Imposition, if and only if:

(a) Neither the Property (nor any other premises owed by Landlord) nor any part thereof would by reason of such postponement or deferment be, in the judgment of Landlord (exercised in good faith), in danger of being forfeited or lost; and no criminal liability could be, in the judgment of Landlord (exercised in good faith), imposed on Landlord by reason of such postponement or deferment, and

(b) [Intentionally Deleted].

Either Landlord or Tenant may, if it shall so desire, endeavor at any time or times to obtain a lowering of the assessed valuation upon the Property, or any part thereof, for the purpose of reducing taxes thereon, and in such event, the other party will cooperate in effecting such reduction.

Section 4.4 Joinder of Landlord in Contest of Imposition. Landlord shall not be required to join in any proceedings referred to in Section 4.3 hereof unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by and/or in the name of Landlord or any owner of the Property, in which event, Landlord shall join in such proceedings or permit the same to be brought in its name. Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant will indemnify and save harmless Landlord from and against any such costs and expenses, including, but not limited to, attorneys' fees and disbursements, and from any liability resulting from such proceeding. Tenant shall be entitled to any refund with respect to any Imposition and penalties or interest thereon which have been paid by Tenant (whether directly or through escrowed funds), or which have been paid by Landlord but previously reimbursed in full to Landlord by Tenant.

Section 4.5 Evidence of Imposition. The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition, or of non-payment of such Imposition, shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

Section 4.6 Appointment of Attorney-in-Fact. Landlord appoints Tenant the attorney-in-fact of Landlord for (and only for) the purpose of making all payments to be made by Tenant pursuant to any of the provisions of this Lease to persons or entities other than Landlord. In case any person or entity to whom any sum is directly payable by Tenant under any of the provisions

of this Article 4 shall refuse to accept payment of such sum from Tenant, Tenant shall thereupon give written notice of such fact to Landlord and shall pay such sum directly to Landlord at the address specified in Section 19.1 hereof, and Landlord shall promptly pay such sum to such person or entity.

Section 4.7 Payment of Impositions. Tenant shall make all payments of Impositions directly to the appropriate taxing authorities.

ARTICLE 5 **INSURANCE**

Section 5.1 Insurance. At all times during the term of this Lease, Tenant, at its own cost and expense, shall carry and maintain insurance coverage set forth below:

(a) Property Insurance.

(1) Insurance on the Property (including, without limitation, all improvements thereto hereafter made by Tenant) and all fixtures, equipment and personal property at the Property under an “All Risks of Physical Loss” policy (hereinafter referred to as “All Risks”) including, without limitation, coverage for loss or damage by water, flood, subsidence and sprinkler damage; such insurance to be written with full replacement coverage (the “Replacement Value”), *i.e.*, in an amount equal to the greater of (A) 100% of the full costs of replacement of the Property and such fixtures, equipment and personal property (less the cost of excavations, foundations and footings below the basement floor) or (B) an amount sufficient to prevent Tenant from becoming a co-insurer of any loss under the applicable policy. The insurance company’s determination of the amount of coverage required in clause (A) above shall be binding and conclusive on Landlord and Tenant for purposes of the coverage required by clause (A). A stipulated value or agreed amount endorsement deleting the co-insurance provision of the policy shall be provided with such insurance. If not otherwise included within the “All Risks” coverage specified above, Tenant shall carry or cause to be carried, by endorsement to such “All Risks” policy, coverage against damage due to water and sprinkler leakage, flood and collapse and shall be written with limits of coverage reasonably required by Landlord.

(2) The Replacement Value shall include the cost of debris removal and the value of grading, paving, landscaping, architects, and development fees.

(b) Liability Insurance. Comprehensive general liability insurance with respect to the Property and the operations related thereto, whether conducted on or off the Property, against liability for personal injury, including bodily injury and death, and property damage. Such comprehensive general liability insurance shall be on an occurrence basis and specifically shall include:

(1) Contractual Liability to cover Tenant’s obligation to indemnify Landlord as required hereunder; and

(2) Water damage and sprinkler leakage legal liability.

All such insurance against liability for personal injury, including bodily injury and death, and property damage as specified above shall be written for a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollar (\$2,000,000) in the aggregate, or such greater amount which is in accordance with Tenant's current liability policies or which Tenant is then maintaining for the Property. Such limit shall be subject to reasonable increase from time to time in accordance with the limits then being customarily carried on buildings of similar age and construction and similarly situated as the Property.

Section 5.2 Insurance Providers. All insurance provided for in this Article 5 shall be in such form and shall be issued by such responsible insurance companies licensed to do business in the State of Texas as are reasonably approved by Landlord. Any insurance company rated by Best's Insurance Guide (or any successor publication of comparable standing) as "A" or better (or the equivalent of such rating) shall be deemed a responsible company and acceptable to Landlord. Upon the execution of this Lease, and, thereafter, not less than 15 days prior to the expiration dates of the expiring policies required pursuant to this Article 5, certificates of insurance and certified copies of the insurance policies or renewal certificates, as the case may be, bearing notations evidencing the payment in full of premiums or accompanied by other evidence reasonably satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord.

Section 5.3 Named Insureds. The policies of insurance provided for in Section 5.1(a) and (b) shall name Landlord and Tenant's Mortgagee as additional insureds. All other policies of insurance provided for in Section 5.1 shall name Landlord, Tenant, and any Tenant's Mortgagee as the insureds as their respective interests may appear. Subject to and in accordance with the provisions of Exhibit A hereof, such policies shall also be payable, if required by Tenant's Mortgagee, to such Tenant's Mortgagee as the interest of such Tenant's Mortgagee may appear.

Section 5.4 Compliance with and No Violation of Insurance. Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article 5, and Tenant shall perform, satisfy and comply with or cause to be performed, satisfied and complied with the conditions, provisions and requirements of the insurance policies and the companies writing such policies so that, at all times, companies reasonably acceptable to Landlord provide the insurance required by this Article 5.

Section 5.5 Additional Insurance Provisions. Each policy of insurance required to be carried pursuant to the provisions of Article 5 shall contain (a) a provision that no act or omission of Landlord or Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, (b) an agreement by the insurer that such policy shall not be canceled, modified or denied renewal without at least 30 days prior written notice to Landlord, (c) an agreement that if cancellation is due to nonpayment of premiums, the insurer will so specify in the notice given in (b) above and will reinstate the policy upon payment of the premiums by Landlord or Tenant's Mortgagee and (d) a waiver of subrogation by the insurer. In the event Tenant fails to maintain, or cause to be maintained, or deliver and furnish to Landlord certified copies of certificates of insurance required by this Lease and such failure continues for thirty (30) days following written notice thereof to Tenant, Landlord may procure such insurance for the benefit only of Landlord for such risks covering Landlord's interests, and Tenant will pay all premiums thereon within 30 days after demand by Landlord. In the event Tenant fails to pay

such premiums (or reimburse Landlord) upon demand the amount of all such premiums shall bear Interest from the date paid by Landlord until reimbursed by Tenant.

Section 5.6 Insurance Limits. [Intentionally Deleted].

ARTICLE 6

DAMAGE OR DESTRUCTION

Section 6.1 Damage or Destruction. In case of damage to or destruction of the Property or any part thereof by fire or other casualty, Tenant will promptly give written notice thereof to Landlord and shall, in accordance with the provisions of this Article and all other provisions of this Lease, restore the same as nearly as possible to its value, condition and character immediately prior to such damage or destruction, subject to Tenant's right to make alterations in conformity with and subject to the conditions of Article 9 hereof, and in conformity with the plans and specifications required to be prepared pursuant to Section 6.2, whether or not such damage or destruction has been insured (but only to the extent such damage or destruction was insurable under an All Risks policy or other policy or policies required to be maintained by Tenant pursuant to Article 5), Tenant is entitled to receive any insurance proceeds, subject, however, to Section 6.3, or insurance proceeds are sufficient to pay in full the cost of the restoration work in connection with such restoration. Such restoration shall be commenced promptly (but no later than 180 days after the occurrence of such damage or destruction) and shall be prosecuted and completed expeditiously and with utmost diligence, Unavoidable Delays (hereinafter defined) excepted. Landlord and its agents may, from time to time, inspect the restoration without notice in the event of an emergency or, in other cases, upon reasonable advance notice to Tenant during normal business hours.

Section 6.2 Documents Required Before Restoration. In the event of any damage or destruction of the Property or any part thereof by fire or other casualty, Tenant agrees to furnish to Landlord at least 20 days before the commencement of the restoration of such damage or destruction, the following:

(a) complete plans and specifications for such restoration prepared by a licensed and reputable architect reasonably satisfactory to Landlord (the "Architect"), which plans and specifications shall meet with the reasonable approval of Landlord, together with the approval thereof by all governmental authorities then exercising jurisdiction with regard to such work, and shall comply with all restrictive covenants affecting the Property, and which plans and specifications shall be and become the sole and absolute property of Landlord upon the expiration or any termination of this Lease.

(b) contracts then customary in the trade with the Architect, and with a reputable and responsible contractor reasonably approved by Landlord, providing for the completion of such restoration in accordance with said plans and specifications, which contracts shall meet with the reasonable approval of Landlord.

(c) assignments of the contracts with the Architect and the contractor so furnished, duly executed and acknowledged by Tenant, the Architect and the contractor by its terms to be effective upon the expiration or any termination of this Lease or upon Landlord's re-

entry upon the Property following a default by Tenant prior to the complete performance of such contract.

(d) certificates of insurance as set forth in Section 5.2 and as otherwise reasonably required by Landlord.

Section 6.3 Insurance Proceeds. All insurance money on account of such damage or destruction shall be retained by Tenant or Tenant's Mortgagee for use as provided herein.

Section 6.4 Insurance Proceeds Deficiency. [Intentionally Deleted].

Section 6.5 Disposition of Remaining Insurance Proceeds. [Intentionally Deleted].

Section 6.6 Interest on Escrowed Funds. [Intentionally Deleted].

Section 6.7 Restoration.

(a) If the Property shall be partially or totally damaged or destroyed by fire or other casualty, Tenant shall restore such damage or destruction as previously provided in this Article 6, Net Rent and Additional Rent shall continue to be due and payable as if no damage or destruction had occurred, and this Lease shall remain in full force and effect. In the event 33% or more of the rooms in the Hotel are out of service due to damage or destruction by fire or other casualty, Tenant's obligation to pay Net Rent and Additional Rent shall be abated until such time as the repair or restoration work is completed.

(b) If the Property, or any part thereof, is damaged by fire or other casualty and such fire or other casualty occurs during the last 12 months of the term of this Lease and the repair and restoration work to be performed by Tenant in accordance with this Article 6 cannot, as reasonably estimated by Landlord, be completed within two months after the occurrence of such fire or other casualty, or the insurance proceeds received by Tenant in respect of such damage are not adequate to pay the entire cost, as reasonably estimated by Landlord, of the repair and restoration work to be performed by Tenant in accordance with this Article 6, then, in any such event, Landlord shall have the right, by giving written notice to Tenant within 60 days after the occurrence of such fire or other casualty, to terminate this Lease as of the date of such notice, in which case all insurance proceeds on account of such casualty shall be paid to Landlord. If the Property, or any part thereof, is damaged by fire or other casualty and such fire or other casualty occurs during the last 12 months of the term of this Lease and the repair and restoration work to be performed by Tenant in accordance with this Article 6 cannot, as reasonably estimated by Landlord, be completed within two months after the occurrence of such fire or other casualty, and within 30 days of Landlord's written request to Tenant to extend the term of this Lease, Landlord and Tenant fail to reach an agreement on the terms of a renewal of the term of this Lease, then Tenant shall have the right, by giving written notice to Landlord within 60 days after the occurrence of such fire or other casualty, to terminate this Lease as of the date of such notice, in which case all insurance proceeds on account of such shall be paid to Landlord. If neither Landlord nor Tenant exercises their respective rights to terminate this Lease in accordance with this Section 6.7(b), Tenant shall repair such damage and restore the Property in accordance with this Article 6 and this Lease shall remain in full force and effect.

Section 6.8 Waiver of Conflict. To the extent the provisions of this Article or otherwise in this Lease shall conflict with the provisions of any laws of the State of Texas, or any agency or political subdivision thereof, controlling the rights and obligations of parties to leases in the event of damage by fire or other casualty to leased space, the provisions of this Article and this Lease shall govern and control and such conflicting laws shall be deemed expressly waived by the parties hereto.

ARTICLE 7 **CONDEMNATION**

Section 7.1 Partial Condemnation. If less than substantially all of the Property is taken or condemned for a public or quasi-public use (a sale in lieu of condemnation to be deemed a taking or condemnation), this Lease shall remain in full force and effect and the Net Rent and Additional Rent shall continue to be due and payable, subject to a reasonable abatement of Net Rent and Additional Rent as to that portion of the Property rendered untenable by the taking or condemnation as determined in the reasonable discretion of Landlord, and Tenant, at its cost and expense, shall proceed to restore, subject to Unavoidable Delays, the remaining portion of the Property to a complete architectural unit, whether or not the net condemnation award is sufficient to pay in full the cost of such restoration. Such restoration work shall be performed in the same manner and pursuant to the same conditions as set forth in Article 6 hereof with respect to restoration as a result of a fire or casualty. Tenant shall be entitled to receive any and all awards paid by the condemning authority in connection with such partial taking which are attributable to the value of the improvements located on the Property, provided that such condemnation award received by Tenant, less the reasonable costs incurred by Tenant in connection with the collection of such award, shall be applied to the cost of such restoration, subject to the same conditions to release set forth in Section 6.3 and Section 6.4 hereof. Any balance of the award remaining after completion of such restoration and not used for such restoration, may be retained by Tenant.

Section 7.2 Total Condemnation. If all or substantially all of the Property is taken or condemned for public or quasi-public use, then Tenant shall, not later than 20 days after such occurrence, deliver to Landlord notice of its desire to terminate this Lease on the next due date for the Net Rent payment (the "Termination Date"), a certificate of the President or Vice President of Tenant describing the event giving rise to such termination, and a certificate signed by Tenant to the effect that termination of this Lease with respect to the Property will not be in violation of any operating covenant with regard to Tenant's business on or at the Property pursuant to any third-party agreement then in effect. Tenant shall be entitled to receive the entire condemnation award(s) attributable to the value of the improvements located on the Property, and upon payment of all Net Rent and Additional Rent then due and unpaid and upon compliance by Tenant with all other obligations and liabilities of Tenant under this Lease, actual or contingent, which have arisen on or prior to such Termination Date, then in such event this Lease shall terminate; provided, however, if Tenant exercises its termination right pursuant to the terms of this Section 7.2, then Net Rent and Additional Rent shall abate as of the date of such taking or condemnation. If any condemnation occurs pursuant to this Section 7.2, then Tenant shall receive the entire award or other compensation for the value of the improvements located on the Property; however, Landlord may separately pursue a claim (to the extent it will not

reduce award to which Tenant is entitled) against the condemnor for the value of the land taken by the condemnor.

Section 7.3 Notice of Taking; Cooperation. Tenant shall immediately notify Landlord of the commencement of any condemnation, eminent domain, or other similar proceedings with regard to the Property. With respect to any condemnation, eminent domain or similar proceeding involving all or substantially all of the Property, Landlord and Tenant covenant and agree to fully cooperate in such proceedings in order to maximize the total award receivable in respect thereof.

ARTICLE 8

REPAIRS AND MAINTENANCE; SERVICES

Section 8.1 Repairs and Maintenance. Tenant shall, at its own cost and expense, keep and maintain all the Property in good condition and repair and make all necessary repairs and replacements to the Property, whether structural or non-structural, including, but not limited to, the roof, exterior, foundation, structural and operational parts, equipment, paving, parking lots and landscaping (including mowing of grass and care of shrubs), pipes, water, sewage, and septic system, heating system, plumbing system, window glass, fixtures, and all other appliances and their appurtenances and all equipment and personal property used in connection with the Property so that the Property is in at least the same condition as when received by Tenant, reasonable wear and tear, casualty and condemnation (as to which Articles 6 and 7, respectively, shall apply) excepted. Such repairs and replacements, interior and exterior, structural and non-structural, shall be made promptly, as and when necessary so that the Property is in at least the same condition as when received by Tenant, reasonable wear and tear excepted. All repairs and replacements shall be in quality and class at least equal to the original work. On default of Tenant in making such repairs or replacements that continues after the expiration of any applicable notice and cure period provided herein, Landlord may, but shall not be required to, make such repairs and replacements for Tenant's account, and the actual expense thereof together with Interest (hereinafter defined) thereon shall constitute and be collectible as Additional Rent. Tenant shall maintain at its sole cost and expense all portions of the Property in a clean and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstructions. At least 14 days before the end of the Term, Tenant shall deliver to Landlord a certificate from an engineer reasonably acceptable to Landlord certifying that the building's HVAC, life safety, plumbing, electrical and mechanical systems are then in good repair and working order and have been maintained in accordance with this Section 8.1.

Section 8.2 No Waste. Tenant will not do or suffer any waste or damage, disfigurement or injury to the Property or any part thereof.

Section 8.3 Repair and Maintenance Obligations. It is intended by Tenant and Landlord that Landlord shall have no obligation, in any manner whatsoever, to repair or maintain the Property (or any equipment therein), whether structural or nonstructural, all of which obligations are intended, as between Landlord and Tenant, to be those of Tenant. Tenant expressly waives the benefit of any statute now or in the future in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Property in good order, condition and repair.

Section 8.4 Services. Tenant shall, at Tenant's sole cost and expense, supply the Property with electricity, heating, ventilating and air conditioning, water, natural gas, lighting, replacement for all lights, restroom supplies, telephone service, window washing, security service, janitor, scavenger and disposal services, and such other services as Tenant determines to furnish to the Property. Tenant shall also pay for all maintenance upon such utilities. Landlord shall not be in default hereunder or be liable for any damage or loss directly or indirectly resulting from, nor shall the Net Rent or Additional Rent be abated or a constructive or other eviction be deemed to have occurred by reason of, the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services, any failure to furnish or delay in furnishing any such services, whether such failure or delay is caused by accident or any condition beyond the control of Landlord or Tenant or by the making of repairs or improvements to the Property or otherwise, or any limitation, curtailment, rationing or restriction on use of water, electricity, gas or any form of energy serving the Property, whether such results from mandatory governmental restriction or voluntary compliance with governmental guidelines or otherwise. Tenant shall pay the full cost of all of the foregoing services as Additional Rent.

ARTICLE 9

ALTERATIONS AND IMPROVEMENTS BY TENANT.

Section 9.1 Initial Improvements. Tenant shall complete the construction of a hotel facility on the Property pursuant to the Plans as defined in that certain Hotel and Event Center Development Agreement executed of even date herewith between Landlord, Tenant and the City of McKinney, Texas (the "Development Agreement").

Section 9.2 Alterations and Improvements. Unless required by law or any governmental authority, and except as provided in the next sentence, Tenant shall not make any alterations or improvements (except the initial construction to be performed pursuant to Section 9.1, the repairs and maintenance pursuant to Article 8, and the removal and replacement of equipment from the building as set forth in Article 16) to the Property or any part thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Tenant need not seek the consent of Landlord to alterations or improvements to be commenced or performed in any Lease Year that, individually, are \$100,000.00 or less, or in the aggregate, are \$500,000.00 or less, in each case, in value or cost (whichever is higher). Notwithstanding anything to the contrary herein, in no event shall Tenant make any alterations or improvements which would affect the structure or structural integrity of the building or the facade of the building, without obtaining the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. In no event shall Tenant be permitted to install underground storage tanks or underground fuel systems on the Property. Landlord's refusal to consent to the installation of an underground tank or underground fuel system shall be conclusively presumed to be reasonable. Any such alterations or improvements in or to the Property requiring the approval of Landlord shall be subject, however, in all cases to the following:

(a) Any improvement or alteration shall be made with at least ten (10) days prior notice to the Landlord, unless a governmental authority requires otherwise or except in the case of an emergency, in which case, Tenant shall give Landlord as much notice as is

practicable, accompanied by a copy of the proposed plans and specifications in detail reasonably sufficient for Landlord to review same, the identity of the contractor and any subcontractors, and a copy of all contracts with respect to the improvement or alteration, and shall be made promptly at the sole cost and expense of the Tenant and in a good and workmanlike manner and in compliance in all respects with all applicable laws, ordinances, codes, rules, regulations, permits and authorizations promulgated or issued by any governmental authority having jurisdiction thereof and all restrictive covenants affecting the Property. Upon Landlord's request, to be made not more frequently than once per calendar year, Tenant shall deliver to Landlord "as-built" plans and specifications for any work theretofore completed. Landlord's consent to or approval of any alterations, additions or improvements (or the plans therefor) shall not constitute a representation or warranty by Landlord, nor Landlord's acceptance, that the same comply with sound architectural and/or engineering practices or with all applicable laws or restrictive covenants, and Tenant shall be solely responsible for ensuring all such compliance.

(b) The Property shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to the Property.

(c) NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED TO OR FOR THE TENANT. FURTHERMORE, NOTICE IS HEREBY GIVEN TO TENANT AND TENANT'S MECHANICS, LABORERS AND MATERIALMEN WITH RESPECT TO THE PROPERTY THAT NO MECHANIC'S, MATERIALMAN'S OR LABORER'S LIEN SHALL ATTACH TO OR AFFECT THE REVERSION OR OTHER INTEREST OF LANDLORD IN OR TO THE PROPERTY.

(d) No alteration or improvement shall, when completed, be of such a character as to render the Property anything other than a complete, self-contained structural unit, capable of being operated for the Permitted Use.

(e) Worker's compensation and general liability insurance with respect to the alterations and improvements as required by Section 5.2 shall be maintained and/or provided.

(f) All fixtures, work, alterations, additions, improvements or equipment installed or made by Tenant, or at Tenant's expense, upon or in the Property shall be the Property of Landlord. All personal property and moveable equipment and trade fixtures owned by Tenant upon or in the Property shall remain the property of Tenant unless Tenant fails to remove such personal property, equipment and trade fixtures upon termination of this Lease or surrender by Tenant of the Property to Landlord. All items not so removed shall, at Landlord's option, be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant and without any obligation to account for such items.

Section 9.3 Signage. Provided that the installation and maintenance thereof complies with all laws, ordinances, rules, regulations and restrictive covenants, and Tenant has received all approvals, consents, and permits required therefor by all laws, ordinances, rules, regulations and restrictive covenants, Tenant may install and maintain signs on the Property whose design, color scheme, location, material composition, and method of installation are approved by Landlord,

which approval shall not be unreasonably withheld. Tenant shall maintain such signs in a good, clean, and safe condition in accordance with all laws, ordinances, rules, regulations and restrictive covenants. Tenant shall repair all damage caused by the installation, use, maintenance, and removal of the signs and, upon their removal, restore the Property where such signs were located to their condition immediately before the installation thereof (ordinary wear and tear excepted, other than any discoloration caused thereby). Tenant shall, at its risk and expense, remove the signs and perform all restoration work as provided above within ten days after the occurrence of any of the following events: the termination of Tenant's right to possess the Property; the termination of this Lease; the expiration of the term of this Lease; or Tenant's vacating the Property. If Tenant fails to do so within such ten-day period, Landlord may, without compensation to Tenant, perform such work and dispose of the signs in any manner it deems appropriate or deem such signs abandoned and, after removing Tenant's logo therefrom, use such signs; Tenant shall pay to Landlord all reasonable costs incurred in connection therewith within 30 days after Landlord's request therefor.

ARTICLE 10 **DISCHARGE OF LIENS**

Section 10.1 No Liens, Encumbrances or Charges. Except for the lien on Tenant's leasehold estate in connection with Tenant's construction financing, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Property or any part thereof or the income therefrom or this Lease or the leasehold estate created hereby, and Tenant shall not suffer any other matter or thing whereby the estate, rights and/or interest of Tenant and/or Landlord (or any part thereof) in the Property or any part thereof might be encumbered by any such lien, encumbrance or charge.

Section 10.2 Construction Liens. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Property or any part thereof, Tenant, within 20 days after notice of the filing thereof, will cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy Landlord may have hereunder or at law or equity, Landlord may, but shall not be obligated to, discharge the same and Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord and all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in connection with the discharge of the lien and/or the prosecution of such action, together with Interest thereon from the respective dates of Landlord's making of the payment or incurring of the cost and expense to the date Tenant reimburses Landlord for such amount, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord immediately on demand.

Section 10.3 No Consent by Landlord to Construction Liens. Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Property or any part thereof.

ARTICLE 11
COMPLIANCE WITH LAWS, ORDINANCES, ETC.

Section 11.1 Compliance by Tenant. Throughout the term of this Lease, Tenant, at its sole cost and expense, will promptly comply in all respects with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers (including, without limitation, all environmental laws, ordinances, orders, rules, regulations and requirements), and all orders, rules and regulations of the National Board of Fire Underwriters, or any other body or bodies exercising similar functions, foreseen or unforeseen, ordinary, as well as extraordinary, and all restrictive covenants, which may be applicable to the Property or any part thereof and the sidewalks, alleyways, passageways, curbs and vaults adjoining the Property or to the use or manner of use of the Property or the owners, tenants or occupants thereof, whether or not such law, ordinance, order, rule, regulation, restrictive covenant, or requirement shall necessitate structural changes or improvements or other work or interfere with the use and enjoyment of the Property.

Section 11.2 Compliance with Insurance. Tenant shall likewise observe and comply in all respects with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the Property and the improvements thereon, and Tenant shall, in the event of any violation or any attempted violation of the provisions of this Section 11.2, take steps immediately upon knowledge of such violation or attempted violation to remedy or prevent the same, as the case may be.

Section 11.3 Right to Contest Compliance. Provided no Event of Default is then in existence, Tenant shall have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant or Landlord or both, at Tenant's sole cost and expense and without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 11.1 and defer compliance therewith during the pendency of such contest, subject to the following:

(a) If compliance therewith, pending the prosecution of any such proceeding, may legally be delayed without the incurrence of any lien, charge or liability of any kind against the Property or any part thereof and without subjecting Landlord to any liability, civil or criminal, or fine or forfeiture, for failure so to comply therewith during such period, then Tenant may delay compliance therewith until the final determination of such proceeding.

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant, nevertheless, may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Landlord to criminal liability, fine or forfeiture, or the Property to a lien, and Tenant, prior to instituting any such proceedings, furnishes to Landlord a letter of credit or bond or undertaking by a surety company or cash deposit or other security reasonably satisfactory to Landlord (such choice of security to be at Landlord's sole option), securing compliance with the contested law, ordinance, order, rule, regulation or requirement and payment of all interest, penalties, fines, fees and expenses in connection therewith.

(c) Any such proceeding instituted by Tenant shall be begun as soon as is reasonably possible after the passage or issuance of any such law, ordinance, order, rule, regulation or requirement and the application thereof to Tenant or to the Property and shall be prosecuted to final adjudication with dispatch and due diligence.

(d) Notwithstanding anything to the contrary herein, Tenant shall promptly comply with any such law, ordinance, order, rule, regulation or requirement being contested and compliance shall not be deferred if at any time the Property, or any part thereof, shall be in danger of being forfeited or lost or if Landlord shall be in danger of being subjected to criminal liability or penalty by reason of noncompliance therewith.

(e) Tenant agrees to indemnify and hold Landlord, the joint venturers of Landlord and Landlord's employees, agents and representatives harmless from and against any and all claims, causes of action, judgments, damages, fines, forfeitures, costs, and expenses, including, but not limited to, attorneys' fees and disbursements, arising out of or in connection with Tenant's failure to comply with and/or contesting any such law, ordinance, order, rule, regulation or requirement pursuant to the provisions of this Section 11.3.

Landlord will execute and deliver any appropriate papers which may be reasonably necessary or proper to permit Tenant to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement.

ARTICLE 12

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 12.1 Right to Perform Tenant's Covenants. If, after any applicable grace and/or notice period but without notice or grace in the case of an emergency, Tenant shall at any time fail to pay any Imposition in accordance with the provisions of Article 4 hereof or to take out, pay for, maintain or deliver any of the insurance policies provided for in Article 5 or Article 9 hereof, or shall fail to make any other payment or perform any other act on its part to be made or performed under this Lease, or shall default in the performance of any of its obligations under this Lease (hereinafter referred to as "Breaches"), then Landlord, without thereby waiving such Breach or releasing Tenant from any obligation contained in this Lease, may (but shall not be obligated to), perform the same for the account of and with the expense thereof to be paid by Tenant, and may (but shall be under no obligation to) enter upon the Property for any such purpose and take all such action thereon, as may be necessary therefor.

Section 12.2 Reimbursement. All sums so paid by Landlord pursuant to Section 12.1 and all costs and expenses, including, without limitation, all reasonable legal fees and disbursements incurred by Landlord in connection with the performance of any such act pursuant to Section 12.1, together with Interest thereon from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense to the date paid by Tenant to Landlord shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord within thirty (30) days after Tenant's receipt of written demand.

ARTICLE 13
ENTRY ON PROPERTY BY LANDLORD

Section 13.1 Entry on Property by Landlord. Tenant will permit Landlord and its authorized representatives to enter the Property at all reasonable times and hours upon reasonable notice to Tenant (who shall have the opportunity to have a representative of Tenant present), which may be oral notice, except in cases of real or apparent emergency (in which case no notice shall be required), for the purpose of inspecting the same, and making any necessary repairs thereto and performing any work therein that Landlord may be entitled to make or perform, respectively, pursuant to the provisions of Section 12.1 hereof. Nothing herein shall imply any duty upon the part of Landlord to do any such work, and performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same.

ARTICLE 14
INDEMNIFICATION OF LANDLORD

Section 14.1 Indemnification of Landlord. Tenant will indemnify and save harmless Landlord and any partner, joint venturer or member of Landlord against and from all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, judgments and causes of action including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord and/or any such partner, joint venturer or member by reason of any of the following occurring during the term of this Lease EVEN THOUGH CAUSED OR ALLEGED TO BE CAUSED BY THE NEGLIGENCE OR FAULT OF LANDLORD OR ITS AGENTS (OTHER THAN A LOSS ARISING FROM THE SOLE OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR FRAUD OF LANDLORD OR ITS AGENTS), AND EVEN THOUGH ANY SUCH CLAIM, CAUSE OF ACTION, OR SUIT IS BASED UPON OR ALLEGED TO BE BASED UPON THE STRICT LIABILITY OF LANDLORD OR ITS AGENTS. THIS INDEMNITY IS INTENDED TO INDEMNIFY LANDLORD AND ITS AGENTS AGAINST THE CONSEQUENCES OF THEIR OWN NEGLIGENCE (BUT NOT THEIR SOLE OR GROSS NEGLIGENCE OR WILLIFUL MISCONDUCT OR FRAUD) OR FAULT AS PROVIDED ABOVE WHEN LANDLORD OR ITS AGENTS ARE JOINTLY, COMPARATIVELY, CONTRIBUTIVELY, OR CONCURRENTLY NEGLIGENT WITH TENANT:

- (a) any work or thing done in, on or about the Property or any part thereof;
- (b) any use, non-use, possession, occupation, restoration, alteration, repair, condition (including, without limitation, any environmental condition), operation, maintenance or management of the Property or any part thereof or any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto;
- (c) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, sub-tenants, licensees or invitees;
- (d) any accident, injury (including, without limitation, death) or damage to any person or entity or property occurring in, on or about the Property or any part thereof or any street, alley, sidewalk, curb, vault, passageway, or space adjacent thereto;

(e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with;

(f) any liability which may be asserted against Landlord or any lien or claim which may be alleged to have arisen against or on the Property, under any law, ordinance, order, rule, regulation or requirement of any governmental authority including, without limitation, environmental laws, ordinances, orders, rules, regulations or requirements, and any restrictive covenants affecting the Property;

(g) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in any occupancy agreements, concession agreements or other contracts and agreements affecting the Property, on Tenant's part to be kept, observed or performed;

(h) the condition of the Property or of any buildings or other structures now or hereafter situated thereon, or the fixtures or personal property thereon or therein;

(i) any tax or fee attributable to the execution or recording of this Lease or any memorandum thereof charged by any governmental authority; or

(j) any contest permitted pursuant to the provisions of any Article of this Lease.

The obligations of Tenant under this Article 14 shall not in any way be affected by the absence or presence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Property.

In case any claim, action or proceeding is made or brought against Landlord by reason of any of the foregoing events to which reference is made in this Section 14.1, then Tenant, upon written notice from Landlord will, at Tenant's sole cost and expense, resist or defend such claim, action or proceeding, in Landlord's name, if necessary, by counsel approved, in writing, by Landlord, such approval not be unreasonably withheld. Notwithstanding the foregoing, Landlord may engage its own counsel, at Landlord's expense, to defend it or to assist in its defense.

Section 14.2 Survival of Indemnification. The provisions of Section 14.1 shall survive the termination or expiration of this Lease.

ARTICLE 15

ASSIGNMENT; SUBLETTING; TRANSFERS

Section 15.1 Transfers. Except to the holder of a mortgage or deed of trust to which Landlord is required to subordinate its interest in the Property as provided in Section 18.1, Tenant shall not, without the prior written consent of Landlord, assign, transfer, or encumber this Lease or any estate or interest herein, whether directly or by operation of law (being a "Transfer"), except to a transferee who shall deliver to Landlord a written agreement whereby

such transferee expressly assumes Tenant's obligations hereunder (a "Transferee"). No Transfer shall release Tenant from its obligations under this Lease, but rather Tenant and its transferee shall be jointly and severally liable therefor. If an Event of Default occurs while the Property or any part thereof are subject to a Transfer, then Landlord, in addition to its other remedies, may collect directly from such transferee all rents becoming due to Tenant and apply such rents against rent. Tenant authorizes its transferees to make payments of rent directly to Landlord upon receipt of notice from Landlord to do so following the occurrence of an Event of Default hereunder.

Tenant shall promptly notify Landlord of any such Transfer. Tenant shall remain liable for the performance of all of the obligations of Tenant hereunder, or if Tenant no longer exists because of a merger, consolidation, or acquisition, the surviving or acquiring entity shall expressly assume in writing the obligations of Tenant hereunder. Additionally, the Transferee shall comply with all of the terms and conditions of this Lease, including the Permitted Use, and the use of the Premises by the Transferee may not violate any other agreements affecting the Premises, the building located thereon, Landlord or other tenants of such building. At least 30 days after the effective date of any Transfer, Tenant agrees to furnish Landlord with copies of the instrument effecting any of the foregoing Transfers and documentation establishing Tenant's satisfaction of the requirements set forth above applicable to any such Transfer. The occurrence of a Transfer shall not waive Landlord's rights as to any subsequent Transfers. Any subsequent Transfer by a Transferee shall be subject to the terms of this Article 15.

ARTICLE 16 **SURRENDER**

Section 16.1 Surrender. Tenant shall on the last day of the term hereof, or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Property pursuant to Article 17 hereof, surrender and deliver up the Property and (unless Landlord requires the removal thereof as provided in Section 9.1(f)) and all buildings, fixtures, equipment and other personal property now or hereafter at the Property into the possession and use of Landlord in the same condition as received, reasonable wear and tear, casualty and condemnation (as to which Articles 6 and 7, respectively, shall apply) excepted, and free and clear of any liens created by Tenant or resulting from the acts or omissions of Tenant. Tenant shall at no time during the term of this Lease remove any buildings, fixtures, equipment or other personal property from the Property (except personal property and moveable equipment owned by Tenant) except Tenant may remove from the Property any equipment or other personal property which is obsolete or unfit for use or which is no longer useful in the operation of the Property so long as such equipment and/or other personal property are immediately replaced with equipment and/or other personal property, as the case may be, which are current, fit for use and useful in the operation of the Property and Tenant complies with any applicable provisions of this Lease with respect thereto (i.e., requirements in connection with alterations). Nothing in this Article 16 shall in any way be deemed to affect any of Tenant's obligations as to the use of the Property set forth in Article 2 of this Lease.

Section 16.2 Holding Over. If the Property is not surrendered as above set forth, Tenant shall be a tenant at sufferance and shall indemnify, defend and hold Landlord harmless from and against loss or liability resulting from the delay by Tenant in so surrendering the

Property, including, without limitation, any claim made by any succeeding occupant founded on such delay. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease. In addition to the foregoing, and in addition to the Additional Rent, Tenant shall pay to Landlord a sum equal to 150% of the Net Rent herein payable during the last month of the term of this Lease during each month or portion thereof for which Tenant shall remain in possession of the Property or any part thereof after the termination of the term or of Tenant's rights of possession, whether by lapse of time or otherwise, and Tenant shall otherwise continue to be subject to all of Tenant's obligations under this Lease. The provisions of this Section 16.2 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein, at law or at equity.

Section 16.3 Validity of Surrender. Except for surrender upon the expiration or earlier termination of the term hereof, no surrender to Landlord of this Lease or of the Property shall be valid or effective unless agreed to and accepted in writing by Landlord.

ARTICLE 17 **DEFAULT PROVISIONS**

Section 17.1 Events of Default. Each of the following events shall be an "Event of Default" hereunder:

(a) Default by Tenant in paying any installment of Net Rent or Additional Rent or in making any deposit required pursuant to Article 4 and such default continues for a period of ten days following written notice thereof to Tenant;

(b) If Tenant or any guarantor of Tenant's obligations hereunder shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under present or any future bankruptcy act or any other present or future applicable federal, state or other statute or law or other law, ordinance, order, rule, regulation or requirement of any governmental authority, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or any guarantor of Tenant's obligations hereunder or of all or any substantial part of its properties or of Tenant's leasehold estate with respect to the Property;

(c) If within 60 days after the commencement of any proceeding against Tenant or any guarantor of Tenant's obligations hereunder seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law or other law, ordinance, order, rule, regulation or requirement of any governmental authority, such proceeding shall not have been dismissed, or if, within 60 days after the appointment, without the consent or acquiescence of Tenant or any guarantor of Tenant's obligations hereunder, of any trustee, receiver or liquidator of Tenant or any guarantor of Tenant's obligations hereunder or of all or any substantial part of its properties or of Tenant's leasehold estate with respect to the Property, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within 30 days after the expiration of any such stay, such appointment shall not have been vacated;

(d) If a levy under execution or attachment shall be made against Tenant's leasehold estate or interest hereunder and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of 30 days;

(e) If the Property is used for other than the Permitted Use or use of the Property for the Permitted Use is abandoned and such default continues for a period of thirty days following written notice thereof to Tenant;

(f) If Tenant fails to timely maintain, or cause to be maintained, any insurance required to be maintained under this Lease and such failure continues for ten days, or the failure of Tenant to furnish Landlord with certificates of any insurance required under this Lease and such failure continues for ten days after written notice thereof to Tenant;

(g) If Tenant fails to provide any estoppel certificate within 20 days after Landlord's written request therefor pursuant to Section 27.3 and such failure shall continue for five days after Landlord's second written notice thereof to Tenant; or

(h) Default by Tenant in observing or performing one or more of the other terms, conditions, covenants or agreements of this Lease and the continuance of such default for a period of 30 days after written notice by Landlord specifying such default (unless such default requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such 30-day period, in which case no such Event of Default shall be deemed to exist so long as Tenant shall have commenced curing such default within such 30-day period and shall diligently and continuously prosecute the same to completion).

Section 17.2 Remedies. Upon any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

(a) Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall pay to Landlord the sum of all Net Rent and Additional Rent accrued hereunder through the date of termination, all amounts due under Section 17.3, and an amount equal to (A) the total Net Rent and Additional Rent that Tenant would have been required to pay for the remainder of the term of this Lease discounted to present value at a per annum rate equal to the "Prime Rate" as published on the date this Lease is terminated by The Wall Street Journal, Southwest Edition, in its listing of "Money Rates" minus one percent, minus (B) the then present fair rental value of the Property for such period, similarly discounted;

(b) Terminate Tenant's right to possess the Property without terminating this Lease by giving written notice thereof to Tenant, in which event Tenant shall pay to Landlord all Net Rent and Additional Rent and other amounts accrued hereunder to the date of termination of possession, all amounts due from time to time under Section 17.3, and all Net Rent and Additional Rent and other net sums required hereunder to be paid by Tenant during the remainder of the term of this Lease, diminished by any net sums thereafter received by Landlord through reletting the Property during such period, after deducting all costs incurred by Landlord in reletting the Property. If Landlord elects to proceed under this Section 17.2(b), Landlord may

remove all of Tenant's property from the Property and store the same in a public warehouse or elsewhere at the cost of, and for the account of, Tenant, without becoming liable for any loss or damage which may be occasioned thereby. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Property or to collect rent due for such reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Net Rent and Additional Rent due hereunder. Reentry by Landlord in the Property shall not affect Tenant's obligations hereunder for the unexpired term of this Lease; rather, Landlord may, from time to time, bring an action against Tenant to collect amounts due by Tenant, without the necessity of Landlord's waiting until the expiration of the term of this Lease. Unless Landlord delivers written notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to dispossess or exclude Tenant from the Property shall be deemed to be taken under this Section 17.2(b). If Landlord elects to proceed under this Section 17.2(b), it may at any time elect to terminate this Lease under Section 17.2(a);

(c) Perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Property in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the lesser of eighteen percent per annum or the maximum rate permitted by Law; or

(d) Additionally, with or without notice, and to the extent permitted by Law, Landlord may alter locks or other security devices at the Property to deprive Tenant of access thereto and Landlord shall not be required to provide a new key or right of access to Tenant.

Section 17.3 Payment by Tenant. Upon any Event of Default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses) in obtaining possession of the Property, removing and storing Tenant's or any other occupant's property, repairing, restoring, altering, remodeling, or otherwise putting the Property into condition acceptable to a new tenant, if Tenant is dispossessed of the Property and this Lease is not terminated, reletting all or any part of the Property (including brokerage commissions, cost of tenant finish work, and other costs incidental to such reletting), performing Tenant's obligations which Tenant failed to perform, and enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the Event of Default; provided, however, the aggregate amount of the alteration or remodeling costs contemplated in this Section 17.3, together with sums Landlord is entitled to receive pursuant to Section 17.2(a), shall not exceed an amount equal to the Net Rent and Additional Rent and other net sums that Tenant would have otherwise been required to pay hereunder during the remainder of the term of this Lease but for the Event of Default. To the full extent permitted by law, Landlord and Tenant agree the federal and state courts of the state in which the Property is located shall have exclusive jurisdiction over any matter relating to or arising from this Lease and the parties' rights and obligations under this Lease.

Section 17.4 Reentry by Landlord. If any Event of Default shall occur, or if this Lease or Tenant's right to possession shall be terminated as provided in Section 17.2 hereof or by

summary proceedings or otherwise, then, and in any of such events, Landlord may without notice, re-enter the Property either by force or otherwise, and dispossess Tenant and the legal representative of Tenant or other occupant of the Property by summary proceedings or otherwise, and remove their effects and hold the Property as if this Lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal or other proceedings to that end. The terms “enter,” “re-enter,” “entry,” or “re-entry,” as used in this Lease, are not restricted to their technical legal meaning.

Section 17.5 Injunction. In the event of a breach or a threatened breach by Tenant of any of its obligations under this Lease, Landlord shall also have the right of injunction. The special remedies to which Landlord may resort in this Article are cumulative and not intended to be exclusive of any other remedies or means of redress to which Landlord may lawfully be entitled at any time and Landlord may invoke any remedy allowed at law or in equity as if specific remedies were not provided for herein.

Section 17.6 Retention of Monies. Subject to applicable law, if this Lease or Tenant’s right to possession shall terminate under the provisions of Section 17.2, or if Landlord shall re-enter the Property as provided herein or in the event of the termination of this Lease or Tenant’s right to possession, or re-entry, by or under any summary dispossess or other proceeding or action or any provision of law by reason of default hereunder on the part of the Tenant, Landlord shall be entitled to retain all monies, if any, paid by Tenant to Landlord, whether as advance rent, security or otherwise, but such monies shall be credited by Landlord against any Net Rent or Additional Rent due from Tenant at the time of such termination or re-entry or, at Landlord’s option, against any damages payable by Tenant under this Article or pursuant to law or equity.

Section 17.7 Recovery of Damages or Deficiencies. Suit or suits for the recovery of damages or deficiencies, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the term of this Lease would have expired if it had not been so terminated hereunder, or under any provision of law, or had Landlord not re-entered the Property. Nothing herein contained shall be construed to limit or preclude recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default hereunder on the part of Tenant. Nothing herein contained shall be construed to limit or prejudice the right of Landlord to obtain as damages by reason of the termination of this Lease or re-entry of the Property for the default of Tenant under this Lease an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved whether or not such amount be greater, equal to, or less than any of the sums referred to in Section 17.2.

Section 17.8 Mitigation of Damages. Upon termination of Tenant’s right to possess the Premises, Landlord shall, to the extent required by law (and no further), use objectively reasonable efforts to mitigate damages by reletting the Premises. Landlord shall not be deemed to have failed to do so if Landlord refuses to lease the Premises to a prospective new tenant with respect to whom Landlord would be entitled to withhold its consent pursuant to Article 15, or who is an affiliate, parent or subsidiary of Tenant; requires improvements to the Premises to be made at Landlord’s expense; or is unwilling to accept lease terms then proposed by Landlord in

good faith, including: leasing for a shorter or longer term than remains under this Lease; re-configuring or combining the Premises with other space, taking only a part of the Premises; and/or changing the use of the Premises.

Section 17.9 No Waiver of Tenant's Obligations. The failure of Landlord to insist upon enforcement of Tenant's obligations of strict performance with the terms of this Lease or payment of Net Rent or Additional Rent shall not be deemed to be a waiver of those obligations.

Section 17.10 Waiver of Right of Redemption. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Property, by reason of the violation by Tenant of any of the covenants or conditions of this Lease or otherwise.

Section 17.11 Waiver of Right to Trial by Jury. TENANT WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION ARISING OUT OF THIS LEASE. TENANT FURTHER WAIVES ITS RIGHTS TO INTERPOSE ANY COUNTERCLAIM OR OFFSET IN ANY SUMMARY PROCEEDING INSTITUTED BY LANDLORD BASED UPON NON-PAYMENT OF NET RENT OR ADDITIONAL RENT (TENANT ACKNOWLEDGES THAT ANY SUCH COUNTERCLAIM OR OFFSET MUST BE BROUGHT IN A SEPARATE SUIT AGAINST LANDLORD).

Section 17.12 Payments on Account. No receipt of moneys by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue or extend the term of this Lease or affect any notice theretofore given Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Net Rent and Additional Rent payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Property, it being agreed that after the service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for the possession of the Property, or after possession of the Property by re-entry by summary proceedings or otherwise, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Property or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 17.13 No Waiver. No failure of Landlord to exercise any right or remedy consequent upon a default in any covenant, agreement, term or condition of this Lease, and no acceptance of full or partial Net Rent or Additional Rent by Landlord during the continuance of any such default, shall constitute a waiver of any such default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no default thereof, shall be waived, altered or modified except by a written instrument executed by that party. No waiver of any default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

Section 17.14 Cumulative Rights and Remedies. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or otherwise.

Section 17.15 Attorneys' Fees and Disbursements. Tenant shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants and provisions of this Lease and/or incurred by Landlord in any action brought on account of the provisions hereof, and all such costs and expenses, may be included in and form a part of any judgment entered in any action or proceeding against Tenant; provided, that if Tenant is the prevailing party in any action to enforce any claim against Landlord on account of this Lease, then Landlord shall pay to Tenant all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Tenant in such action.

Section 17.16 Lease Valid until Terminated by Landlord. Even though Tenant has breached this Lease, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to enforce all its rights and remedies under this Lease, including, without limitation, the right to recover all Net Rent and Additional Rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Property or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession unless written notice of termination is given by Landlord to Tenant.

Section 17.17 Tenant's Expenses. All agreements and covenants to be performed or observed by Tenant under this Lease shall be at Tenant's sole cost and expense and without any abatement of Net Rent or Additional Rent.

ARTICLE 18 **SUBORDINATION**

Section 18.1 Subordination. Landlord agrees to subject its fee simple title interest in the Property to any mortgage or deed of trust securing financing provided to Tenant for the purpose of permitting the improvements to be made by Tenant to the Property pursuant to Section 9.1 hereof, so long as such mortgage or deed of trust contains terms and provisions satisfying the requirements of Section 27.18. In confirmation of such subordination, Landlord shall promptly execute and deliver any instrument in recordable form that such mortgagee shall reasonably request to evidence the subjection of such fee simple title interest to such mortgage or deed of trust. Nothing contained in this Lease shall limit or curtail Landlord's right to sell, mortgage or otherwise deal with its fee interest in the Property, or affect Landlord's right to assign the Net Rent and/or Additional Rent payable under this Lease either as further collateral security under a Mortgage or otherwise. Any such assignment of rent shall be honored by Tenant.

Section 18.2 Attornment. Tenant shall attorn to any party succeeding to Landlord's interest in the Property, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request.

Section 18.3 [Intentionally Deleted].

Section 18.4 Landlord's Default. In the event of any act or omission of Landlord constituting a default by Landlord hereunder beyond any applicable grace or notice period, Tenant shall have all remedies available to it at law or in equity. However, if such act or omission cannot, with due diligence and in good faith, be remedied within such period or cannot be cured simply by the payment of money, Landlord shall be allowed such further period of time as may be reasonably necessary provided that it commences remedying the same with due diligence and in good faith and thereafter diligently prosecutes such cure.

ARTICLE 19
NOTICES

Section 19.1 Notices. Any notice, request, or other communication (hereinafter severally and collectively called "notice") in this Lease provided for or permitted to be given, made or accepted by either party to the other must be in writing, and shall be given or be served by depositing the same in the United States mail, postpaid and certified and addressed to the party to be notified, with return receipt requested, or sending by commercial overnight delivery service. Notice given in any manner as provided in this Section 19.1 shall be effective only if and when received by the party to be notified. The following shall be prima facia evidence of the date of actual receipt of notice by the addressee: if hand delivered or sent by an overnight delivery service, by a delivery receipt signed by the addressee or the addressee's agent or representative, or written evidence by the carrier of such notice of the date of attempted delivery at the address of the addressee if such delivery is refused.

For purposes of notice, the addresses of the parties shall, until changed as herein provided, be as follows:

Landlord: **McKinney Community Development Corporation**

Attn: Cindy Schneible, Executive Director

Facsimile: _____

Telephone: _____

With a copy to:

City of McKinney

222 N. Tennessee

McKinney, TX 75069

Attn: Jason Gray, City Manager

Facsimile: 972-547-2607

with a copy to:

David G. Drumm
Carrington, Coleman, Sloman & Blumenthal, L.L.P.
901 Main Street, Suite 5500
Dallas, TX 75202
Phone: (214) 855-3032
Fax: (214) 758-3732

Tenant:

Attn: _____
Phone: _____
Fax: _____

However, the parties hereto and their respective heirs, successors, legal representatives, and assigns shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least ten days written notice to the other party.

ARTICLE 20
QUIET ENJOYMENT

Section 20.1 Quiet Enjoyment. Landlord covenants and agrees with Tenant that upon Tenant paying the Net Rent and Additional Rent and observing and performing all the terms, covenants and conditions on Tenant’s part to be observed and performed hereunder, Tenant may peaceably and quietly enjoy the Property hereby demised, subject, however, to the terms and conditions of this Lease.

ARTICLE 21
COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES

Section 21.1 Binding Effect. The covenants and agreements herein contained shall bind and inure to the benefit of Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns, and cannot be changed, modified or terminated orally, but only by an instrument in writing signed by both parties.

ARTICLE 22
ADDITIONAL RENT

Section 22.1 Additional Rent. Any monies or amounts due Landlord from Tenant at any time during the term of this Lease, or otherwise pursuant to the terms of this Lease, other than Net Rent, shall be deemed “Additional Rent”, and if Landlord, at any time, is pursuant to the terms of this Lease compelled to pay or elects to pay any sum of money or amount or to do any act which will require the payment of any sum of money, by reason of the failure of the Tenant to comply with any provision of this Lease that continues beyond any applicable notice and cure period provided herein, or if the Landlord is compelled to incur any expense, including,

without limitation, reasonable attorneys' fees and disbursements, as a result of any breach on the part of the Tenant that continues beyond any applicable notice and cure period provided herein, or in instituting, prosecuting and/or defending any action or proceeding arising by reason of any breach on the part of the Tenant under the terms of this Lease that continues beyond any applicable notice and cure period provided herein, the actual sum or sums so paid, or expenses so incurred by the Landlord, together with all Interest from the date such sums were paid or expense incurred through the date Tenant reimburses Landlord for such amounts, shall also be deemed Additional Rent under this Lease. Additional Rent shall be payable by Tenant to Landlord upon demand, unless otherwise set forth herein.

ARTICLE 23 **DEFINITIONS**

Section 23.1 Affiliate. "Affiliate" means any person or entity which, directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with the party in question.

Section 23.2 Interest. "Interest" shall mean a rate per annum equal to the lesser of 6% above the prime commercial lending rate of Bank of America, N.A., Dallas, Texas, charged to its customers of the highest credit standing for 90 day unsecured loans, in effect from time to time, or the maximum applicable legal rate, if any.

Section 23.3 Landlord. The term "Landlord" as used in this Lease means only the owner, or the mortgagee in possession, for the time being of the Property, so that in the event of any transfer of title of the said Property, the said transferor or Landlord shall be and hereby is entirely freed and relieved of all future covenants, obligations and liabilities of Landlord hereunder. The obligations contained in this Lease to be performed by Landlord shall, subject as aforesaid, be binding on Landlord's successors and assigns, only during their respective periods of ownership.

Section 23.4 Responsible Officer. "Responsible Officer" means, with respect to the subject matter of any covenant agreement or obligation of Tenant hereunder, the Chairman or Vice Chairman of the Board of Directors, the Chairman or Vice Chairman of the Executive Committee of the Board of Directors, the President, any Senior Vice President or Executive Vice President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Comptroller or any Assistant Comptroller, who in the performance of his or her operational responsibility would have knowledge of such matters and the requirements with respect thereto.

Section 23.5 Tenant. The term "Tenant," as used in this Lease, shall include more than one person if more than one person is Tenant and that if, at any time, the term "Tenant" shall include more than one person, the obligations of all such persons under this Lease shall be joint and several.

Section 23.6 Lease Year. "Lease Year" shall mean, in the case of the first Lease Year, the period commencing on the Commencement Date and ending on the last day of the 12th full calendar month following the Commencement Date. Each subsequent "Lease Year" shall mean

a period of 12 full calendar months beginning on the day after the expiration of the first Lease Year, and each subsequent annual anniversary of such day.

Section 23.7 Unavoidable Delays. “Unavoidable Delays” shall mean delays caused by strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions, enemy action, civil commotion, fire, terrorist action, epidemic, public utility failure, unavoidable casualty, moratorium or similar laws prohibiting performance or severe weather conditions or any other similar matter which shall be beyond the reasonable control of Tenant or Landlord, as the case may be; but the lack or insufficiency of funds shall not constitute an Unavoidable Delay nor shall the time for performing or complying with Tenant’s obligations under this Lease that can be performed by the payment of money (e.g., payment of Net Rent and Additional Rent, and maintenance of insurance) ever be extended by reason of Unavoidable Delays..

ARTICLE 24

NET LEASE; NONTERMINABILITY

Section 24.1 Net Lease. This is an absolutely net lease and the Net Rent, Additional Rent and all other sums payable hereunder by Tenant shall be paid without notice or demand therefor, and without any abatement, deduction, set-off, counterclaim, suspension or defense for any reason whatsoever.

Section 24.2 Non-Terminability. This Lease shall not terminate, nor shall Tenant have any right to terminate this Lease, nor shall Tenant be entitled to any abatement or (except as otherwise expressly provided in Article 7) reduction of Net Rent or Additional Rent hereunder, nor shall the obligations of Tenant under this Lease be affected, by reason of subject to Article 6, any damage to or destruction of all or any part of the Property from whatever cause, subject to Article 7, the taking of the Property or any portion thereof by condemnation, requisition or otherwise, the prohibition, limitation or restriction of Tenant’s use of all or any part of the Property, or any interference with such use, Tenant’s acquisition or ownership of all or any part of the Property otherwise than as expressly provided herein, any default on the part of Landlord under this Lease, or under any other agreement to which Tenant and Landlord may be parties, the failure of Landlord to deliver possession of the Property on the commencement of the term hereof or any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, that the Net Rent, the Additional Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events and that the obligations of Tenant hereunder shall continue unaffected unless the requirement to pay or perform the same shall have been terminated pursuant to any express provision of this Lease.

Section 24.3 Tenant Remains Obligated. Tenant agrees that it will remain obligated under this Lease in accordance with its terms, and that it will not take any action to terminate, rescind or avoid this Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up or other proceeding affecting Landlord or its successor in interest, or any action with respect to this Lease which may be taken by any trustee or receiver of Landlord or its successor in interest or by any court in any such proceeding.

Section 24.4 Tenant's Waivers. Tenant waives all rights which may now or hereafter by conferred by law to quit, terminate or surrender this Lease or the Property or any part thereof, to any abatement, suspension, deferment or reduction of the Net Rent, Additional Rent or any other sums payable under this Lease, except as otherwise expressly provided herein, or to cause Landlord to make repairs to the Premises at Landlord's expense.

ARTICLE 25 **HAZARDOUS MATERIAL**

Section 25.1 Hazardous Material. Tenant shall comply, and cause the Property to comply, with all Environmental Laws (as hereinafter defined) applicable to the Property (including, without limitation, the making of all submissions to governmental authorities required by Environmental Laws and the carrying out of any remediation program specified by such authority), shall not use or permit the Property to be used for the generation, manufacture, refinement, production, or processing of any Hazardous Material (as hereinafter defined) or for the storage, handling, transfer or transportation of any Hazardous Material, except for such materials that are used in the ordinary course of Tenant's business provided such materials are properly stored, used and disposed of in a manner and location satisfying all Environmental Laws, shall not permit to remain, install or permit the installation on the Property of any surface impoundments, underground storage tanks, or asbestos or asbestos-containing materials, and shall cause any alterations of the Property to be done in a way so as to not expose in an unsafe manner the persons working on or visiting the Property to Hazardous Materials and in connection with any such alterations shall remove in compliance with Environmental Laws any Hazardous Materials present upon the Property which are not in compliance with Environmental Laws or which present a danger to persons working on or visiting the Property.

Section 25.2 Environmental Laws. "Environmental Laws" means the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§6901, et. seq. (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9601 et seq. (CERCLA), the Toxic Substance Control Act, as amended, 15 U.S.C. §§2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §§136 et seq., and all applicable federal, state and local environmental laws, ordinances, orders, rules and regulations, as any of the foregoing may have been or may be from time to time amended, supplemented or supplanted, and any other federal, state or local laws, ordinances, orders, rules and regulations, now or hereafter existing relating to regulations or control of Hazardous Material or materials. The term "Hazardous Materials" as used in this Lease shall mean substances defined as "hazardous substances", "hazardous materials", "hazardous wastes" or "toxic substances" in any applicable federal, state or local statute, rule, regulation or determination, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§1801, et seq.; the Resource, Conservation and Recovery Act of 1976, 42 U.S.C. §§6901, et seq.; and, asbestos, pcb's, radioactive substances, methane, volatile hydrocarbons, petroleum or petroleum-derived substances or wastes, radon, industrial solvents or any other material as may be specified in applicable law or regulations.

Section 25.3 Indemnification. Tenant agrees to protect, defend, indemnify and hold harmless Landlord, its directors, officers, employees and agents, and any successors to Landlord's interest in the chain of title to the Property, their direct or indirect partners, directors, officers, employees, and agents, from and against any and all liability, including, without limitation, all foreseeable and all unforeseeable damages including but not limited to attorney's and consultant's fees, fines, penalties and civil or criminal damages, directly or indirectly arising out of the use, generation, storage, treatment, release, threatened release, discharge, spill, presence or disposal of Hazardous Materials from, on, at, to or under the Property prior to or during the term of this Lease, and including, without limitation, the cost of any required or necessary repair, response action, remediation, investigation, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following transfer of title to the Property. This agreement to indemnify and hold harmless shall be in addition to any other obligations or liabilities Tenant may have to Landlord at common law under all statutes and ordinances or otherwise, and shall survive the expiration or earlier termination of this Lease. Tenant expressly agrees that the representations, warranties and covenants made and the indemnities stated in this Lease are not personal to Landlord, and the benefits under this Lease may be assigned to subsequent parties in interest to the chain of title to the Property, which subsequent parties in interest may proceed directly against Tenant to recover pursuant to this Lease.

ARTICLE 26

FINANCIAL INFORMATION AND REPRESENTATIONS

Section 26.1 Financial Statements. Tenant shall provide to Landlord annual audited consolidated financial statements within 90 days after each fiscal year of Tenant, prepared in accordance with generally accepted accounting principles consistently applied, and accompanied by a report and unqualified opinion of a nationally recognized firm of independent certified public accountants selected by Tenant (except that a qualification for a change in accounting principles with which such firm of independent certified public accountants concurs shall be permitted), and quarterly unaudited consolidated financial statements within 45 days after each fiscal quarter of Tenant, prepared in accordance with generally accepted accounting principles, together with a certification by a Responsible Officer of Tenant that the information contained in such financial statements fairly presents the financial position of Tenant and its Subsidiaries on the date thereof (subject only to year-end adjustments).

Section 26.2 Representations and Warranties of Tenant. Tenant represents and warrants to Landlord that:

(a) Tenant is a duly organized and validly existing _____ in good standing under the laws of the jurisdiction of its incorporation, and is duly qualified as a foreign corporation and in good standing in the State of Texas.

(b) Tenant has full power and authority, and has taken all actions necessary, to enter into this Lease. The execution and delivery of, and the performance by Tenant of its obligations under, this Lease have been duly authorized by all requisite corporate action on the part of Tenant, and does not violate any provision of any law, rule, regulation, order, writ, judgment, decree, determination or award, violate or conflict with, result in a breach of, any of

the provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien upon any of the property or assets of Tenant pursuant to the terms of, any indenture, loan agreement or other agreement or instrument to which Tenant is a party, or by which it or any of its property is bound or to which it may be subject, or violate any provision of any document or instrument (including articles of incorporation and by-laws) relating to the due organization and formation of Tenant or to which it may be subject.

(c) This Lease has been duly executed by or on behalf of Tenant and constitutes the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally.

(d) No authorization, consent, approval, license, or formal exemption from, nor any filing, recording, declaration or registration with, any federal, state, local or foreign court, governmental agency or regulatory authority is required in connection with the execution, delivery and performance of this Lease, or the legality, validity, binding effect or enforceability of this Lease.

(e) To the best current actual knowledge of Tenant, Tenant is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls), except such noncompliance as would not, in the aggregate, have a material adverse effect on the business, operations, assets or financial condition of Tenant.

ARTICLE 27 **MISCELLANEOUS**

Section 27.1 Brokerage. Tenant represents and warrants that no broker or finder procured this Lease and that Tenant had no conversations or negotiations with any broker concerning the leasing of the Property. Tenant shall indemnify, defend and hold harmless Landlord against all liability in connection with a breach of Tenant's representation and warranty in this Article and in connection with any claim for a brokerage or finder's commission or fee arising out of any conversations or negotiations had by Tenant with any broker. This indemnification shall survive the expiration or earlier termination of this Lease.

Section 27.2 Separability. If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision shall be valid and be enforced to the fullest extent permitted by law.

Section 27.3 Estoppel Certificates. Each party agrees at any time, and from time to time, upon not less than fifteen days' prior written request from the other party, to execute, acknowledge and deliver to the other party a statement in writing, certifying (if true) 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), the dates to which the Net Rent and Additional Rent have been paid and whether or not to the best knowledge of the party executing such statement this Lease is then in default or whether any events have occurred which, with the giving of notice or the passage of time, or both, could constitute a default hereunder, it being intended that any such statement delivered pursuant to this Section may be relied upon by the party which requested the statement to be executed and by any prospective assignee of this Lease from Landlord, or purchaser of the fee interest in the Property.

Section 27.4 Entire Agreement. The parties hereto agree that this Lease constitutes the only agreement between them with respect to the Property and that no oral representations or no prior written matter extrinsic to this instrument shall have any force or effect. Tenant agrees that it has signed this Lease fully aware of the condition of the Property and all other matters relative thereto and is not relying on any representations or agreements other than those (if any) contained in this Lease.

Section 27.5 Recording. Tenant shall not record this Lease or any memorandum hereof without the prior written consent of Landlord, which consent may be withheld or denied in the sole and absolute discretion of Landlord. The foregoing notwithstanding, Tenant and Landlord shall execute and record a written Memorandum providing public notice of this Lease, and Tenant's option to purchase the Property set forth in Exhibits B hereto. The form of Memorandum of Lease to be executed by Landlord and Tenant is contained in Exhibit C attached hereto. Tenant grants to Landlord a power of attorney to execute and record a release releasing any such recorded instrument of record that was recorded without the prior written consent of Landlord.

Section 27.6 Specific Performance. Whenever in this Lease Landlord covenants not to unreasonably withhold or delay its consent or approval, if Landlord shall refuse such consent or approval, then Tenant's sole remedy shall be for specific performance of any such covenant and in no event shall Tenant be entitled to any money damages for a breach of such covenant.

Section 27.7 Landlord's Liability. Notwithstanding anything contained to the contrary in this Lease, whether express or implied, it is agreed that Tenant will look only to Landlord's fee interest in and to the Property, for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of a breach or default under this Lease by Landlord, and no other property or assets of Landlord or its directors, officers, shareholders, partners, joint venturers or other principals (disclosed or undisclosed) shall be subject to suit or to levy, execution or other enforcement procedures for the satisfaction of any such judgment (or other judicial process), and, subject to Section 27.6, any liability of Landlord under this Lease shall be limited to Tenant's actual direct, but not consequential, damages. Additionally, Tenant hereby waives its statutory lien under Section 91.004 of the Texas Property Code. Landlord waives all contractual, statutory and constitutional liens held by Landlord on Tenant's personal property, goods, equipment, inventory, furnishings, chattels, accounts and assets ("Tenant's Property") to secure the obligations of Tenant under this Lease until such time as Landlord may obtain an enforceable judgment against Tenant from a court with jurisdiction of Tenant or Tenant's Property, at which time Landlord shall have such lien rights at law and in equity to enforce and collect such judgment and Tenant's obligations under this Lease.

Section 27.8 Records and Books of Account. Tenant shall at all times keep and maintain full and correct records and books of account of the operations of the Property in accordance with generally accepted accounting principles consistently applied and shall accurately record and preserve the records of such operations. Upon an Event of Default, Tenant shall permit Landlord and Landlord's accountants access to such Property records, with the right to make copies and excerpts therefrom upon reasonable advance notice to Tenant.

Section 27.9 Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or of any provisions thereof, or in any way affect this Lease.

Section 27.10 Number and Gender. The use herein of the singular shall include the plural, and the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant.

Section 27.11 Governing Law. This Lease shall be governed by the laws of the State of Texas in all respects including, without limitation, the validity, construction and performance thereof. Notwithstanding the foregoing, this Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted.

Section 27.12 Landlord's Fees. Whenever Tenant requests Landlord to take any action not required of it hereunder or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for Landlord's reasonable, out-of-pocket costs payable to third parties and incurred by Landlord in reviewing the proposed action or consent, including reasonable attorneys', engineers' or architects' fees, within 30 days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

Section 27.13 Joint and Several Liability. If Tenant is comprised of more than one party, each such party shall be jointly and severally liable for Tenant's obligations under this Lease. All unperformed obligations of Tenant at the end of the Term shall survive.

Section 27.14 No Merger. There shall be no merger of the leasehold estate created hereby by reason of the fact that the same person or entity may own directly or indirectly, the leasehold estate created hereby or any interest in this Lease or such leasehold estate and the fee estate in the Property.

Section 27.15 Legal Interpretation; Venue. THIS LEASE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE INTERPRETED, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. LANDLORD AND TENANT STIPULATE THAT ALL DISPUTES ARISING FROM THIS LEASE SHALL BE RESOLVED IN THE FEDERAL DISTRICT COURT IN WHICH DISTRICT DALLAS COUNTY, TEXAS IS LOCATED OR IN STATE COURT LOCATED IN DALLAS COUNTY, TEXAS.

Section 27.16 No Mortgage or Joint Venture. Tenant and Landlord acknowledge and agree that this Lease is, in fact, a lease arrangement, and does not constitute a loan or a joint venture, and that Tenant has been represented by experienced legal counsel, who has advised Tenant of the rights and duties of Tenant. Tenant will not assert that the transaction evidenced hereby is a loan or a joint venture if Landlord subsequently seeks to enforce its legal rights as a landlord.

Section 27.17 Direction of Tenant's Energies. Tenant acknowledges that Landlord's benefit to be derived from its financial investment in the construction of improvements on the Property pursuant to the Development Agreement will be substantially reduced if during the Term of this Lease either Tenant or any person, corporation, partnership, limited liability company, or other entity, directly or indirectly controlling, controlled by or under common control with Tenant shall directly or indirectly operate, manage, conduct, or have an interest in any other hotel or lodging establishment within commercial proximity of the Property. Accordingly, Tenant agrees, during the Term of this Lease, that neither Tenant nor any person, corporation, or other entity directly or indirectly controlling, controlled by or under common control with Tenant (and also, in the event Tenant is a corporation or other entity, if any officer or director thereof or shareholder or other owner owning more than 10% of the outstanding stock or other ownership interest thereof, or any parent subsidiary related or affiliated corporation), shall directly or indirectly commence operation of any hotel or lodging facility or in any manner compete with the business conducted on the Property within a straight line radius of five miles of the Property (which Tenant acknowledges is a reasonable area for purposes of this provision); and any such prohibited event shall constitute an Event of Default hereunder.

Section 27.18 Tenant's Financing and Leasehold Mortgage Provisions. Exhibit A contains provisions regarding Tenant's financing and leasehold mortgage rights.

Section 27.19 Tenant's Option to Purchase the Property. Exhibit B contains provisions regarding Tenant's option to Purchase the Property (including the Declarant Rights) for the Hotel Unit Fee Purchase Price. Upon Tenant's acquisition of the Property pursuant to such option to purchase, this Lease shall terminate and be of no further force or effect, and Landlord and Tenant shall enter into such easements and access agreements as may be necessary with respect to parking, utilities, and other matters to be agreed upon by Landlord and Tenant. As used herein, the "Hotel Unit Fee Purchase Price" means that value calculated as follows: (a) in the case of an exercise of Tenant's Option to Purchase the Property: (i) within seven (7) years after the Commencement Date of this Lease, if no state tax rebates are obtained with respect to the Property, or (ii) within ten (10) years and three (3) months after the Commencement Date of this Lease if state tax rebates are obtained with respect to the Property, the Purchase Price shall be \$908,495.00; and (b) in the case of an exercise of Tenant's Option to Purchase the Property at any other time, the fair market value of the Property as of the date of such exercise, as determined by a mutually agreeable, hospitality-oriented appraisal firm taking into consideration the limitations, encumbrances, and restrictions recorded against the Hotel Unit.

Section 27.20 Waiver of Sovereign Immunity. Pursuant to Section 271.152 of the Texas Local Government Code, Landlord hereby waives its sovereign immunity with respect to any causes of action, rights of indemnity, and remedies available to Tenant in connection with Landlord's indemnity obligations and breaches of Landlord's duties under this Lease.

Section 27.21 Transfers of Ownership of the Property by Landlord. Except in connection with the exercise by Tenant of Tenant's option to purchase the Property as set forth in Exhibit C, Landlord agrees that it will not transfer ownership of the Property during such time as Landlord's ownership of the Property remains a condition to the ongoing validity of the Economic Development Agreement dated _____, between _____ and _____.

Section 27.22 Leasehold Title Examination. Landlord shall order from Republic Title of Texas, Inc. ("**Title Company**"), Attn: Nancy Colaluca, 2626 Howell Street, 10th Floor, Dallas, Texas 75204, ncolaluca@republictitle.com, a commitment for a policy of leasehold title insurance (including legible copies of the documents referenced therein) ("**Title Commitment**") setting forth the state of title to the Premises and all exceptions thereto that would appear in such a policy. Tenant may advise Landlord of any unacceptable exceptions in the Title Commitment, and Landlord shall undertake to eliminate or modify such unacceptable exceptions to Tenant's reasonable satisfaction. If Landlord does not eliminate or modify such unacceptable exceptions within thirty (30) days after being advised of same, Tenant may terminate this Lease. Tenant shall bear the cost of any leasehold owner's policy of title insurance that Tenant may elect to acquire.

Section 27.23 Encumbrances. During the Term of this Lease, without the prior written consent of Tenant, which may be granted or withheld in Tenant's sole discretion, Landlord will not enter into any new agreement or permit the recording of an instrument which would encumber the Premises, nor will Landlord modify or permit the modification of any existing encumbrance, including, without limitation, any modification to the Condominium Declaration.

Section 27.24 Assignment of Declarant's Rights. During the Term of this Lease and during such time as an Event of Default does not exist under this Lease, Landlord assigns and sets over unto Tenant any of Landlord's rights or interests as Declarant under the Condominium Declaration, such that Tenant may act as the Declarant and Tenant shall have the right to appoint such persons to serve on the Board of Directors of the association established by the Condominium Declaration as Landlord would otherwise be entitled to appoint (collectively, the "Declarant Rights"). In addition, Landlord hereby transfers and assigns to Tenant and acknowledges and agrees that Tenant shall have the right to exercise any and all voting rights allocated to Landlord in its capacity as an "Owner" of a "Unit" with respect to any matter coming before the membership of the association under the Condominium Declaration for a vote. Upon the acquisition of the Hotel Unit by Tenant or an affiliate or successor or assign pursuant to Tenant's option to purchase the Hotel Unit, such assignment of Declarant's rights would be permanently conveyed to such purchaser.

Section 27.25 Prior Public Investment. Tenant acknowledges that in addition to the Public Incentive Investment committed by the Landlord under the Development Agreement, the Landlord has heretofore made a significant investment in the Property by acquiring the Hotel Unit and funding the cost of site improvements and the partially completed vertical structures on the Land. In order to mitigate the cost to the public of the Landlord in connection with the Property, the Landlord shall be entitled to recover the following amounts in mitigation of the Public Incentive Investment:

(a) Subsidy Return. Landlord shall pay over to Tenant fifty percent (50%) of all reimbursements, abatements, rebates and refunds received by Developer from the State of Texas with regard to hotel occupancy taxes, alcoholic beverage taxes, and sales and use taxes imposed in connection with the Hotel and Event Center for the first five years the Hotel Complex is open for business and seventy-five percent (75%) of all such reimbursements, abatements, rebates, and refunds for periods thereafter, as and when such reimbursements, abatements, rebates and refunds are received.

(b) Share of Net Equity Proceeds. In connection with the initial transfer by Tenant of this Lease to a non-affiliated third party, Tenant shall pay over to Landlord a fifty percent (50%) portion of the Net Equity Proceeds derived from such sale.

(c) Definitions. As used in this Section 27.25, the following terms have the following meanings:

“Net Equity Proceeds” means that portion of proceeds derived from the initial sale of this Lease and Event Center Lease by Tenant to a non-affiliated third party, which remains after the payment of arm’s length, third party closing costs, transfer costs, repayment of the Tenant’s mortgage, any other payments required by the purchase and sale agreement for the sale and an amount required such that Private Equity Investment from distributions of net operating income and proceeds from a sale of this Lease and the Event Center Lease equal a thirty percent (30%) Internal Rate of Return.

“Internal Rate of Return” means the annualized effective compounded return rate that makes the net present value of all cash flows (both positive and negative) from the Private Equity Investment equal to zero.

EXAMPLE:

Initial Investment	Cash Flow Year 1 – Under Const	Cash Flow Year 2	Cash Flow Year 3	Cash Flow Year 4+ Sales Proceeds
(\$5,000,000)	\$0	\$250,000	\$500,000	\$8,500,000
IRR = 17.18%				

“Private Equity Investment” shall mean the cumulative capital investment made by all persons as equity investments in Tenant. This shall include any capital advanced prior to or during the commencement of construction as well as any additional capital advanced following the completion of the hotel until the sale thereof by Tenant.

“Public Incentive Investment” shall mean the amount actually funded by the City of McKinney pursuant to or in furtherance of the Development Agreement for the completion of the hotel project at the Property, or which the City may otherwise elect to fund in its sole discretion. The Public Incentive Investment shall include payments made by the City pursuant to Part II – Binding Provisions of that certain letter agreement dated June 27, 2012, regarding the

“McKinney Gateway Hotel and Event Center Project” between the City of McKinney, MCDC, Champ Hospitality, LP, and Beck Development, LLC (the latter two parties being Affiliates of Developer).

Section 27.26 Franchise Agreement Termination. In the event that a Franchise Agreement with an approved Franchisor is terminated during the Mandatory Franchise Period, the following provisions shall apply:

(a) If the approved Franchisor terminates the Franchise Agreement due to a default by Owner under the Franchise Agreement and Owner fails to enter into a new Franchise Agreement with a Replacement Franchisor approved by the City within one hundred twenty (120) days thereafter, then on the first day of each calendar month during the period commencing on the expiration of that one hundred twenty (120) day period and concluding on the earlier of (i) the date on which the operation of the Hotel under a new Franchise Agreement with an approved replacement Franchisor begins, or (ii) the last day of the Mandatory Franchise Period, Owner shall pay the City the Franchise Termination Payment. The City shall not withhold, condition or delay its approval of a replacement Franchisor if the replacement Franchisor has an Approved Hotel Brand.

(b) If (i) the Franchise Agreement is terminated for any reason other than a termination by the approved Franchisor due to a default by Owner under the Franchise Agreement (including without limitation, if Franchisor ceases to exist as a separate brand name of hotel or a certain Franchise location, including the Hotel being sold to a new Franchisor unless as a result of merger, name change or similar action creating a legal successor in interest as provided herein), and (ii) Owner fails to enter into a new Franchise Agreement with a replacement Franchisor approved by the City within six (6) months thereafter, then Owner shall pay the Franchise Termination Payment to the City on the first day of each month during the period commencing on the expiration of that six (6) month period and concluding on the earlier of (x) the date that the operation of the Hotel under the new Franchise Agreement with the approved replacement Franchise begins, or (y) the last day of the Mandatory Franchise Period. The City shall not withhold, condition or delay its approval of the replacement Franchisor if the Replacement Franchisor has an Approved Hotel Brand.

(c) As used in this Section 27.26, the following terms have the following meanings:

“Franchise Agreement” shall mean an executed Franchise Agreement between Tenant and the Franchisor.

“Franchisor” means a company which engages in the hotel lodging business and which grants to a developer or owner of a hotel the right and license to own and operate the hotel in the name of the hotel brand registered by the Franchisor pursuant to a franchise agreement between the Tenant and the Franchisor. “Franchisor” shall include any legal successor-in-interest, whether by merger, name change or similar action to any entity serving as Franchisor hereunder or under the Franchise Agreement.

"Franchise Termination Payment" means the fee that shall be paid by the Tenant to Landlord if the Franchisor properly terminates the Franchise Agreement, as a result of a default by Tenant at any time during the first ten (10) years of the term of this Lease. The payment shall be as follows--\$50,000 in the first year of the term of this Lease, \$45,000 in the second year of the term of this Lease, \$40,000 in the third year of the term of this Lease, \$35,000 in the fourth year of the term of this Lease, \$30,000 in the fifth year of the term of this Lease, \$25,000 in the sixth year of the term of this Lease, \$20,000 in the seventh year of the term of this Lease, \$15,000 in the eighth year of the term of this Lease, \$10,000 in the ninth year of the term of this Lease, and \$5,000 in the tenth year of the term of this Lease . There shall be no Franchise Termination Payment due after the expiration of the tenth year of the term of the Hotel Ground Lease.

"Approved Hotel Brand" means any one of the following brands: Westin, Sheraton, Le Meridien, Marriott, Renaissance, JW Marriott, Autograph by Marriott, Hilton, Hilton Embassy Suites, Hilton Doubletree, Wyndham Hotels and Resorts, Omni, or Intercontinental Hotel.

"Mandatory Franchise Period" means the period commencing on the issuance of the Certificate of Occupancy for the Hotel and continuing for a period of fifteen (15) years thereafter.

"Replacement Franchisor" means a Franchisor selected by Tenant with which Tenant enters into a Franchise Agreement for the Hotel following any termination of the Franchise Agreement with an approved Franchisor.

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Executed as of the date first written above.

LANDLORD:

**MCKINNEY COMMUNITY DEVELOPMENT
CORPORATION,
a Texas nonprofit corporation**

By: _____

Name: _____

Title: _____

TENANT:

_____,

a _____

By: _____

Name: _____

Title: _____

EXHIBIT A

TENANT'S FINANCING AND LEASEHOLD MORTGAGE PROVISIONS

1. Tenant's Financing. Landlord acknowledges that Tenant will obtain financing for construction of the hotel improvements and that Tenant's lender or lenders (collectively the "Tenant's Mortgagee") will require a leasehold mortgage (the "Mortgage") on Tenant's leasehold interest in the Property and all fixtures and improvements of Tenant (collectively the "Leased Property"). Notwithstanding anything herein to the contrary, Landlord specifically agrees to subordinate for the benefit of Tenant's Mortgagee, and with respect to all present and future obligations of or secured by Tenant to Tenant's Mortgagee, any right or interest in the leasehold estate or improvements that would or might be prior to the security interests of Tenant's Mortgagee. Landlord further agrees to non-disturbance and attornment to Tenant's Mortgagee, including, *inter alia*, agreeing to the following terms and conditions of Tenant's Mortgagee:

(a) Negative Pledge Agreement. Landlord will agree that, for so long as any part of the obligation secured by the Mortgage remains outstanding, or Tenant's Mortgagee has any commitment to advance funds to Tenant, Landlord will not, without first obtaining the prior written consent of Tenant's Mortgagee (which consent may be granted or withheld in Tenant's Mortgagee's sole and absolute discretion), create or permit any lien, encumbrance, charge, or security interest of any kind to exist on the Leased Property, the Lease, or any interest of Landlord in the Leased Property or the Lease. Landlord further agrees that Landlord will not transfer, sell, assign or in any manner dispose of the Leased Property or the Lease.

(b) No Amendment. The Lease shall not be modified or amended in any manner without the prior written consent of Tenant's Mortgagee, which consent will not be unreasonably withheld provided that such modification or amendment does not in any way adversely affect Tenant's Mortgagee, does not increase the rent or otherwise increase Tenant's financial obligations under the Lease or, in Tenant's Mortgagee's reasonable judgment, does not adversely impact Tenant's intended use of the Leased Property.

(c) Duplicate Notice to Tenant's Mortgagee. Landlord shall give to Tenant's Mortgagee a duplicate copy of any and all notices which Landlord gives to Tenant pursuant to the terms of the Lease, including notices of default, and no such notice shall be effective as to Tenant's Mortgagee until such duplicate copy is actually received by Tenant's Mortgagee, in the manner provided in the Lease.

(d) Cancellation or Termination. There shall be no cancellation, surrender, or termination of the Lease by joint action of Landlord and Tenant without the prior written consent of Tenant's Mortgagee, nor shall the Lease be canceled or terminated by any action of Landlord unless Landlord provides Tenant and Tenant's Mortgagee the notice of default and opportunity to cure set forth in this Lease and, with respect to Tenant's Mortgagee, as set forth herein, and neither Tenant nor Tenant's Mortgagee cures such default within the applicable cure period.

(e) Default and Tenant's Mortgagee's Rights. If an Event of Default should occur under the Lease, then Landlord specifically agrees that Landlord shall not enforce or seek to enforce any of its rights, recourses, or remedies, including but not limited to termination of the

Lease or Tenant's right to possession under the Lease, until a notice specifying the event giving rise to such Event of Default has been received by Tenant's Mortgagee, and expiration of Tenant's Mortgagee's right to cure such Default.

(f) New Tenant. Should the Lease be terminated for any reason other than expiration of the stated term or Tenant's exercise of its option to purchase the Property hereunder, Tenant's Mortgagee shall have the right and option, exercisable by delivering notice to Landlord of such termination (which notice Landlord agrees to give) to elect to receive, in its own name or in the name of its nominee or assignee ("New Tenant"), which New Tenant must be reasonably acceptable to Landlord, a new lease of the Property for the unexpired balance of the term on the same terms and conditions as herein set forth, having the same balance priority as the Lease, and Landlord agrees to execute such new lease.

(g) Limitation of Tenant's Mortgagee's Liability. Tenant's Mortgagee shall not be or become liable to Landlord as an assignee of the Lease until such time as Tenant's Mortgagee, by foreclosure or other procedures, shall either acquire the rights and interest of Tenant under the Lease or shall actually take possession of the Leased Property, and upon Tenant's Mortgagee's assigning such rights and interest to another party or upon relinquishment of such possession, as the case may be, Tenant's Mortgagee shall have no further such liability.

2. Landlord Estoppels. So long as a Mortgage is in existence, Landlord shall provide an estoppel certificate to Tenant's Mortgagee within 20 days of Landlord's receipt of a written request from Tenant's Mortgagee. The estoppel certificate must (a) confirm that Landlord consents to the Mortgage, (b) identify (i) the terms of the Lease, and (ii) all documents evidencing the Lease, (c) certify that there have been no unapproved changes to the Lease and that it is in full force and effect, (d) confirm that there are no known defaults pending under the terms of the Lease and no conditions exist, which but for the giving of notice or passage of time, would result in a default under the Lease, (e) state the date through which rent has been paid, and (f) contain such other provisions as may be necessary to satisfy any requirement that is not already contained in the Lease.

3. Declarant Estoppels. During such time as Landlord or an affiliate is the declarant under the Declaration, such declarant shall provide an estoppel certificate to Tenant's Mortgagee within 20 days of Landlord's receipt of a written request from Tenant's Mortgagee confirming such matters as Tenant's Mortgagee may reasonably require.

4. Tri-Party Agreement. At the closing of Tenant's loan, the City of McKinney, McKinney Community Development Corporation ("MCDC"), Tenant and Tenant's Mortgagee shall enter into a mutually acceptable "Tri-Party Agreement" (herein so called) setting forth their respective rights and obligations. In addition to the requirements of Landlord set forth in Paragraph 1 above, the Tri-Party Agreement shall include the following requirement of Tenant's Mortgagee:

(a) Duplicate Notice to Landlord. Tenant's Mortgagee shall give to Landlord a duplicate copy of any and all notices which Tenant's Mortgagee gives to Tenant pursuant to the terms of the Mortgage and other agreements and instruments relating thereto (collectively, the "Loan Facility"), including notices of default, and no such notice shall be effective as to

Landlord until such duplicate copy is actually received by Landlord, in the manner provided in the Loan Facility.

(b) Default and Landlord's Rights. Provided that Tenant is not required to incur any additional fees or costs in connection with the granting of such request by Tenant's Mortgagee, Tenant will seek to obtain from Tenant's Mortgagee an agreement that Landlord shall be permitted to acquire the Loan Facility from Tenant's Mortgagee following an event of default thereunder by Tenant.

EXHIBIT B

TENANT'S OPTION TO PURCHASE THE PROPERTY

Pursuant to the terms of Section 27.19 of this Lease, Landlord grants to Tenant the right to purchase all of Landlord's right, title and interest in and to the Property from Landlord (the "Option") at any time during the period beginning on the date hereof through and including the day which is the last day of the Term of the Lease (such period hereinafter referred to as the "Option Period") subject to the conditions set forth in this Exhibit B.

Tenant shall deliver to Landlord written notice (the "Notice") of Tenant's exercise of the Option at any time prior to the expiration of the Option Period. Within twenty (20) days following Tenant's delivery to Landlord of the Option Notice, Landlord shall deliver to Tenant a form of purchase and sale agreement, on the terms and conditions contained herein, and pursuant to which Landlord will offer to sell the Property to Tenant (the "Sale Contract"). The Sale Contract shall provide, among other things, (i) that the purchase price for the Property shall be an amount equal to the Hotel Unit Fee Purchase Price described in Section 27.19 above, and (ii) that any and all of Landlord's Declarant Rights shall be assigned to Tenant at the closing of such purchase.

The closing of the transaction contemplated hereby shall occur on the date which is thirty (30) days from the date the Sale Agreement is executed or such earlier or later date as may be mutually agreed upon by Landlord and Tenant in writing (the "Closing Date"). On the Closing Date, (i) Tenant shall pay the Hotel Unit Fee Purchase Price to Landlord, and (ii) Landlord shall deliver to Tenant, (A) a recordable warranty deed conveying the Property to Tenant, (B) a recordable assignment of the Declarant Rights, and (C) such other additional documents and instruments as in the mutual opinion of Tenant's counsel and Landlord's counsel are reasonably necessary to the proper consummation of this transaction.

The covenants and agreements in this Exhibit B shall bind and inure to the benefit of Landlord and Tenant and their respective successors and assigns, and cannot be changed, modified or terminated orally, but only by an instrument in writing signed by both parties.

EXHIBIT C

FORM OF MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (“Memorandum”) is entered into as of the ____ day of October 2012, by and between McKinney Community Development Corporation, a Texas nonprofit corporation (the “Landlord”), and _____, a _____ (the “Tenant”), with reference to the following facts:

Pursuant to that certain Lease Agreement by and between Landlord and Tenant dated of even date herewith (the “Lease”), Landlord leases to Tenant and Tenant leases from Landlord that certain property located in McKinney, Collin County, Texas, and more particularly described on Exhibit A attached hereto and made a part hereof. The initial term of the Lease commences on the Commencement Date (as defined in the Lease) and ends at 11:59 p.m. on December 31st during the year which is ninety-nine (99) years after the year in which the Commencement Date occurs.

Pursuant to Section 27.19 and Exhibit B of the Lease, Landlord grants Tenant an option to purchase the Property at any time during the term of the Lease, which option shall bind and inure to the benefit of Landlord and Tenant and their respective successors and assigns, and cannot be changed, modified or terminated orally, but only by an instrument in writing signed by both parties. In the event that Tenant exercises its option to purchase the Property, Landlord shall transfer all of Landlord's Declarant Rights (as defined in the Lease) under that certain Condominium Declaration for the McKinney Condominium (as described in the Lease).

Except in connection with the exercise by Tenant of Tenant's option to purchase the Property, Landlord agrees that it will not transfer ownership of the Property during such time as Landlord's ownership of the Property remains a condition to the ongoing validity of that certain Economic Development Agreement (as described in the Lease).

Landlord and Tenant have executed this Memorandum solely for the purpose of recording the same in the office of the public records of Collin County, Texas, and it is subject in each and every respect, to the rents and other terms, covenants and conditions of the Lease.

This Memorandum is executed and delivered with the understanding and agreement that the same shall not in any manner or form whatsoever, alter, modify or vary the rents and other terms, covenants and conditions of the Lease. In the event of any conflict or inconsistency between the terms, covenants and conditions of the Lease and the provisions of this Memorandum, the terms, covenants and conditions of the Lease shall control.

[Signatures on following page.]

EXHIBIT A
to Memorandum of Lease

DESCRIPTION OF THE PROPERTY

The Hotel Unit, as created and defined in the Condominium Declaration for the McKinney Condominium, recorded in the Official Records of Collin County, Texas, as Document No. 20080229000237480, as amended by the Amended and Restated Condominium Declaration of even date therewith.

DALLAS_1 5945210v3