

HOTEL AND EVENT CENTER DEVELOPMENT AGREEMENT

This Hotel and Event Center Development Agreement (this "Agreement"), entered into by and among THE CITY OF MCKINNEY, TEXAS, a municipal corporation organized and existing pursuant to the laws of the State of Texas (the "City"), the MCKINNEY COMMUNITY DEVELOPMENT CORPORATION, a Texas nonprofit corporation ("MCDC"), _____, a _____ ("Owner"), and _____, a _____ ("Developer");

WITNESSETH:

WHEREAS, MCDC is the owner of fee simple title to the "Hotel Unit" (herein so called), as created and defined in the Condominium Declaration for the McKinney Gateway Condominium, recorded in the Official Records of Collin County, Texas, as Document No. 20080229000237480 (the "Original Declaration"), as to be amended by the Amended and Restated Condominium Declaration (the "Amended Declaration") (the Original Declaration and the Amended Declaration are sometimes collectively referred to as the "Condominium Declaration"). The Condominium Map showing the respective units as described on Exhibit A attached hereto. The Amended Declaration has not, as yet, been finalized and executed. The parties agree that they will use all reasonable efforts to negotiate and execute the Amended Declaration on or before seventy (70) days from the Effective Date of this Agreement. In all events, the Amended Declaration will contain the provisions set forth on Exhibit A-1.

WHEREAS, the City is the owner of fee simple title to the "Event Center Unit" (herein so called), as created and defined in the Condominium Declaration; and

WHEREAS, a previous owner of the Hotel Unit has constructed site improvements and partially completed above-ground steel structures constituting common elements on the land subject to the Condominium Declaration (the "Land"); and

WHEREAS, Owner proposes to complete the construction of the Hotel and Event Center contemplated by the Condominium Declaration; and

WHEREAS, Owner, with the consent of MCDC and City, has retained Developer to perform specified duties on behalf of Owner and to serve as Owner's representative as set forth herein; and

WHEREAS, the City and MCDC have found that the development of the Hotel and Event Center by Owner serves the public purposes of promoting economic development and diversity, increasing employment, reducing unemployment and underemployment, expanding commerce, and stimulating business and commercial activity in the State of Texas, the County of Collin, and the City of McKinney; and

WHEREAS, to promote such public purposes, the City and MCDC have determined to invest public funds in the development of the Hotel and Event Center on the terms and conditions expressed herein;

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

NOW, THEREFORE, pursuant to the authority granted to the City to establish an economic development program pursuant to Chapter 380 of the Texas Local Government Code and authorize the City's execution and performance of this Agreement, in consideration of the foregoing recitals and the mutual covenants set forth herein, and additional good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, MCDC, Owner and Developer hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Defined Terms. Capitalized terms not otherwise defined herein shall have the following meanings:

"Adoption Date" means the date upon which the City Council adopted the resolution authorizing and approving this Agreement. The City will provide owner with a copy of the resolution upon its adoption.

"Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with any party hereto.

"Agreement" shall mean this Hotel and Event Center Development Agreement by and between the City, MCDC, Owner and Developer.

"Amended Zoning Ordinance" means the Amended Zoning Ordinance applicable to the Land that was adopted by the City Council on December 18, 2007, as Ordinance No. 2007-12-135.

"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.

"Bonded Hotel Investment Costs" means that portion of the Hotel Incentive Investment funded by the City that is obtained from the proceeds of new revenue bonds issued by the City and collateralized by an assignment of the City's portion of the hotel occupancy tax revenues to be generated by the Hotel.

"City" has the meaning set forth in the Recitals of this Agreement.

"City Approvals" means permits or approvals acquired under City Regulations in order to develop, use and operate the Hotel Complex.

"City Council" means the city council of the City or its designee.

“City Development Fees” means all fees or assessments charged or required by the City in connection with any City Approvals:

- (a) to defray, offset or otherwise cover the cost of public improvement services, or facilities including, but not limited to, all impact fees, pro rata fees, or building permit fees; or
- (b) that are imposed for a public purpose.

The known City Development Fees are described on Exhibit D attached hereto.

“City Parties” means collectively the City and MCDC.

“City Regulations” means the Amended Zoning Ordinance and all other ordinances, resolutions, codes, rules, regulations and policies of the City in effect as of the time in question.

“City Review Delays” means, with respect to the review by the City of plans for construction work submitted by Owner or Developer as Owner's representative and the issuance by the City of a construction permit:

- (a) the amount of calendar days beyond the period of eight (8) business days for the City to review and provide corrections to Owner or Developer as Owner's representative on the initial set of 100% construction working drawings for the construction work for the Hotel Complex submitted by Owner or Developer, as Owner's representative, to the City;
- (b) the amount of calendar days beyond the period of six (6) business days for the City to review and provide corrections to Owner or Developer as Owner's representative on the second set of 100% construction working drawings for the construction work for the Hotel Complex submitted by Owner or Developer as Owner's representative to the City; and
- (c) the amount of calendar days beyond the period of three (3) business days for the City to issue the construction permit after the City has approved 100% construction working drawings for the construction work for the Hotel Complex submitted by Owner or Developer as Owner's representative to the City.

For the purpose of clauses (a) and (b) above, the date of submittal of the applicable drawings by the Owner shall not be considered in the number of days that the City has allowed for review and correction.

“Collateral Assignment” has the meaning set forth in Section 8.5 hereof.

“Common Control” means that two Persons are both controlled by the same Person.

“Condominium Declaration” has the meaning set forth in the Recitals hereto.

“Construction Commencement Conditions” means collectively all of the following conditions: (a) the City has issued a construction permit for the construction of the Hotel Complex; (b) the Owner or Developer as Owner's representative has delivered to the City and MCDC an executed Construction Contract for the construction of the Hotel Complex; and (c) the Owner or Developer as Owner's representative has delivered to the City and MCDC a copy of the duly issued Construction Payment Bond for the construction of the Hotel Complex.

“Construction Contract” means a contract or contracts between Owner or its Affiliate and a Construction Manager at Risk for the performance of the Construction Work for the Hotel Complex in accordance with the construction permits, and any amendments to such contracts to include any change orders. The parties have agreed to use as the form of Owner/Contractor Agreement AIA A133-2009 (formerly A121 CMc-2003), Standard Form of Agreement Between Owner and Construction Manager as Constructor where the Basis for Payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

“Construction Costs” means the portions of the contract price paid under the Construction Contract between the Owner or its Affiliates and CM for the performance of the Construction Work.

“Construction Manager at Risk” means a contractor that is licensed by the State of Texas to perform the type of work for which it has been retained by Owner in accordance with this Agreement. The parties have designated HCBeck, as the Construction Manager at Risk (hereinafter referred to as “CM”).

“Construction Payment Bond” means a payment and performance bond or bonds provided by the CM under the Construction Contract, in an amount equal to one hundred percent (100%) of the contract sum due under the Construction Contract that:

- (a) has been duly issued by a surety licensed to do business in the State of Texas;
- (b) names Owner and the City as dual obligees; and
- (c) that insures the payment of the contract sum due under the Construction Contract and the performance by the CM under the Construction Contract.

“Construction Work” means the construction of all foundations and vertical buildings, structures and other improvements required to be constructed as part of the Hotel Complex.

“Control” means the ownership (direct or indirect) by one Person of an interest in the profits and capital and the right to manage and control the day-to-day affairs of another Person. The term “Control” includes any grammatical variation thereof, including “Controlled” and “Controlling”.

“Declaration” means that certain Amended and Restated Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements dated to be effective August 15, 2002, by the McKinney Economic Development Corporation, a Texas non-profit corporation (“MEDC”) recorded August 20, 2012 (as further amended the “Declaration”).

The Declaration encumbers the Real Property upon which the Hotel Complex is to be built and other adjacent real property. MEDC and the parties hereto do hereby agree that there can be no further amendment to the Declaration which could adversely impact the Hotel Complex by either (1) increasing the costs or obligations of the Owner or its successors, or (2) permitting any improvements to be built on the property to the west of the Hotel Complex between the Hotel Complex and US Highway 75 which would be for a use other than office or retail and of a height measured from the current surface of greater than two (2) stories, without the express written consent of the Owner or, if applicable, the lessee of the Hotel Unit.

“Declaration Estoppel” means that certain Estoppel Certificate from the MEDC approving all matters requiring MEDC approval under the Declaration for the development and constitution of the Hotel Complex.

“Developer” means _____, and any transferees of _____, as the context may require, including for this purpose any Affiliates of Developer.

“Economic Development Agreement” means that certain agreement between the City and Owner of even date herewith pertaining to certain tax incentives related to the development of the Hotel Complex.

“Event Center” means a facility for conferences, banquets, business meetings and other events as described on Exhibit C attached hereto.

“Event Center Development Costs” means all hard and soft costs in connection with the design and construction of the Event Center from and after the date hereof.

“Event Center Lease” means that certain Lease of even date herewith by and between the City, as lessor, and Developer, as lessee, whereby Owner leases the Event Center in accordance with the terms thereof.

“Event Center Unit” has the meaning set forth in the Recitals hereto.

“Event of Default” has the meaning set forth in Section 6.1.

“Exactions” collectively means any sewer, water, roadway and other mitigation measures or requirements, including without limitation any additional onsite or offsite public improvements, that are required or imposed by the City on the Owner or its affiliate as a condition or requirement of the issuance or approval by the City of any City Approvals for the Hotel Complex. The term “Exactions” does not include any City Development Fees which are charged to Owner in connection with the development of the Hotel Complex.

“Force Majeure” means collectively a delay in performance caused by:

(a) war, terrorist attacks, insurrections, strikes or other labor disturbances, walkouts, riots, floods, earthquakes, fires, casualties or acts of God;

(b) days lost, in whole or in part, due to or resulting from rain or adverse weather conditions, acts of God, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that affect work to be performed or damage completed work or stored materials, together with the necessary additional time required for Owner, Developer and the CM to remobilize on site and/or to re-engage onsite activities in a condition equivalent to pre-force majeure delay;

(c) the enactment of Laws that prevent or preclude compliance by a Party with any material provision of this Agreement;

(d) litigation relating to the Hotel Complex or the Hotel Unit brought by Persons other than a Party, or Affiliate of a Party, that impairs or delays:

(i) the construction of the Hotel Complex; or

(ii) obtaining any City Approvals required for the Hotel Complex;

(e) the failure by any governmental agency to issue any approval required for the development and construction of the Hotel Complex; and

(f) City Review Delays.

“Franchise Agreement” shall mean an executed Franchise Agreement between Owner 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 an Approved Hotel Brand pursuant to a franchise agreement between the developer or owner 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.

“Funded Public Incentive Investment” shall mean the cumulative amount funded by the City Parties hereunder for Event Center Development Costs and Hotel Development Costs.

“GAAP” means Generally Accepted Accounting Principles.

“Governmental Agencies” means all governmental or quasi-governmental agencies (such as public utilities) having jurisdiction over, or the authority to regulate development of, the Hotel Complex; provided, however, as used in this Agreement, the term “Governmental Agencies” does not include the City or any of the departments of the City.

“Governmental Agency Approvals” means all permits and approvals required by Governmental Agencies under Governmental Agency Regulations for construction, development, operation, use or occupancy of the Hotel Complex.

“Governmental Agency Regulations” means the laws, ordinances, resolutions, codes, rules, regulations and official policies of Governmental Agencies in effect as of the time in question.

“Hotel” means a hotel to be developed by Owner on the Hotel Parcel as described on Exhibit C as attached hereto, which shall be a full service hotel consisting of a minimum of 186 guest rooms, a three-meal full service restaurant, a lobby and bar, open to the public and serving the business community and citizens of the City and visitors to the City and adjacent communities in accordance with the standards required under the Amended Zoning Ordinance and the Franchise Agreement.

“Hotel Complex” means the Hotel, the Event Center and all shared common elements as described on Exhibit C attached hereto.

“Hotel Ground Lease” means that certain Ground Lease of even date herewith by and between MCDC, as lessor, and Owner, as lessee, whereby Owner leases the Hotel Unit in accordance with the terms thereof.

“Hotel Unit” has the meaning set forth in the Recitals hereto and as described on Exhibit C attached hereto.

“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 Prime 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%				

“Laws” means the Constitution and the laws of the State, the United States and any codes, statutes, regulations or executive mandates thereunder, and any court decisions, state or federal, thereunder.

“Management Agreement” has the meaning set forth in Article VIII.

“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.

“Maximum Public Incentive Investment” shall mean the sum of all Public Incentive Investment payments up to the aggregate amount of Eighteen Million and No/100 Dollars (\$18,000,000.00); provided, however, that in the event the total Remaining Project Costs of

exceed \$35,000,000.00 but are less than \$38,000,000.00 (the “Excess Cost Interval”), the “Maximum Public Incentive Investment” shall be increased by amount equal to (i) seventy-five percent (75%) of costs within the Excess Cost Interval that are not the result of additional items or extras requested by either the City Parties or Owner or its Affiliates, and (ii) one hundred percent (100%) of costs within the Excess Cost Interval that are the result of additional items or extras requested by the City Parties (but no percent of excess costs that are the result of additional items or extras requested by Owner or Developer or its Affiliates). In no event, with the exception of the City Caused Cost Overruns, shall the Maximum Public Incentive Investment exceed \$20,250,000.

“MCDC” shall have the meaning set forth in the Recitals of this Agreement.

“Mortgage” means a mortgage or deed of trust, or other similar instrument (whether one or more), by which Owner conveys or pledges as security its interest in the Hotel Complex or a portion thereof, or interest therein for the purpose of:

(a) financing or refinancing the construction of the Hotel Complex or any portion thereof;

(b) obtaining financing proceeds by encumbering the Hotel Ground Lease and Event Center Lease or a portion of either or both; and

(c) a sale and leaseback arrangement, in which Owner sells and leases back concurrently therewith its interest in the Hotel Ground Lease, or a portion thereof, or interest therein, or improvements thereon for the purpose of: (1) developing the Hotel Complex or any portion thereof, (2) refinancing any of the foregoing, or (3) obtaining financing proceeds by encumbering the Hotel Ground Lease or Event Center Lease or a portion of either or both.

“Mortgagee” means: (a) the holder of the beneficial interest under a Mortgage; (b) the lessor under a sale and leaseback Mortgage arrangement; and (c) any successors, assigns and designees of the foregoing.

“Notice of Default” has the meaning set forth in Section 6.1.

“Notices” has the meaning set forth in Section 11.1.

“Notice Request” has the meaning set forth in Section 9.3.

“Official Records” means the official records of Collin County, Texas, in which real property instruments are recorded for public notice.

“Owner” means _____, and any transferees of _____, as the context may require, including for this purpose any Affiliates of Owner.

“Parties” collectively means the City, MCDC, Owner (or Owner's Transferees, as applicable) and Developer (or Developer's Transferees, as applicable), determined as of the time in question.

“Person” means an individual, partnership, firm or association, corporation, trust, Governmental Agency, administrative tribunal, or other form of business or legal entity.

“Planning Commission” means the Planning and Zoning Commission of the City.

“Plat” means that certain _____ (the “**Plat**”) dated _____, recorded under _____, which describes the “Real Property” (herein so called) upon which the Hotel Complex shall be developed and constructed as described in Article VII and on Exhibit B attached hereto.

“Private Equity Investment” shall mean the cumulative capital investment made by Persons as equity investments in Owner. 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 Transfer by Owner.

“Project” means the development and construction of the Hotel Complex upon the Land in accordance with the terms of this Agreement, the Construction Contract, the Amended Zoning Ordinance, and other agreements entered into in connection herewith.

“Proportionate Percentage” shall be that percentage representing the ratio of (a) the Maximum Public Incentive Investment reduced by the Remaining Event Center Development Costs and further reduced by the portion of the Public Incentive Investment funded under the letter agreement dated June 27, 2012, to (b) the sum of the amount in (a) plus the Private Equity Investment.

“Public Incentive Investment” shall mean the amount actually funded by the City pursuant to or in furtherance of this Agreement for the completion of the Hotel Project, not to exceed the Maximum Public Incentive Investment. 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, MCDC, Champ Hospitality, LP, and Beck Development, LLC (the latter two parties being Affiliates of Developer).

“Remaining Event Center Development Costs” means the following costs and expenses: (a) all hard costs and soft costs incurred in connection with the design and construction of the Event Center from and after the date hereof; and (b) all costs in connection with the purchase and installation of the original furniture, fixtures and equipment for the Event Center.

“Remaining Hotel Development Costs” means all hard and soft costs in connection with the design and construction of the Hotel from and after the date hereof.

“Remaining Project Costs” means the sum of (x) the Remaining Event Center Development Costs and (y) the Remaining Hotel Development Costs.

“Replacement Franchisor” means a Franchisor selected by Developer as Owner's representative with which Owner enters into a Franchise Agreement for the Hotel following any termination of the Franchise Agreement with an approved Franchisor.

“Required Commencement Date” means the date, subject to extension due to delays caused by Force Majeure Events, as described in Section 2.1.

“Required Completion Date” means the date subject to extension due to delays caused by Force Majeure Events, as described in Section 2.1.

“Site Plan” means the site plan for the development of the Hotel Complex upon the Land, as described hereto on Exhibit D.

“State” means the State of Texas and any Governmental Agency acting on behalf of the State.

“Subsidy Return” has the meaning set forth in Section 4.1(a).

“Substantially Complete” or “Substantial Completion” means the stage and the progress of the construction of the Hotel Complex where the work is sufficiently complete in accordance with the Construction Contract so that the Hotel Complex can be occupied and utilized for its intended use. The parties shall determine by written agreement the "Substantial Completion Date" (herein so called).

“Term” means the term of this Agreement commencing on the date hereof and terminating upon the first anniversary of the Substantial Completion Date.

“Terminate” means the expiration of the Term of this Agreement, whether by the passage of time or by any earlier occurrence pursuant to any provisions of this Agreement. The term “Terminate” includes any grammatical variant thereof, including “Termination” or “Terminated”.

“Transfer” means the sale, assignment, or other transfer by Owner of this Agreement, or any right, duty, or obligation of Owner under this Agreement, made pursuant to the terms, standards, and conditions of Article V of this Agreement, including by foreclosure, trustee’s sale, or deed in lieu of foreclosure under a Mortgage (whether one or more), but excluding: (a) a dedication of any portion of the common elements established under the Condominium Declaration to the City or a Governmental Agency; (b) a Mortgage (whether one or more); (c) the Hotel Ground Lease and the Event Center Lease; (d) leases, subleases, licenses, and operating agreements entered into by Owner or Developer as Owner's representative for occupancy of space in the Hotel Complex (together with any appurtenant tenant rights and controls customarily included in such leases or subleases), and any assignment or transfer of any such lease, sublease, license or operating agreement by either party thereto; and (d) any collateral assignment of this Agreement to a Mortgagee (whether one or more).

“Transferee” means the Person to whom a Transfer is affected.

ARTICLE II OWNER'S DEVELOPMENT OBLIGATIONS

2.1 Project Completion and Timeline. Owner shall complete the construction of the Hotel Complex and remaining aspects of the Project in accordance with the term, specifications,

and conditions of this Agreement, the Construction Contract(s) (including the plans and specifications that are produced and approved in connection therewith (the “Plans”)), City Approvals, the Site Plan, and other instruments and agreements entered into or given in accordance herewith, and in doing so shall meet the following time deadlines:

(a) Owner shall commence construction of the Hotel Complex and satisfy all Construction Commencement Conditions no later than the Required Commencement Date.

(b) Owner and the City Parties agree that the following timelines for development shall, subject to Force Majeure, apply each based on execution and delivery of this Agreement. The date upon which the parties agree that the development period has commenced shall be determined by the parties hereto by written agreement, and thereafter referred to herein as the “Required Commencement Date,” which in no event shall, subject to Force Majeure, be later than one hundred twenty (120) days after the date of this Agreement:

Execution of Development Agreement: Day 0

Finalization of Debt/Equity/Ownership Structure: 120 Days and completion of the Plat and Condominium Declaration as required hereby

Required Commencement Date = 120 Days after Execution of Development Agreement and completion of the Plat and Condominium Declaration as required hereby

After the Required Commencement Date, the following milestones shall occur:

Develop permit-ready drawings for Core and Shell: Five months

Obtain Core and Shell Permit: One month thereafter

Upon the securing of the permits, the owner shall issue the “notice to proceed” herein so called.

Mobilize Site: One month thereafter

Remediation Activities: One month thereafter

Dry-in of Core and Shell: Nine months thereafter

Completion of Interiors and FF&E: Five months thereafter

Substantial Completion (22 months after Required Commencement Date)

Substantial Completion Date to be referred to as the “Required Completion Date”).

(c) Owner shall Substantially Complete the Hotel Complex and remaining aspects of the Project on or before the Required Completion Date.

2.2 Coordinated Design. Owner or Developer as Owner's representative will reasonably coordinate development and construction of the Hotel and Event Center with the City Parties, and will cause its design professionals and contractors to coordinate their efforts with the City through such staff persons or contractors as the City may designate. The City may retain such engineers, architects, design professionals and consultants at the expense of the City Parties as the City may deem necessary to advise it on the development and construction of the Project, including without limitation the meeting of construction milestones and conformance with this Agreement, the approved Plans, City Approvals, and similar matters. Designated representatives of the Owner, Developer and the City Parties shall meet as often as the City Parties, Owner, or Developer as Owner's representative may reasonably request. The City Parties' coordination will be limited to the design of the Event Center and the exterior elevation and skin of the Hotel Complex. Provided, further, the City Parties agree that the City Manager is the only party with whom the Developer and Owner must secure consent or coordinate in any such matters as to the Event Center. The City Parties agree that their review shall be done in a timely manner and shall not prevent Owner and Developer from maintaining their predevelopment and construction schedule. The City further agrees to not unreasonably withhold or delay its consent or approval to any such matters.

2.3 Construction Contract.

(a) Because the Project will be designed and constructed as a unitary complex, Owner shall retain a single CM for the remaining construction of the Hotel Complex. Developer or an Affiliate of Developer may act as the CM of the Development, and, may charge (or pay to such Affiliate) a market-rate construction management fee not to exceed four percent (4%) of total Construction Costs (including general conditions). The Construction Contract shall require a Construction Payment Bond issued prior to the commencement of any Construction Work. The City shall be a third party beneficiary to the Construction Contract.

(b) The Construction Contract shall include an itemized budget for all Construction Costs. The Contract shall provide that City requested change orders shall require prior approval of Owner or Developer as Owner's representative. Owner or Developer as Owner's representative shall not provide such approval until obtaining the consent of the City's representative but only if such change order is requested by the City and would result in additional scope and change in costs to the Event Center for which the City is responsible for payment.

2.4 Failure to Meet Timeline. If, after the Notice to Proceed, Owner fails to meet any of the construction timelines required above and Owner fails (i) to fully cure such failure, subject to Force Majeure, after receipt of written Notice from the City within ninety (90) days, or (ii) otherwise demonstrates to the City's reasonable satisfaction that Owner can substantially

complete the Hotel Complex by the Required Completion Date, the City shall have the option to suspend any further funding of the Public Incentive Investment until the Owner has cured such failure and is in compliance with the construction timelines. Notwithstanding the foregoing, if Owner fails to achieve Substantial Completion of the Hotel Complex within ninety (90) days, following the Required Completion Date, the City shall have the option to Terminate this Agreement and the Hotel Ground Lease, the Event Center Lease, and the Economic Development Agreement, or any of them, in which case Developer shall have no further right to develop the Hotel Complex and the City shall have no further obligation to fund Public Incentive Investments. In addition, if Owner fails to achieve Substantial Completion of the Hotel Complex by the Required Completion Date, Owner shall pay liquidated damages to the City at the rate of One Thousand Two Hundred Fifty and No/100 Dollars (\$1,250.00) per day for each day after the Required Completion Date until (1) the Hotel Complex is Substantially Complete, or (2) this Agreement is terminated by the City Parties as provided herein. The remedies, notice provisions, and cure periods described in this Section 2.4 shall be in addition to and independent of any applicable remedies, notice provisions, or cure periods set forth under Article VI, notwithstanding the fact that the failure to meet construction timelines may otherwise constitute a default under this Agreement.

2.5 Facilitation of City Approvals. The City Approvals required for the construction and development of the Hotel Complex will be issued pursuant to the requirements of the City Regulations and the standard procedures of the City, but on an expedited basis as provided herein; provided, however, that so long as this Agreement has not been terminated, all the City's charges for City Development Fees, Exactions building permits and Certificates of Occupancy, whether or not set forth on Exhibit E, shall be waived. Any refusal to waive such fees or requirements shall constitute a default by the City hereunder, and any delays occasioned in securing such waivers shall constitute a City Delay hereunder. The City shall cooperate with Developer as Owner's representative to facilitate prompt and timely review of the processing of all applications for City Approvals, including the timely processing and checking of all maps, plans, permits, building plans, subdivision plats, plats and other plans relating to development of the Hotel Complex filed by Developer as Owner's representative. Any and all fees or costs which constitute either a City Development Fees or an Exaction shall be waived by the appropriate City entity as described hereto on Exhibit E. In connection with any City Approvals, the City shall take action in a manner which complies with and is consistent with this Agreement and applicable State or local Law.

2.6 Governmental Agency Approvals. Developer as Owner's representative shall apply for and pursue all required Governmental Agency Approvals from Governmental Agencies which are required during the course of design, development, construction, use or occupancy of the Hotel Complex. Developer as Owner's representative shall take such reasonable steps as are necessary to obtain all such Governmental Agency Approvals and shall bear all costs and expenses retaining such Governmental Agency Approvals which shall be obtained in Owner's name. When and if obtained, copies of all such Governmental Agency Approvals shall be submitted to the City promptly after Developer's as Owner's representative receipt of a written request therefor from the City. Owner shall comply with, and shall cause the Hotel Complex to comply with, all Governmental Agency Regulations and Laws related to the development of the Hotel Complex. The City shall cooperate with Owner or Developer, as Owner's representative,

in such endeavor and shall cause all such matters to be processed upon an expedited basis upon Owner's and Developer's written request for such cooperation.

ARTICLE III PUBLIC INCENTIVE INVESTMENT

3.1 Necessity of Public Incentive Investment. Owner and Developer have represented to the City Parties, and the City Parties acknowledge that they have been informed and concur, that the development and construction of the Hotel Complex to completion as described in this Agreement can only occur with the payment of the Public Incentive Investment to or on behalf of Owner under this Agreement. Public Incentive Investment payments shall be made from funds of the MCDC and the City pursuant to their statutory authority.

3.2 Pre-Conditions to Public Incentive Investment Obligations. Notwithstanding anything herein to the contrary, the City Parties' obligation to make Public Incentive Investment payments to reimburse Owner are conditioned upon Owner first entering into a Franchise Agreement for an Approved Hotel Brand.

3.3 Payment of Event Center Costs. The City Parties shall make Public Incentive Investment payments to reimburse Owner for one hundred percent (100%) of the Remaining Event Center Development Costs, until the Maximum Public Incentive Investment amount has been met taking into account all Public Incentive Investment payments, as follows:

(a) Within fifteen (15) days following receipt of a written draw request by the City Parties from the Developer, as the Owner's representative, the City Parties shall pay the Owner for the actual Remaining Event Center Development Costs due to the parties specified in the draw request; and

(b) Within fifteen (15) days following receipt of a written request and evidence of the payment by Developer as the Owner's representative for Remaining Event Center Development Costs not payable under a Construction Contract, the City Parties shall reimburse Owner for such other Remaining Event Center Development Costs that have not previously been reimbursed to Owner.

3.4 Partial Payment of the Hotel Development Costs. The City Parties shall make Public Incentive Investment payments to reimburse Owner for a portion of the Hotel Development Costs, until the Maximum Public Incentive Investment amount has been met taking into account all Public Incentive Investment payments, as follows:

(a) Within fifteen (15) days following receipt of a written draw request by the City Parties from Developer as the Owner's representative, in substantially the form of Exhibit F attached, the City Parties shall pay the Owner for a portion of the Hotel Development Costs due to the parties specified in the draw request, which portion shall be the Proportionate Percentage of those of the Remaining Hotel Development Costs not be funded by a Mortgagee.

3.5 Effect of Default upon Payment Obligations. In the event that, at the time of the submittal by Owner or Developer as Owner's representative of any draw request pursuant to

Sections 3.2 or 3.3 above, there is an Event of Default on the part of Developer that remains uncured following written notice from City Parties, the City Parties shall not be required to make any payments to Owner under that draw request until all such Events of Default are cured. If any payments are suspended or otherwise not paid as a result of an Event of Default which is subsequently cured, any such suspended or deferred payments shall be promptly paid by City to Owner and in no event later than the next draw request.

ARTICLE IV MITIGATION OF PUBLIC INCENTIVE INVESTMENT

4.1 Mortgage Covenants. In order to facilitate the financing of the Hotel Complex, the City and MCDC do hereby agree as follows:

(a) MCDC shall expressly subordinate its lessor interest in the Hotel Unit to the lien created by the Mortgage thereon; and/or

(b) at the Closing of the Loan(s) evidenced by the Mortgage(s), the City, MCDC, Owner and the Mortgagee shall enter into a mutually acceptable "Tri-Party Agreement" (herein so called) setting forth their respective rights and obligations.

ARTICLE V ASSIGNMENT

5.1 City Parties. The City Parties shall not have the right to assign, pledge, transfer or convey their respective rights, titles, interests or obligations under this Agreement.

5.2 Developer. Prior to the Substantial Completion of the Hotel Complex, Owner shall not have the right to assign its rights, titles, interests or obligations under this Agreement to any third party, other than to an Affiliate of Owner, Developer or an affiliate of Developer and/or to Owner's Mortgagee, without the prior written consent of the City, which consent may be withheld in the City's sole discretion. Following the Substantial Completion of the Hotel Complex, Owner shall have the right to sell or assign all or any part of the Hotel Ground Lease or Event Center Lease and its rights, titles, interests and obligations under this Agreement and the Economic Development Agreement to any Person with the prior written consent of the City, which shall not be unreasonably withheld so long as the proposed Transferee delivers to the City Parties a written assumption agreement, signed by the Owner and its Transferee. Any assignment by the Owner shall be subject to the provisions or restrictions of this Agreement during the Term of this Agreement. Prior to any such Transfer, the City shall be provided copies of all instruments and agreements effectuating or related to such Transfer. The costs or expenses related to any such Transfer charged by the Franchisor or Mortgagee in connection therewith shall be deducted from the net proceeds realized by Owner in determining the Internal Rate of Return of Owner or its investors, together with any other expenses incurred by Owner that are normal and customary in commercial transactions of such type in the Dallas, Texas metropolitan area.

5.3 Mortgagee as Transferee. No Mortgage (including the execution and delivery thereof to the Mortgagee) shall constitute a Transfer. The Mortgagee shall be a Transferee only upon:

(a) The acquisition by such Mortgagee of the affected interest of Owner encumbered by such Mortgagee's Mortgage; and

(b) Delivery to the City of a written agreement assuming, from and after the date such Mortgagee so acquires its interest, the applicable rights, duties and obligations of Owner under this Agreement as provided in the Tri-Party Agreement.

ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by a Party to perform any material term or provision of this Agreement (including but not limited to, the failure of a Party to approve a matter or take an action within the applicable time periods governing such performance under this Agreement) shall, subject to the provisions of this Agreement to the contrary, constitute an "Event of Default" if (a) such defaulting party does not cure such failure within ten (10) business days following delivery of a Notice of Default from the other Party ("Notice of Default") where such failure is of the nature that it can reasonably be fully cured within such ten (10) business day period, or (b) where such failure is not of a nature in which it can be fully cured within such ten (10) business day period, the defaulting party does not within such ten (10) business day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure, provided that such matter is fully cured within one hundred twenty (120) days. Notwithstanding the foregoing, an Event of Default based on the failure to pay money shall in no event be subject to cure under clause (b) above. Any Notice of Default given hereunder shall specify in reasonable detail the nature of the failures and performance by the defaulting party and the manner in which such failures of performance may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

6.2 Owner's Remedies. Pursuant to Section 271.152 of the Texas Local Government Code, the City Parties hereby waive their sovereign immunity with respect to any cause of action, damages and remedies available to Owner for a breach of the City Parties' duties under this Agreement. Upon the occurrence of an Event of Default by the City Parties, Owner shall have the right, in addition to all other rights and remedies available under this Agreement, to:

(a) Bring any proceeding in the nature of specific performance, injunctive relief or mandamus; and/or

(b) Bring any action at law or in equity as may be permitted by Law or this Agreement.

6.3 City Parties' Remedies. Except as otherwise provided in this Agreement, upon the occurrence of an Event of Default by the Owner, the City Parties shall have the right, in addition to all other rights and remedies available under this Agreement to:

(a) Bring any proceeding in the nature of injunctive relief or mandamus;

(b) Bring any action at law or in equity as may be permitted by Law or this Agreement; and/or

(c) Suspend any further funding of the Public Incentive Investment until the Event of Default is cured as required hereby.

ARTICLE VII CITY PLAT OBLIGATIONS

7.1 Original Plat. The Land, which is subject to the Original Declaration, is currently platted pursuant to a plat dated _____, recorded under _____ (the "Original Plat"), which by agreement of the parties needs to be further subdivided by replat or amended plat whereby the property described in the Original Plat shall be divided in four (4) parcels as generally described on Exhibit B-1, attached hereto. One lot shall be the lot upon which the Hotel Complex shall be constructed, one lot shall be for the additional lawn area which shall be subject to the Event Center Lease, but not the Condominium Declaration, and the remaining lots shall be separated from the Hotel Complex and Event Center Lease and owned by and the sole responsibility of the City.

7.2 Replat. The City shall cause, at its sole cost and expense, a replat or amended plat to be prepared consistent with Section 7.1 above and Exhibit B-1, and upon approval by the parties hereto shall cause the replat or amended plat to be approved by all applicable governmental authorities and recorded in the Collin County Records. Said replat or amended plat shall recognize and/or dedicate, as necessary, all cross access and utility easements necessary to allow the development and operating of the Hotel Complex as contemplated. Upon the recordation of the replat or amended plat, the parties shall use the legal descriptions for the Hotel Complex and additional lawn area for all documents required or contemplated by this Agreement, and such replat shall constitute the Plat for purposes of this Agreement. The matters set forth on Exhibit B-1 shall also serve as the basis for the Condominium Map for designating the parameters of the Hotel Unit and Event Center Unit, respectively. The City shall satisfy the provisions of this Article VII on or before sixty (60) days from the Effective Date of this Agreement

ARTICLE VIII MORTGAGEE PROTECTION

8.1 Mortgagee Protection. No Event of Default shall defeat, render invalid, diminish or impair the conveyance of any Mortgage made for value but, subject to the provisions of Section 9.2, all of the terms and conditions contained in this Agreement and any applicable Tri-Party Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Hotel Ground Lease, or any portion thereof or interest therein or improvements thereon, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

8.2 Mortgagee Not Obligated; Mortgagee as Transferee. No Mortgagee shall have any obligation or duty under this Agreement whatsoever, including but not limited to any obligation to construct a Hotel Complex or any portion thereof, except that nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee to undertake any new construction or improvement on the Land, or to otherwise have the benefit of any rights of

Owner, or to enforce any obligation of the City Parties, under this Agreement unless and until such Mortgagee elects to become a Transferee pursuant to Section 5.3. Any Mortgagee that affirmatively elects to become a Transferee shall be later released from all obligations and liabilities under this Agreement upon the subsequent Transfer by the Mortgagee of its interest as a Transferee to another person.

8.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If any of the City Parties receives notice from a Mortgagee requesting that a copy of any future notice of default that may be given Owner hereunder and specifying the address for service thereof (“Notice Request”), then the City Parties shall deliver to such Mortgagee, concurrently with service thereon to Owner, any Notice of Default thereafter given to Owner. Such Mortgagee shall have the right (but not the obligation) to cure or remedy, or to commence to cure or remedy, the Event of Default claimed within the applicable time periods for cure specified in this Agreement. If, however, the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Hotel Ground Lease, or portion thereof, such Mortgagee shall seek to obtain possession with diligence and continuity, but in no event later than ninety (90) days after a copy of the Notice of Default is given to Mortgagee through a receiver or otherwise, and shall thereafter remedy or cure such Event of Default or noncompliance promptly and with diligence and dispatch after obtaining possession. Other than an Event of Default or noncompliance (i) for failure to pay money, or (ii) that is reasonably susceptible of remedy or cure prior to a Mortgagee obtaining possession, so long as such Mortgagee is pursuing cure of the Event of Default or noncompliance in conformance with the requirements of this Section 8.3, none of the City Parties will exercise any right or remedy under this Agreement on account of such Event of Default or noncompliance. When and if a Mortgagee acquires the interest of Owner encumbered by such Mortgagee’s Mortgage and such Mortgagee elects in writing to become a Transferee pursuant to Section 5.3, then such Mortgagee shall promptly cure all monetary or other Events of Default for noncompliance then reasonably susceptible to being cured by such Mortgagee, to the extent that such Events of Default or noncompliance are not cured prior to such Mortgagee becoming a Transferee pursuant to Section 5.3.

8.4 Priority of Mortgages. For purposes of exercising any remedy of the Mortgagee pursuant to this Section 8.4, the applicable Laws of the State of Texas shall govern the rights, remedies and priorities of each Mortgagee, absent a written agreement between Mortgagee and Owner and the City Parties as otherwise provided.

8.5 Collateral Assignment. As additional security to a Mortgagee under a Mortgage on the Hotel Complex or any portion thereof, Owner shall have the right to execute a Collateral Assignment of Owner’s rights, benefits and remedies under this Agreement in favor of the Mortgagee (“Collateral Assignment”) on the standard form provided by the Mortgagee.

ARTICLE IX COVENANTS RUNNING WITH THE LAND

9.1 During the Term of this Agreement, all the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties (and their respective heirs or successors) (by merger, consolidation or

otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons that require a legal or equitable interest to Owner in the Hotel Ground Lease, or any portion thereof, whether by operation of Laws or in any manner whatsoever and shall inure to the benefit of the Parties and their respective heirs or successors (by merger, consolidation or otherwise) and permitted assigns as Transferees, as covenants running with the Land.

ARTICLE X
NOTICES

10.1 Delivery of Notices. All notices, statements, demands, consents and other communications (“Notices”) required or permitted to be given by any Party to another Party pursuant to this Agreement or pursuant to any applicable Law or requirement of public authorities shall be properly given only if the Notice is (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 10.2; and (c) sent to the Party to which it is addressed at the address set forth below, with such other address as such party may hereafter specify by at least five(5) calendar days’ prior written notice:

If to City: City of McKinney
 222 N. Tennessee
 McKinney, TX 75069
 Attn: Jason Gray, City Manager
 Facsimile: 972-547-2607

If to MCDC: McKinney Community Development Corporation

 Attn: Cindy Schneible, Executive Director
 Facsimile: _____

If to Developer: _____

 Attn: _____
 Facsimile: _____

If to Owner: _____

 Attn: _____
 Facsimile: _____

with copy to: Champ Hospitality, L.P.
 4100 Midway Road, Suite 2115
 Carrollton, TX 75007
 Attn: Joseph H. Champ, President
 Facsimile: 214-295-3576

The Beck Group

1807 Ross Avenue
Suite 500
Dallas, TX 75201
Attn: Mike Webster, Managing Director
Facsimile: 214-303-6702

Winstead PC
1201 Elm Street, Suite 5400
Dallas, TX 75270
Attn: John M. Nolan
Facsimile: 214-745-5390

10.2 Methods of Delivery. All Notices required or permitted to be given hereunder shall be deemed to be duly given (a) at the time of delivery, if such Notice is personally delivered; or (b) on the third business day after mailing, if such Notice is deposited with the United States Postal Service, postage prepaid, for mailing via certified mail, return receipt requested; or (c) on the next business day, if such Notice is sent by a nationally recognized overnight courier which maintains evidence of receipt; or (d) upon receipt of delivery, if such Notice is sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of receipt. Notices shall be effective on the date of receipt. If any Notice is not received or cannot be delivered due to a change in address of the receiving Party, of which Notice was not properly given to the sending Party, or due to a refusal to accept by the receiving Party, such Notice shall be effective on the date delivery is attempted.

10.3 Franchise Agreement Notices. Owner or Developer as Owner's representative shall notify the City Parties of its receipt of any notice or result of inspection by the Franchisor within thirty (30) days of the receipt of the same, and upon request, the City Parties shall be entitled to a copy of any correspondence from Franchisor or the Owner to Owner's lender regarding the Franchise Agreement. Owner shall notify the City Parties of any Termination, modification, amendment or other material change to the Franchise Agreement within thirty (30) days of its receipt of the same. In addition to the foregoing, the existence of a default under the Franchise Agreement or under the Management Agreement to which any part of the Project is subject shall be disclosed in writing pursuant to the Notice requirements of this Article XI as soon as is reasonably possible, but in any event, within three (3) business days of Owner learning of said default.

ARTICLE XI

GENERAL PROVISIONS

11.1 Waiver, Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any failure of performance, including an Event of Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver

shall affect any other action or inaction, or cover any other period of time, other than any action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent action or inaction. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

11.2 Estoppel Certificate. Any Party may, at any time, and from time to time, deliver written notice to another Party requesting such other Party to certify in writing: (a) that this Agreement is in full force and effect and a binding obligation of the Parties; (b) that this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; (c) to the knowledge of such other Party, that no Party has committed an Event of Default under this Agreement, or if an Event of Default has to such other Party's knowledge occurred, to describe the nature of any such Event of Default; and (d) such other certifications that may be reasonably requested by the other Party or a Mortgagee. A Party receiving a request hereunder shall execute and return such certificate within ten (10) days following the receipt thereof, and if a Party fails so to do within such ten (10) day period, the information in the requesting Party's notice shall conclusively be deemed true and correct in all respects. Each Party acknowledges that a certificate hereunder may be relied upon by Transferees and Mortgagees.

11.3 Limited Liability. Notwithstanding any other provision of this Agreement, no Party shall in any circumstances be liable to any other Party under, arising out of or in any way connected with this Agreement for any consequential loss or damage or special or punitive damages, whether arising in contract or tort, including negligence.

11.4 Negation of Partnership. The Parties specifically acknowledge that the Hotel Complex is a private development, that no Party is acting as the agent of any other in any respect hereunder (except as may be specifically and expressly provided by separate agreement, if at all), and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Owner, the affairs of the City Parties, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third Party beneficiary rights in any Person who is not a Party or a Transferee; and nothing in this Agreement shall limit or waive any rights Owner may have or acquire against any third Person with respect to the terms, covenants or conditions of this Agreement.

11.5 Not a Public Dedication. Except as shown on any approved final plat of the Hotel Complex, nothing herein contained shall be deemed to be a gift or dedication of the Hotel Complex or any buildings or improvements constructed on the Hotel Complex, to the general public, for the general public, or for any public use or purpose whatsoever (except those public benefits described in this Agreement which accrue to the City through the development of local business activity, employment and development, none of which in any way entitle the City or any other governmental or quasi-governmental entity to any gift or dedication of the Hotel Complex or Hotel Unit as private property), it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the

development of the Hotel Complex as private property except for the Event Center Unit (which shall be public property).

11.6 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

11.7 Exhibits. The Exhibits, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto.

11.8 Amendment or Termination. Except as expressly provided in this Agreement, this Agreement may be Terminated, modified or amended only by the written consent of the Parties.

11.9 Entire Agreement. This written Agreement and the Exhibits hereto, contain all the representations and the entire agreement among the Parties with respect to the subject matter hereof. Upon execution of this Agreement, any prior or contemporaneous correspondence, memoranda, agreements, warranties or representations, are superseded in total by this Agreement and Exhibits hereto. Neither the conduct nor actions of the Parties, nor the course of dealing or other custom or practice between the Parties, shall constitute a waiver or modification of any term or provision of this Agreement. This Agreement may be modified or amended only in the manner specified in this Agreement.

11.10 Construction of Agreement. All of the provisions of this Agreement have been negotiated at arms-length among the Parties and after advice by counsel and other representatives chosen by each Party, and the Parties are fully informed with respect thereto. Therefore, this Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provisions hereof, or by reason of the status of either Party. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the Parties hereunder. The captions preceding the text of each Article and Section are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

11.11 Further Assurances; Covenant to Sign Documents. Each Party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents and writings, which may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement.

11.12 Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the Laws of the State.

11.13 Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

11.14 Recording. The Parties agree that this Agreement shall not be recorded. In lieu thereof, the Parties shall prepare a separate Memorandum of Agreement, a form of which is described hereto on Exhibit A, to be recorded in the Official Records of Collin County, Texas (“Memorandum”). Upon a termination of this Agreement or a Transfer, the Parties shall record a release of the Memorandum in the Official Records of Collin County, Texas.

11.15 Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

11.16 No Personal Liability. No member of Owner or Developer shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement. The City Parties shall look solely to the Owner or the Developer and the assets of Owner or Developer or any other obligated party hereunder for the payment of any claim under this Agreement.

[Signatures on the Next Pages]

The Parties hereto have duly executed this Agreement to be effective as of the Adoption Date.

CITY:

CITY OF MCKINNEY, TEXAS,
a municipal corporation

By: _____
Name: _____
Title: _____

MCDC:

MCKINNEY COMMUNITY DEVELOPMENT
CORPORATION,
a Texas non-profit corporation

By: _____
Name: _____
Title: _____

DEVELOPER:

_____,
a _____

By: _____
Name: _____
Title: _____

OWNER:

_____,
a _____

By: _____
Name: _____
Title: _____

EXHIBIT A
CONDOMINIUM MAP

TO BE PROVIDED WITHIN SEVENTY (70) DAYS.

EXHIBIT A-1

AMENDED DECLARATION TERMS

1. To the maximum extent feasible, those components of the building constituting common elements of the condominium regime which are useful to the operation of the Hotel Unit or the Event Center Unit, but not both, shall be designated as limited common elements appurtenant to the unit they serve to the end that the Owner of such Unit is obligated to pay all of the maintenance and related obligations on such building components. Without limitation, such building components shall be defined to include exterior walls, doors or windows serving or bordering only one Unit; stairwells serving only one Unit; and Systems serving only one Unit. Structural components of the building; the roof of the building; exterior walls, doors and windows serving more than one Unit; common stairwells; and Systems serving more than one Unit shall be designated as general common elements whose maintenance expenses shall be allocated in accordance with the Allocation Percentages. "Systems" shall be defined to include fixtures, equipment, pipes, lines, wires, computer cables, conduits, and other systems used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, wastewater, sewage, and audio, video and other electronic medium signals).

2. Each Unit and its associated parking shall be separately assessed for ad valorem taxes.

3. All insurance requirements for the Condominium, including policy types, limits and deductibles, shall not exceed those set forth in the Hotel Ground Lease or the Event Center Lease.

4. All meeting and conference rooms shall be included within the Event Center Unit and shall not be Common Elements of the Condominium.

5. The Lessee of the Event Center Lease may pledge its leasehold interest to the Lender of the Lessee for the Hotel Unit.

6. The Hotel Unit Owner is currently the Declarant and as such has two of the three board seats and member voting rights. The Declarant/Board rights, as well as member voting rights, shall be assigned by MCDC to the Hotel Lessee under the Hotel Ground Lease during the Term of the Hotel Ground Lease permitting such Hotel Lessee, rather than the MCDC, who serves as Declarant to have the two board seats and vote as the member. This assignment would terminate upon termination of the Hotel Ground Lease but only if the Hotel Lessee fails to purchase the Hotel Unit from MCDC. If the Hotel Lessee exercises its right to purchase the Hotel Unit, upon acquisition of the Hotel Unit, all rights of MCDC as a member of the condominium association and as "Declarant" under the Condo Declaration shall be assigned to the Hotel Lessee, shall be part of the conveyance of the Hotel Unit by MCDC to the Hotel Lessee and shall be held permanently by the Hotel Lessee. This change would impact the Condo Declaration and the Hotel Ground Lease.

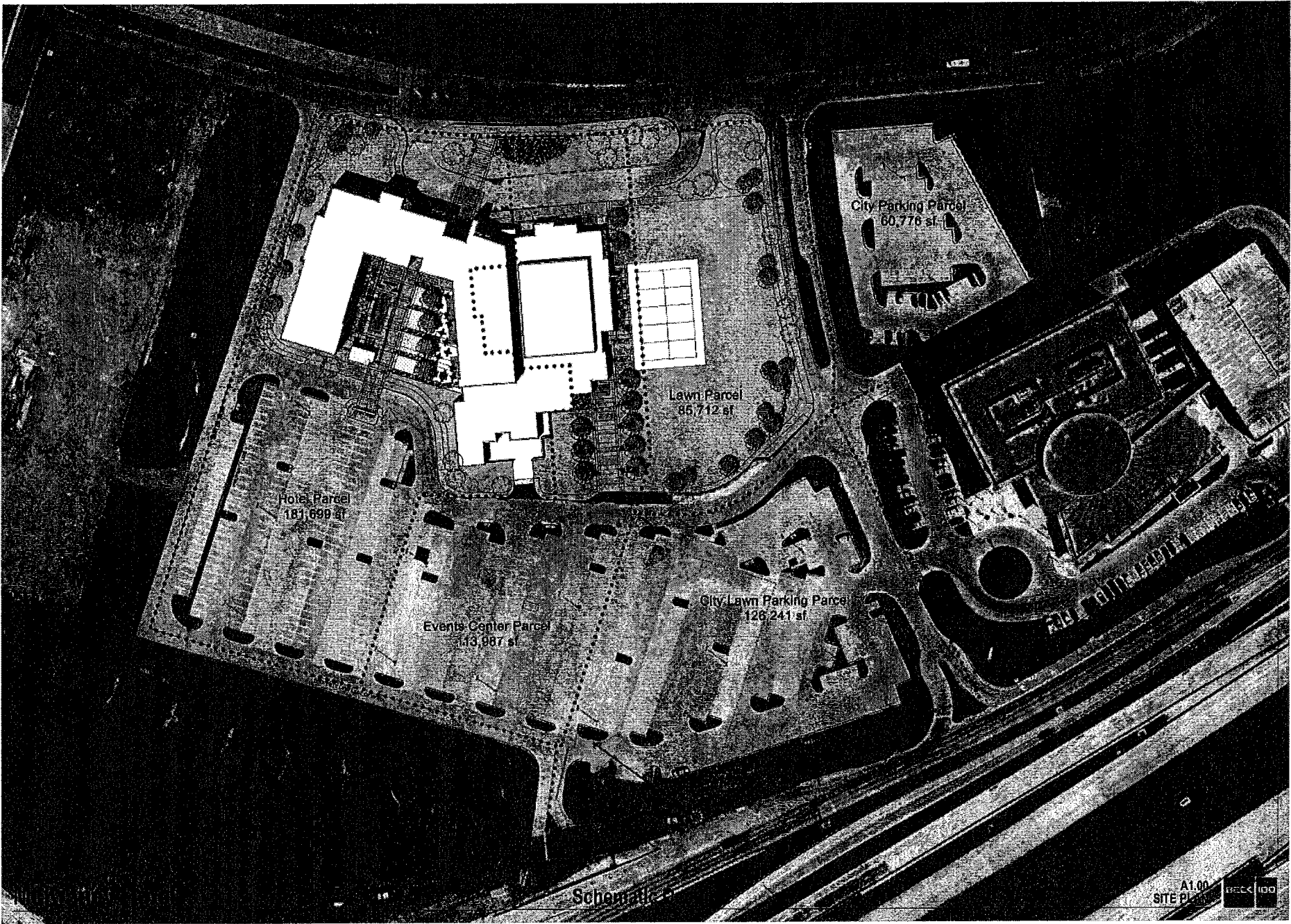
7. The Allocation Percentages shall be _____ for the Hotel Unit and _____ for the Event Center Unit. All allocations for Common Expenses, whether determined in accordance with the Allocation Percentages or otherwise, shall be addressed in the Condo Declaration, and the Allocation Document shall be terminated in its entirety. Unanimous consent of both Unit Owners shall be required for the following actions: revocation or termination of the Condo Declaration, or amendment of the Condo Declaration (other than ministerial matters; and provided that matters which do not affect a Unit or such Unit Owner's use of the common areas, or the assessments (special or otherwise) to which such Unit Owner is subject shall not require such Unit Owner's vote). Furthermore, the Condo Association's regulations and bylaws shall require unanimous consent to be amended or terminated, to levy a special assessment, to alter or lessen the "Hotel Standards" defined therein or the permitted uses of the Units.

EXHIBIT B

PLAT OF REAL PROPERTY

TO BE ATTACHED IN SIXTY (60) DAYS.

EXHIBIT B-1
LOT ALLOCATION



Hotel Parcel
181,699 sf

Lawn Parcel
86,712 sf

City Parking Parcel
60,776 sf

Events Center Parcel
143,987 sf

City Lawn Parking Parcel
126,241 sf

Schematic 5

A1.00
SITE PLAN
SCALE 1" = 100'

EXHIBIT C

HOTEL COMPLEX DESCRIPTION

McKinney Hotel / Events Center Program Summary

Hotel Guest Tower

# of Guest Rooms		186
Total GSF of Guestrooms (Flrs 1-4)	104,343	

Lobby and Public Areas	Seats	GSF	Net SF
Lobby			
Entry Vestibule			68
Front Desk			94
Business center			90
Public Restrooms			320
Cart storage			50
Atm			10
Vending (general store)			250
Total Lobby		1,058	882
Food & Beverage Outlets			
Food Outlets			
Restuarant	93		2,046
Beverage Outlets			
Bar	47		1,209
Total F&B Outlets		3,906	3,255
Function Space			
Ballroom			7,500
Meeting B			750
Meeting C			750
Meeting D			500
Meeting E			500
Boardroom			500
Prefunction			2,100
Coat Room			100
Bathrooms			1,000
Banquet service areas			1,000
Entry/vestibule			500
Storage			1,500
Total Function Space		20,040	16,700
Exterior Public Areas			
Backyard			1,408
Swimming Pool			750
Outdoor Bar			0
Outdoor Bar storage			0
Restroom unisex			51
Pool equipment			111
Total Exterior Areas		2,784	2,320
Recreation			

Fitness		640
Restroom		51
Total Recreation	829	691
Administration		
Front Office Work Area		250
General Manager		100
Asst. General Manager		100
Dir of Sales		100
Sales Manager		100
Sales Manager		100
Dir of F&B		100
Dir of Catering		100
Catering Manager		100
Banquet Manager		100
Reception admin .		200
File, copy, supplies storage		100
Admin break room		100
Data Center		250
Luggage Storage & Safety Deposit		250
Total Front Office	2,460	2,050
Food Production Area		
Kitchen & Pantries		
Restuarant Kitchen		2,000
Restuarant Cold Storage		250
Restuarant Dry Storage		250
Liquor Storage		60
Banquet service areas		1,000
Chef's Office		50
Total Food Production	4,332	3,610
Receiving & Storage		
Loading & receiving (Outdoor)		250
Compactor (Outdoor)		250
Can wash		50
Total Receiving		550
Employee Support		
Security/time clock		25
Resroom Unisex		40
Lockers		100
Cafeteria		400
Total Employee Support	650	565
Laundry		
Laundry production		500
Laundry Manager		50
Soiled Linen Storage		186
Clean Linen Storage		186

Laundry Chute		100
Total Laundry	1,175	1,022
Maintenance & Landscape		
Maintenance Shop		400
Landscape equipment storage		100
Janitors closet		10
Total Maintenance	587	510
Electrical/ Mechanical/Fire control		
Electrical		200
Mechanical		500
Mechanical fire Pump room		200
Telecom		100
Misc riser rooms		200
Fire Control		75
Total EMF	1,466	1,275
Total All public Area	39,837	32,883
Total All Guestrooms	104,343	
Total GSF - Hotel / Events Center	144,180	

This program is based on schematic drawings and is subject to change +/- 5% percent based on final design of the hotel.

EXHIBIT D

SITE PLAN

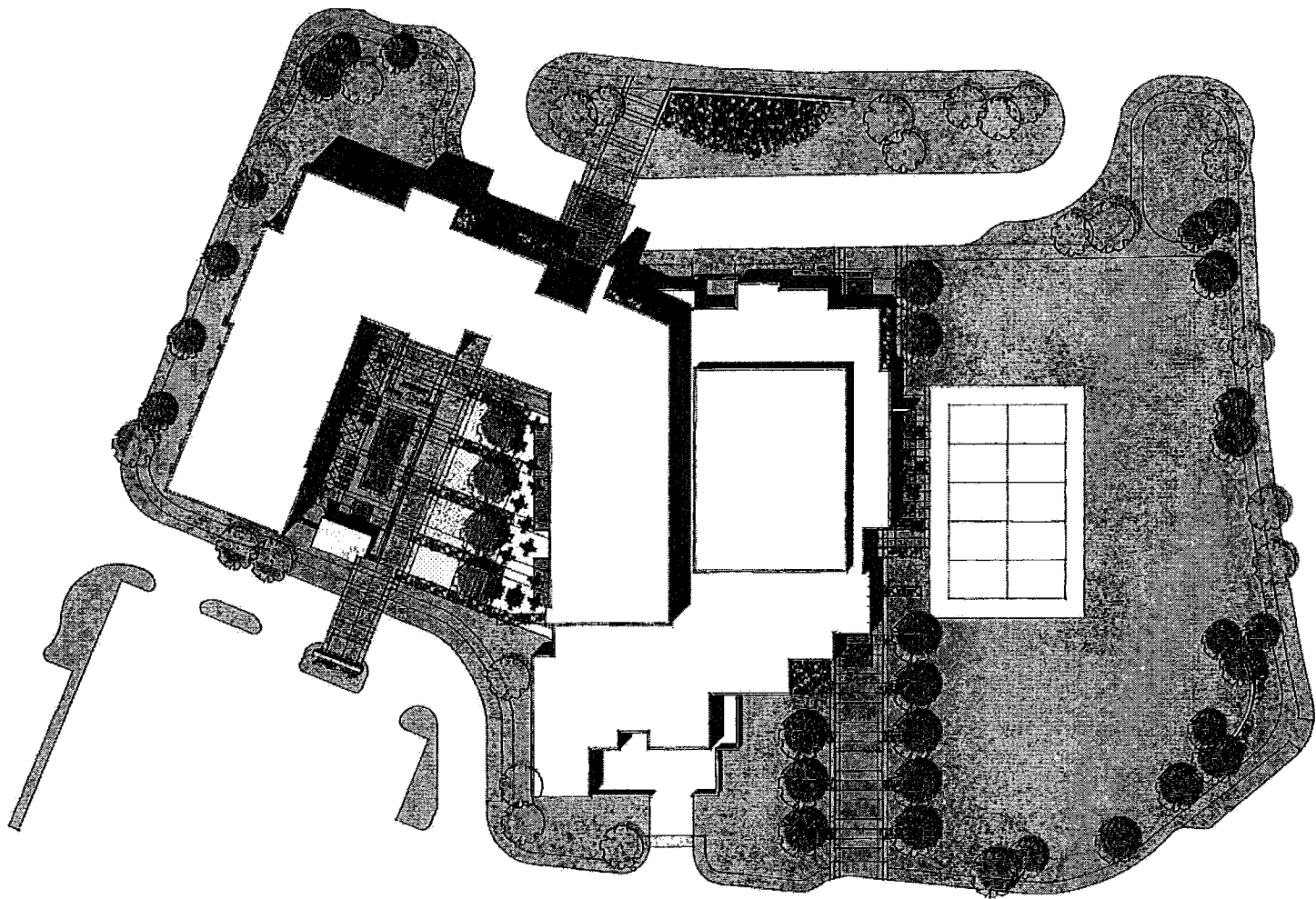


EXHIBIT E

CITY DEVELOPMENT FEES/EXACTIONS

The following constitutes City Development Fees or Exactions, which have either been paid or could be required in the future to develop the hotel complex. Any and all fees which constitute either a City Development Fee or an Exaction, whether specifically identified below shall be waived by the appropriate City entity.

1. Roadway Impact Fee PAID
2. Capital Recovery PAID
3. Pre-Final Plat 07-213PF PAID
4. Record Plat 07-481RP PAID
5. Site Plan 07-214SP PAID
6. Pro-Rata fees along Spur 399 (Waived)
7. Fire Plan Review Fee PAID
8. Health Plan Check Fee PAID
9. Water meter set fee PAID
10. Amending plat application fee
11. Potential zoning fee
12. Site plan fee
13. Building permit/plan review fees
 - Fire Plan Review Fee
 - Health Plan Check Fee
 - Permit fees
 - Water meter set fee

EXHIBIT F
DRAW REQUEST

DALLAS_15918418v11
6465-150 10/30/2012