

## **ECONOMIC DEVELOPMENT AGREEMENT**

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement"), entered into by and between The City of McKinney, Texas, a municipal corporation, organized and existing pursuant to the laws of the State of Texas (the "City"), and \_\_\_\_\_, a \_\_\_\_\_, its successors and assigns ("Owner");

### WITNESSETH:

**WHEREAS**, the City may provide incentives promoting economic development pursuant to Chapter 380 of the Texas Local Government Code, which authorizes grants of a municipality's general funds pursuant to a "program" to stimulate business and commercial activity within the corporate limits of such municipality, and hereby adopts a "program" for the purposes more specifically identified in this Agreement; and

**WHEREAS**, the City has resolved to utilize the provisions of Chapter 380 of the Texas Local Government Code to incentivize the development of the Hotel Complex defined below; and

**WHEREAS**, the City, \_\_\_\_\_, a \_\_\_\_\_ ("Developer") and McKinney Community Development Corporation, a Texas nonprofit corporation ("MCDC"), entered into that certain Hotel and Event Center Development Agreement of even date herewith (the "Development Agreement") with respect to the development of a hotel and event center by Developer (the "Hotel Complex") on land owned by the City and MCDC within the McKinney Gateway project area; and

**WHEREAS**, Owner and City have agreed to enter into this Agreement, pursuant to which the City will make grants out of its general funds to Owner in conjunction with development of the Hotel Complex;

**NOW, THEREFORE**, in consideration of the foregoing, and the terms and conditions hereinafter set forth, the parties agree as follows:

1. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings given them in the Development Agreement.

2. Grants. Upon Substantial Completion of the Hotel Complex within the time required under the Development Agreement, the City will make economic development grants (the "Grants") to Owner, from lawfully available funds, in amounts equal to one hundred percent (100%) of the ad valorem real property taxes assessed and paid upon the value of the Hotel Unit and the Event Center Unit for ten (10) years beginning with January 1 of the year after the date on which Substantial Completion of the Hotel Complex occurs. Upon payment of each year's ad valorem assessment against the Hotel Unit and Event Center Unit made by the City, Owner or its successors or assigns will promptly furnish the City with a paid receipt showing payment in full of such taxes for the applicable tax year. The Grants shall be paid to Owner or to Owner's successors or assigns within thirty (30) days of City's receipt of said paid receipt showing payment in full of such taxes for the applicable tax year. In no event will the amount of the

Grants include amounts equal to any late charges, penalties or interest on ad valorem taxes assessed by the City.

3. Sources of Funds. The Grants made hereunder shall be paid solely from lawfully available funds which have been appropriated by the City for use during each budget year from a lawful source. Under no circumstances shall the City's obligations hereunder be deemed to create any "debt" within the meaning of any constitutional or statutory provision, nor shall any obligation hereunder be deemed to constitute a general obligation of the City of McKinney.

4. Events of Default. The occurrence and failure to cure of any of the following shall constitute an Event of Default hereunder:

(a) Any event constituting an Event of Default under the Development Agreement and during the term of the Development Agreement;

(b) Any Event of Default on the part of Owner pursuant to and during the term of that certain Ground Lease Agreement between MCDC as Lessor and Owner as Lessee of even date herewith;

(c) Any Event of Default by Owner during the term of and pursuant to that certain Event Center Lease Agreement between the City as Lessor and Owner as Lessee of even date herewith;

(d) Owner, or its successors or assigns, shall fail to pay prior to delinquency any ad valorem taxes, hotel occupancy taxes, sales and use taxes or alcoholic beverage taxes assessable by the City, the State of Texas, Collin County or the McKinney Independent School District, or any subdivisions of any of the above assessed against the Hotel Complex or the operations or revenues thereof;

(e) Owner has been convicted of a violation under 8 USC § 1324(a)(f) regarding the unlawful employment of undocumented workers at the Hotel Complex; and

(f) The Hotel Complex is in violation of building codes or other municipal codes imposed by the City relating to life safety issues which continue unabated for a period of one hundred eighty (180) days or longer, and Owner is not in the process of using commercially reasonable efforts to abate said violations.

5. Right to Cure.

(a) Upon receipt of written notice from the City to Owner that any event in Sections 4(a) through 4(d) of this Agreement has occurred, Owner shall have a right to cure the default. The time allowed for cure of a default shall be the longer in duration of either the period equivalent to the applicable cure periods pursuant to the Development Agreement/Ground Lease/Event Center Lease, or within thirty (30) days of Owner's receipt of such written notice of default. Upon the failure of Owner to cure a default, the City may by further written notice to Owner terminate this Agreement, whereupon (i) the City shall have no further obligations to provide Grants hereunder, (ii) Owner shall immediately refund to the City an amount equal to all Grants paid since the expiration of

the applicable cure period after receipt of the written notice of default, and (iii) all other rights, responsibilities and liabilities of the parties hereunder shall be extinguished effective upon such termination.

(b) If an event of default in Section 4(e) occurs, City shall be entitled to reimbursement for all Grants heretofore made by the City hereunder. Said reimbursement shall become due and owing from Owner to the City, together with interest charged from the date each such Grant was made at the statutory rate for delinquent taxes as determined by VTCA Tax Code § 33.01, both without the addition of penalty other than that mandated by VTCA § 33.01 or § 33.07 in Texas Government Code, Chapter 2264, and all other rights, responsibilities and liabilities of the parties hereunder shall be extinguished effective upon such termination. This section 5(b) shall not apply to any affiliate of Owner, operator of the Hotel Complex, or manager of the Hotel Complex that is not considered to be a branch, division, or department of Owner as provided in Texas Government Code, Chapter 2264.

6. City Development Fees. Any and all fees which constitute either a City Development Fee or an Exaction, as those terms are defined in the Development Agreement, shall be waived by the appropriate City entity and may not be required of Owner

7. No Conflicts of Interest. Owner represents and warrants to the City that no officer or employee of the City or MCDC owns any direct or indirect interest in Owner or in any of the profits or revenues to be derived from the Hotel Complex.

8. Assignability. The Grants to be provided to Owner pursuant to Section 2 above may be assigned by Owner, in Owner's sole discretion, effective upon a minimum of fifteen (15) days' prior written notice to the City; provided that each such transfer or assignment shall be by an instrument in writing, in form reasonably satisfactory to City and MCDC, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of the City and MCDC to be bound by and to perform the terms, covenants and conditions of this Agreement. There is no limit on the number of successive assignments that may occur in accordance with the terms of this Agreement. In the event City elects to transfer fee simple title to the land on which the Hotel Complex is located, City's obligations to pay the Grants pursuant to the terms of this Agreement shall continue.

9. Addressing. The Owner agrees that it will use reasonable efforts to ensure that when using an address for the Hotel Complex, such address includes identity of the City of McKinney, Texas.

10. Pursuit of State of Texas Economic Incentives. The City shall use commercially reasonable, good-faith efforts to secure the following additional tax incentives from the State of Texas:

(a) A refund to City of the six percent (6%) state hotel occupancy tax on guest lodging revenues derived from the Hotel Complex;

(b) A refund to City of state alcoholic beverage and sales and use taxes, including efforts to obtain legislation to enable such refund, imposed on revenues generated by the Hotel Complex;

(c) A portion of any tax refunds described in Sections 9(a) and 9(b) of this Agreement received by City shall be paid over to Owner within 60 days of receipt, in accordance with the following schedule: (i) fifty percent (50%) of each refund received during the first 5 years of operation of the Hotel Complex, and (ii) twenty-five percent (25%) of each refund received during years 6 through 10 of operation of the Hotel Complex.

11. Other Economic Development Agreements. The City shall support Owner, and as required, join any economic development agreement as a party, in obtaining other economic incentives from applicable governmental entities, including but not limited to reimbursement or abatement of all or a portion of the ad valorem property taxes assessable against the Hotel Complex for the first ten (10) years of Hotel Complex operations. This Agreement is not evidence that no such exemptions or abatements apply or may be granted with respect to the Hotel Complex. Likewise, this Agreement shall not be construed to prohibit Owner or any subsequent owner of the Hotel or Event Center from protesting or contesting any or all appraisals or assessments of the Hotel Unit or the Event Center Unit, including improvements and personal property located thereon.

12. Notices. Notices hereunder shall be given in accordance with the requirements of Section 11.1 of the Development Agreement.

13. General Provisions. The general provisions set forth in Article XII of the Development Agreement shall apply with regard to this Agreement.

**WITNESS WHEREOF**, the City and Owner have duly executed this Agreement to be effective as of the date hereof.

**CITY OF MCKINNEY, TEXAS,**  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OWNER** \_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_