

**EVENT CENTER LEASE
AND MANAGEMENT AGREEMENT**

THIS EVENT CENTER LEASE AND MANAGEMENT AGREEMENT (this "Lease"), dated as of the ____ day of _____, 2012 by and between, **THE CITY OF MCKINNEY, TEXAS**, a municipal corporation ("Owner"), whose address is 222 N. Tennessee, McKinney, Texas 75069, and _____, a _____ ("Tenant"), whose address is _____.

WITNESSETH:

WHEREAS, Owner is the owner of the Premises (as hereinafter defined) and intends to operate within the Premises a banquet and event center (the "Event Center"); and

WHEREAS, Tenant is knowledgeable and experienced in managing and promoting banquet and Event centers and Owner desires to engage Tenant as its agent, to manage and operate the Event Center;

NOW, THEREFORE, in consideration of the rents and covenants hereinafter set forth, Owner hereby leases to Tenant, and Tenant hereby leases from Owner, the Premises, and Owner engages Tenant as its agent, to manage and operate the Event Center, upon the following terms and conditions:

**ARTICLE I
FUNDAMENTAL LEASE PROVISIONS**

Section 1.01 Definitions. In addition to the other terms which are defined elsewhere in this Lease, the following terms have the meaning set forth below:

(a) **Premises**: The "Premises" shall consist of:

(i) Event Center Unit. The Event Center Unit in the McKinney Gateway Condominium, a condominium project to be established upon that certain real property, a legal description of which is attached as Exhibit A hereto and incorporated by reference herein, located in the City of McKinney, County of Collin, State of Texas. The Event Center Unit is part of a larger condominium regime (the "Condominium Regime") composed of the Event Center Unit, a separate condominium unit (the "Hotel Unit") and the common elements established under the Condominium Regime. The Condominium Regime is created and governed by that certain Amended and Restated Condominium Declaration for the McKinney Gateway Condominium (the "Declaration," and together with the Certificate of Formation, Bylaws and any Rules and Regulations of the Condominium Regime Owners' Association, collectively the "Condominium Regime Governing Documents"). That portion of the Premises consisting of the Event Center Unit shall be deemed to include any and all rights of Owner to all Common Elements (as defined in Section 2.01(b) below) of the Condominium Regime. A plan depicting the Event Center Unit and the Common Elements of the Condominium Regime is attached hereto as Exhibit B. The Condominium Regime is a part of a larger hotel and event center project (the "Project").

(ii) **Lawn Area.** The lawn area depicted on Exhibit A-1 (the "Lawn Area"), which shall be leased and demised to Tenant for Tenant's exclusive use in accordance with the provisions of this Lease until such time as the lease of the Lawn Area is terminated by Owner in accordance with Section XV and removed from the definition of the leased Premises. The Lawn Area is adjacent to the Event Center Unit but is not part of the Condominium Regime and does not constitute a unit or common element thereof.

- (b) **Hotel Lease:** A ground lease of even date herewith from McKinney Community Development Corporation, as lessor, to _____, as lessee, with respect to the Hotel Unit.
- (c) **Term:** Approximately ninety-nine (99) Lease Years, commencing on the Commencement Date and ending on December 31 during the year which is ninety-year (99) years after the Commencement Date ("Expiration Date").
- (d) **Lease Year:** Shall mean a period of twelve (12) consecutive calendar months with the first Lease Year commencing on the Commencement Date hereof and ending on the last day of the twelfth (12th) full calendar month following the Commencement Date, and each succeeding twelve (12) consecutive calendar months thereafter constituting an additional Lease Year, with the last Lease Year ending on the Expiration Date. If the Commencement Date does not fall on the first day of a calendar month, then the first Lease Year shall include the partial month during which the Commencement Date occurred, together with the next succeeding twelve (12) calendar months.
- (e) **Annual Minimum Rent:** One and No/100 Dollar (\$1.00).
- (f) **Additional Charges:** Shall mean the Common Elements and Project Common Areas maintenance costs; all Lawn Area maintenance costs; and Taxes.
- (g) **Use:** The operation and maintenance of an event and banquet center and any other activities ancillary and/or incidental thereto.

ARTICLE II

LEASE OF PREMISES - TERM OF LEASE SECTION

Section 2.01 Demise.

- (a) Owner does hereby lease to Tenant, and Tenant does hereby lease from Owner, the Premises, upon and subject to the terms, conditions, covenants, and agreements set forth in this Lease.
- (b) Tenant shall have a nonexclusive right to use all of the common elements of the Condominium Regime to which Owner has an interest under the Condominium Regime Governing Documents (the "Common Elements") and the common areas of the Project (the "Project Common Areas"), including, but not limited to, mechanical systems and installations, maintenance facilities, easements, structural

supports, sidewalks, paved parking areas, paved service areas, signs, traffic controls, lighting and all means of ingress, egress, acceleration, deceleration and stacking lanes and circulation for the aforesaid parking and service areas of the Condominium Regime and the Project to and from public streets and roads bordering the Condominium Regime and the Project now or hereafter made available to or maintained by Owner under the Condominium Regime Governing Documents, any reciprocal easement agreements or similar instrument benefiting the Project (“REA”), or otherwise. Tenant and its employees, invitees, agents, customers, concessionaires and licensees shall have the nonexclusive right, in common with Owner, the other condominium owners of the Condominium Regime, and other occupants of the Project to use the Common Elements and Project Common Areas.

- (c) For so long as the Premises include the Lawn Area, Tenant and its employees, invitees, agents, customers, concessionaires and licensees shall have the exclusive right to use the Lawn Area.

Section 2.02 Commencement Date. The Initial Lease Term shall commence on the date on which Tenant opens the Premises for business to the public (the “Commencement Date”).

Section 2.03 Acceptance Date. “Acceptance Date” shall mean the date upon which the construction of the Premises is sufficiently complete so that the Premises can be occupied and utilized for its intended use.

Section 2.04 Commencement Date Lease. When the Commencement Date has been determined, Owner and Tenant shall execute a memorandum which shall confirm the Commencement Date, Expiration Date of the Term, and the Lease Year, and which shall also ratify and affirm all of the terms and provisions of this Lease.

ARTICLE III POSSESSION

Section 3.01 As-Is. Except as otherwise expressly provided in this Lease, the Premises are leased to Tenant by Owner on an “as-is” and “where-is” basis.

ARTICLE IV RENT

Section 4.01 Annual Minimum Rent. Commencing on the Commencement Date, and on the first day of each calendar year thereafter during the Term, Tenant shall pay to Owner the Annual Minimum Rent; provided, however, that Tenant may, at its election, make any such payments in advance throughout the Term of this Lease.

Section 4.02 Method of Payment. All payments of Annual Minimum Rent as well as any other amounts due under the terms of this Lease shall be made by check payable to Owner, mailed or delivered to the address set forth above, or to such other person or place as Owner shall designate by written notice to Tenant.

ARTICLE V
COMMON ELEMENT MAINTENANCE AND COST

Section 5.01 **Maintenance.** During the Term of this Lease, Tenant shall maintain and repair, at Tenant's sole cost and expense, the Common Elements or cause the same to be done in a manner so as to maintain the same in good repair and condition or as otherwise required under the Condominium Regime Governing Documents, to the extent such maintenance and repair obligation has been allocated to the Owner under the Condominium Regime Governing Documents. To the extent possible, Owner may cause Tenant to be billed directly as the party to whom any maintenance costs relating to the Premises and/or the Project for which Tenant is responsible under this Lease should be sent. If such separate billings shall be obtained, then Tenant shall pay such costs directly. If such separate billing shall not be obtained, Owner shall pay when due all such costs, and Tenant shall reimburse Owner for same within thirty (30) days after Owner submits to Tenant proof of payment by Owner and copies of any such bills.

ARTICLE VI
TAXES AND OTHER CHARGES

Section 6.01 **Taxes.** Owner shall use all reasonable efforts to obtain from the taxing authorities a separate tax parcel assessment for the Premises (and improvements located thereon) and to cause Tenant to be named as the party to whom all such bills and assessments should be sent. If such separate assessment shall be obtained, then Tenant shall pay the Taxes (as hereinafter defined) directly to the taxing authority. If such separate assessment shall not be obtained, then Owner shall pay when due all Taxes levied and assessed against the Premises, and Tenant shall reimburse Owner for same as set forth in Section 6.02 below. Except as hereinafter provided to the contrary, for each calendar year or part thereof during the Term, Tenant shall pay the net amount (after reflecting all discounts for early payment, refunds and credits and after excluding all penalties, interest and late charges) of all real estate taxes and assessments (collectively, "Taxes") levied and assessed against the Premises.

Section 6.02 **Payment of Taxes.** Tenant shall be liable for and shall pay all Taxes only with respect to Taxes accruing during the Term, regardless of when such Taxes are billed or become due and payable. Tenant shall pay all Taxes within thirty (30) days after Owner submits to Tenant proof of payment of Taxes by Owner, copies of all tax bills and a tax map for such Taxes and a statement setting forth the manner in which Taxes are calculated. Notwithstanding anything to the contrary herein, with respect to betterments or other extraordinary or special assessments, Tenant's obligations shall apply only to the extent such assessments (and interest thereon) accrue during the Term and are applicable to the subject Lease Year within the Term, and Tenant shall have the right to pay assessments in installments over the longest payment period permitted by law for the particular assessment, in which case Tenant shall pay only those installments which accrue during the Term and are applicable to the subject Lease Year within the Term.

Section 6.03 **Exclusions from Taxes.** When used in this Lease, the term "Taxes" shall mean only taxes which are assessed against and payable by Owner with respect to the Premises, less any abatements or other tax forgiveness. Such Taxes shall specifically exclude any late payment charge or penalty interest. Taxes shall additionally exclude the portion of any

increase in real property taxes directly resulting from a reassessment of the Premises due to a change in ownership or change in use (“Change In Ownership”) of the Premises (i.e., the increase in real property taxes directly resulting from a reassessment of the Premises due to a change in ownership or change in use shall not be included within Taxes).

Section 6.04 Right to Contest. Tenant shall have the right to contest, in good faith, the validity or the amount of any Taxes levied against the Premises by such appellate or other proceedings as may be appropriate in the jurisdiction in which the Premises is located and may defer payment of such obligations, and take such other steps as Tenant may deem appropriate. Owner shall cooperate in the institution and prosecution of any such proceedings and will execute any documents required therefor. If Tenant is unsuccessful in reducing the Taxes levied against the Premises, then the expense of such proceedings shall be borne by Tenant. However, if Tenant is successful in reducing the Taxes levied against the Premises, then Owner shall reimburse Tenant for all reasonable costs and expenses incurred in such proceedings and any refunds or rebates secured shall belong to Tenant to the extent that the refund or rebate relates to Taxes previously paid to Owner. In the event Owner fails to reimburse Tenant for the amounts set forth above within thirty (30) days after Tenant’s written demand, Tenant shall have the right to offset the amount of such reimbursement, together with interest thereon at the lesser of (i) the rate of two percent (2%) per annum in excess of the prime rate charged by JPMorgan Chase Bank, and (ii) the maximum contractual rate which could legally be charged under Texas law (the “Default Rate”), against the amounts of Taxes next coming due until the reimbursement is fully recovered by Tenant.

ARTICLE VII UTILITIES

Section 7.01 Utilities. Owner covenants and agrees that the Premises shall be properly serviced with gas, electric, telephone, water, sewer and other utilities sufficient to meet Tenant’s requirements. Such utilities for the Premises shall be contracted for by Tenant or affiliates with service providers who may provide utility services to the Premises and Hotel Unit under omnibus agreements. Tenant shall pay all charges for utility services furnished to the Premises. From and after the Acceptance Date, Tenant agrees to pay promptly, as the same become due and payable, all bills for gas, electricity and water for the Premises and sewer use charges for the Premises for any period during the Term. If at any time during the Term, for any reason, Owner shall provide utility service to the Premises, then Tenant’s cost for such utility service shall not exceed Owner’s actual cost for such utility service. In addition, Tenant shall have the right to install a test meter to verify its utility usage. In no event shall Owner profit in any way from the distribution or redistribution of utilities, including, but not limited to, those resulting from deregulation.

ARTICLE VIII MANAGEMENT AND OPERATION OF EVENT CENTER

Section 8.01 General Management Services. Subject to the provisions of this Lease, Owner hereby engages and appoints Tenant as the exclusive manager of the Event Center during the Term, and Tenant or a hotel and event center management company engaged by Tenant pursuant to the Management Agreement (defined below) hereby agrees to be engaged

and does undertake to supervise, direct, and control the management, operation, and promotion of all aspects of the Event Center as the agent of Owner, subject to the limitations set forth in this Agreement. Notwithstanding the foregoing, or anything to the contrary contained herein, Owner hereby acknowledges and agrees that Tenant shall have the right to engage an Affiliate or the Manager as defined in that certain Hotel and Event Center Development Agreement (the "Development Agreement") of even date herewith among Owner, Tenant, and McKinney Community Development Corporation to manage the Event Center so long as said Affiliate manages the Event Center in accordance with the requirement of this Lease.

Section 8.02 Authority and Duty of Tenant as Manager.

- (a) During the Term, Owner authorizes and instructs Tenant, and Tenant accepts the duty and responsibility, to use good faith efforts to cause the Event Center to be operated, managed, serviced, maintained and refurbished, at Tenant's sole cost and expense, (a) in a manner consistent with the requirements and limitations set forth in this Agreement, and (b) in a manner consistent with the standard requirements of the hotel franchisor (the "Hotel Franchisor") under which the hotel within the Hotel Unit is operated (collectively, the "Operating Standard").
- (b) Without limiting the generality of the foregoing, but subject to the limitations on Tenant's authority set forth in this Agreement, Tenant shall have the exclusive authority and duty during the Term to direct, supervise, manage, and operate the Event Center on a day-to-day basis, as Tenant deems necessary or advisable for the proper operation and maintenance of the Event Center in accordance with the terms and conditions of this Agreement and the Operating Standard.
- (c) Further, without limiting the generality of the foregoing, Tenant specifically agrees:
 - (i) to keep the Premises at all times in a first-class condition, order and repair, consistent with the quality of the remainder of the Project, including, without limitation, the periodic maintenance, repair, refurbishment and replacement of the interior and exterior of the Premises required in connection therewith, and in all events, in compliance with all of the Hotel Franchisor's requirements respecting the same; and
 - (ii) to use commercially reasonable efforts to meet and maintain at all times the highest grade of governmental standards and ratings applicable to the operation of the food preparation services upon the Premises (including, without limitation, the maintenance of a Grade "A" sanitation rating or its equivalent with respect to the food preparation area operated on the Premises).

Section 8.03 Management Fee. In consideration of, and as compensation for, the operation, management, servicing and maintaining of the Event Center by Tenant, Owner agrees that Tenant shall be entitled to charge, collect and retain an aggregate amount equal to one hundred percent (100%) of the Event Center Gross Operating Revenue (as hereinafter defined). The "Event Center Gross Operating Revenue" shall mean any and all revenue and/or income of

any kind whatsoever derived directly or indirectly from the operations at the Event Center and/or the Premises.

Section 8.04 Event Center Marketing Program. Tenant shall develop and implement a specific marketing program for the Event Center, following Tenant's policies and guidelines and any requirements of the Hotel Franchisor, which shall provide for the planning, publicity, internal communications, organizing, and budgeting activities to be undertaken.

Section 8.05 Owner's Use of the Event Center. Notwithstanding anything to the contrary contained herein, Owner shall have the right to use portions of the Event Center for up to forty (40) hours per calendar year (the "Owner's Use Hours") on the following terms and conditions. The Owner's Use Hours shall include up to two (2) "major events" which would require full use of the Event Center ballroom. On or prior to November 30th of each calendar year during the Term of this Lease, Owner shall deliver written notice to Tenant specifying the exact dates and times for each of the Owner's Use Hours that Owner desires to reserve during the successive calendar year. Owner shall specifically designate which events would qualify as the "major events" described above. Within thirty (30) days after Tenant's receipt of Owner's desired Owner's Use Hours, Tenant shall provide Owner with written notice of the desired Owner's Use Hours which have not been previously reserved by another user, and such days shall thereafter be reserved as an Owner Use Day by Tenant for the applicable calendar year. To the extent that any of the desired Owner Use Days fall on a date that has already been reserved by another user, then Owner and Tenant shall confer to determine other dates that the Event Center is available for use by Owner, and Owner shall designate which of the available dates it desires to reserve for the remaining Owner's Use Hours. Any use by Owner of the Event Center, including each of the Owner's Use Hours, shall be subject to Tenant's standard rates, prices, and policies, and in accordance with Tenant's standard terms and conditions, respecting the use and rental of the Event Center, as may be applicable to the general public; provided, however, that Owner shall not be charged with any room rental fees in connection with any of the Owner's Use Hours and Owner shall receive a 10% discount on its food and beverage order in connection with such events. Owner shall be permitted to use any unused Owner's Use Hours during each calendar year on an as-available basis with respect to the Event Center; provided, however, that any unused Owner's Use Hours from one calendar year shall not carry over into the following calendar year.

Section 8.06 Management Agreement. Tenant shall operate the Event Center as an event or convention center of quality comparable to or exceeding those located in similar cities and markets to the City of McKinney, Texas. The selection by Tenant of a management company ("Manager"), whether or not an affiliate of Tenant, and the form, terms, and conditions of any Management Agreement (herein so called) by which such Manager is retained, shall be on terms which are reasonable within the market. So long as such terms are reasonable within the market, no Owner approval shall be required. If the terms are not reasonable within the market, the Owner's written approval must be obtained, which consent shall not be unreasonably withheld or delayed.

Section 8.07 Change in Ownership. Upon the occurrence of an uncured Event of Default by Tenant under this Lease, or the termination of this Lease, the Owner and/or its nominee shall have the right under the Management Agreement to assume the role of Tenant

thereunder without being liable for any cost, damages, or defaults incurred by Tenant prior to the Owner's assumption. In connection with any transfer of this Lease by Tenant which results in a change in the Manager, whether or not an affiliate of Tenant, and the form, terms, and conditions of any Management Agreement by which such new Manager is retained, shall be on terms which are reasonable within the market. So long as such terms are reasonable within the market, no Owner approval shall not be required. If the terms are not reasonable within the market, the Owner's written approval must be obtained, which consent shall not be unreasonably withheld or delayed.

ARTICLE IX REPAIRS

Section 9.01 Tenant's Obligations. During the Term, the Premises (including the elements of the building which are a part of the Premises and any adjacent grounds that are a part of the Premises), and any fixtures, furniture or equipment ("FF&E") or equipment used in connection with the operation of the Event Center shall be maintained and repaired by Tenant at Tenant's sole cost and expense (but subject to reimbursement under any of the insurance policies maintained by Tenant with respect to the Premises) to permit operation of the Event Center in accordance with the Operating Standard.

Section 9.02 Hazardous Materials. "Hazardous Materials" shall mean (i) any waste, material or substance (whether in the form of a liquid, a solid, or a gas and whether or not air-borne) which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, infectious, explosive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is now or becomes regulated in the future by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated pursuant thereto (collectively "Environmental Regulations", and individually, "Environmental Regulation"); (ii) petroleum; (iii) asbestos and asbestos containing materials; (iv) any polychlorinated biphenyl; (v) mold in quantities or locations that require remediation in accordance with commercially reasonable industry standards; and (vi) any radioactive material. In addition to the foregoing, Environmental Regulations shall be deemed to include, without limitation, any local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other governmental restrictions and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant thereto, which deal with or otherwise in any manner relate to, environmental matters of any kind.

- (a) Owner and Tenant each agree that neither Owner nor Tenant shall cause any Hazardous Materials to exist on, or to escape, seep, leak, spill or be discharged, emitted or released from the Premises during the Term in violation of any applicable Environmental Regulation. Notwithstanding the foregoing, Tenant shall be permitted to have such substances in and on the Premises which are customarily used in connection with the management and operation of an Event and banquet center so long as such substances are used in compliance with all Environmental Regulations.

- (b) Owner hereby indemnifies Tenant and its successors and assigns, and agrees to hold Tenant and its successors and assigns harmless from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever, including attorney's fees and costs (collectively "Environmental Liabilities") paid, incurred or suffered by, or asserted against, Tenant or its successors and assigns with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises of any Hazardous Materials which were brought in to the Premises by Owner, its agents (other than Tenant in its capacity as agent under this Lease), employees or their respective predecessors-in-interest, or caused by breach by Owner, its agents, employees or their respective predecessors-in-interest of any Environmental Regulation to which Owner is subject.
- (c) Tenant hereby indemnifies Owner and its successors and assigns, and agrees to hold Owner and its successors and assigns harmless from and against any and all Environmental Liabilities paid, incurred or suffered by, or asserted against, Owner or its successors and assigns with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises of Hazardous Materials which were brought in to the Premises by Tenant, its employees, representatives or contractors, or caused by breach by Tenant of any Environmental Regulation to which Tenant is subject.
- (d) With respect to Hazardous Materials which are or become present at the Premises as the result of any cause whatsoever (other than Hazardous Material which were knowingly and intentionally brought in to the Premises by Tenant, its employees, representatives or contractors) that renders the Premises Unusable (as hereinafter defined), Owner shall, at Owner's sole cost, in a good, workmanlike and expeditious manner, and in compliance with Environmental Regulations, perform all work necessary to restore the Premises to the condition that existed prior to the introduction of the Hazardous Materials. If such work is not commenced within thirty (30) days after the date (the "Notification Date") that Tenant notifies Owner of Hazardous Materials rendering the Premises Unusable (Or such additional period as may be reasonably required to engage environmental consultants and/or engineers and obtain permits and licenses) or if such work is not completed within ninety (90) days after the Notification Date (or such additional period as may reasonably be required given the nature of the work, provided that Owner diligently pursues same to completion), then in addition to all remedies available at law, in equity and otherwise provided for under the terms of this Lease, Tenant shall have the right to terminate this Lease by giving written notice of termination to Owner; provided, however, that Tenant's option to terminate this Lease pursuant to this subsection (e) shall cease to exist at any time the Premises are restored by Owner as required above. If this Lease is terminated by Tenant pursuant to this subsection (e), then neither Owner nor Tenant shall have any further obligations to the other under this Lease, or otherwise with respect to the Premises; provided, however, that nothing herein shall be construed to release

Tenant from any obligation under the Lease accrued or payable prior to the date of termination. For the purpose of this subsection (e), “Unusable” means that the Tenant does not have access to any portion of the Premises because of the enforcement of any Environmental Regulation or the need for the use of the Premises for remediation of any Hazardous Materials, or because the use of the Premises would represent a risk to the health or safety of Tenant, Tenant’s employees, agents or invitees.

- (e) The indemnities contained in subsections (c) and (d) above shall survive the termination of this Lease.

Section 9.03 Surrender of the Premises. At the expiration or earlier termination of the tenancy hereby created, Tenant shall surrender the Premises to Owner in the condition Tenant is required to maintain the Premises pursuant to this Lease, reasonable wear and tear, alterations, damage caused by casualty and/or condemnation or by the acts or negligence of Owner, its employees, agents or contractors.

ARTICLE X

REQUIREMENTS OF LAW

Section 10.01 Owner’s Obligations. Except as otherwise provided in this Lease, Owner shall, at its expense, comply with or cause to be complied with all insurance requirements and with all laws, statutes, ordinances and regulations of Federal, state, county and municipal authorities (collectively, “Laws”) which shall impose any duty upon Owner with respect to the Premises.

Section 10.02 Tenant’s Obligations. Commencing on the Acceptance Date, Tenant, at its expense, shall comply with all Laws relating to its use and occupation of the Premises and shall endeavor to cause the conduct of business therein to comply with all Laws.

Section 10.03 Right to Contest. The party responsible for compliance pursuant to Section 10.01 or 10.02 shall have the right to contest the validity of any Law at the expense of the party responsible for Compliance, unless such contest would result in any fine, charge, cost, expense or civil or criminal liability imposed upon the other party, or any lien on the Project, or a default under any franchise agreement with the Hotel Franchisor. Notwithstanding the foregoing, Tenant shall have the rights provided by Section 14.02 with respect to any mechanic’s lien filed against the Premises.

ARTICLE XI

INSURANCE

Section 11.01 Owner’s Insurance. [Intentionally Deleted].

Section 11.02 Tenant’s Share of Owner’s Insurance Cost. [Intentionally Deleted].

Section 11.03 Tenant’s Insurance.

- (a) Commencing on the Commencement Date, Tenant shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the state of Texas and acceptable to the City of McKinney. The Tenant shall furnish to the City of McKinney Risk Manager certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project and be addressed as follows:

City of McKinney
c/o Periculum Services Group
Department 72
PO Box 257
Portland, MI 48875-0257

(i) Tenant shall insure the Premises, against damage or destruction by fire and other casualties insurable under an "All-Risk" property insurance policy. Said insurance shall be at full replacement cost, without depreciation, of the Premises. All such policies of insurance, shall name and shall be for the mutual and joint benefit and protection of Owner and Tenant, and shall be expressly endorsed to reflect Owner, Hotel Franchisor (and any affiliates thereof as may be requested by Hotel Franchisor) and any applicable lenders of Tenant or any Affiliates of Tenant, as a party at interest, additional insured, and/or loss payee, as the case may be, as its interests may appear.

(ii) Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Bodily Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.

(iii) Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.

(iv) Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.

(v) Umbrella or Excess Liability insurance with minimum limits of \$5,000,000 each occurrence and annual aggregate for bodily injury and property damage, that follows form and applies in excess of the above indicated primary coverage (i), (ii) and (iii). The total limits required may be satisfied by any combination of primary, excess or umbrella liability insurance provided all policies comply with all requirements. The may maintain reasonable deductibles, subject to approval by the City of McKinney.

- (b) With reference to the foregoing required insurance, the Tenant shall endorse applicable insurance policies as follows:
- (i) A waiver of subrogation in favor of City of McKinney, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
 - (ii) The City of McKinney, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader .
 - (iii) All insurance policies shall be endorsed to the effect that City of McKinney will receive notice prior to cancellation, non-renewal, termination, or material change of the policies.
- (c) Commencing on the Commencement Date, Tenant shall maintain in full force and effect fire and extended coverage insurance covering Tenant's furniture, fixtures, equipment and other personal property located in or at the Premises against damage or destruction by fire and other casualties insurable under a Special Form (formerly known as "All-Risk") property insurance policy, in amounts no less than eighty percent (80%) of the replacement value thereof; providing, however, that Tenant shall have the right to self-insure such property.
- (d) All insurance purchased by Tenant shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent.

Section 11.04 Indemnity. Subject to Sections 11.03 and 11.05 hereof, during the Term, Tenant shall indemnify, defend and hold Owner harmless against all costs, expenses, penalties, claims or demands of whatsoever nature arising from or relating to Tenant's use of the Premises, except those which shall result from the negligence or willful misconduct (including fraud) of Owner, its agents (other than Tenant in its capacity as agent under this Lease), employees or contractors, Subject to Sections 11.01 and 11.05 hereof, during the Term, Owner shall indemnify, defend and save Tenant harmless against all costs, expenses, penalties, claims or demands of whatsoever nature arising from or relating to Owner's or its agents' (other than Tenant in its capacity as agent under this Lease), contractors' or employees' use of the Project, including the Common Elements and Project Common Areas and the Premises, except those which shall result from the negligence or willful misconduct (including fraud) of Tenant, its employees, contractors or representatives.

Section 11.05 Mutual Waiver of Subrogation. Notwithstanding anything set forth in this Lease to the contrary, Owner and Tenant do hereby waive any and all right of recovery, claim, action or cause of action against the other, their respective agents, officers and employees for any loss or damage that may occur to the Premises or any addition or improvements thereto, by reason of fire, the elements or any other cause which could be insured against under the terms of a standard fire and extended coverage insurance policy or policies, with vandalism, malicious mischief and all-risk coverage and business interruption insurance or for which Owner and

Tenant may be reimbursed as a result of insurance coverage affecting any loss suffered by either party hereto, regardless of cause or origin, including the negligence of Owner or Tenant or their respective agents, officers and employees.

ARTICLE XII
DAMAGE OR DESTRUCTION

Section 12.01 Tenant's Obligations to Rebuild and Repair.

- (a) Subject to the terms of Section 12.02 below, if all or any part of the Premises is damaged or destroyed by fire, the elements or other casualty, then Tenant shall, at Tenant's sole cost and expense, timely repair the damage and restore the Premises to the condition that existed immediately prior to the damage. As soon as reasonably possible thereafter, Tenant shall repair or restore any trade fixtures, equipment, furniture and other personal property of Tenant, consistent with Tenant's intended use of the Premises as set forth in Section 1.01.

Section 12.02 Termination.

- (a) If more than fifty percent (50%) of the floor area of the Premises is damaged or destroyed or the time needed for repair and restoration is greater than one hundred and fifty (150) days from the commencement of such repair or restoration, and provided that Tenant is not otherwise required to repair and restore the Premises under the Condominium Regime Governing Documents, then Tenant shall have the option, within ninety (90) days after the occurrence of such damage, to terminate this Lease upon written notice to Owner, effective as of the date of such written notice.
- (b) [Intentionally Deleted].
- (c) Notwithstanding anything contained in this Article XII to the contrary, if Tenant is deprived of the use of all or any portion of the Premises or of more than twenty-five percent (25%) of the common areas of the Condominium Regime and/or Common Elements by reason of such damage or destruction and such damage or destruction occurs during the last three (3) years of the Term, and provided that Tenant is not otherwise required to repair and restore the Premises under the Condominium Regime Governing Documents, then Tenant shall not be obligated to repair the damage and restore the Premises and Tenant shall have the right to terminate this Lease, effective as of the date of such damage or destruction, by giving notice of such election to Owner within sixty (60) days after the occurrence of such damage or destruction.

ARTICLE XIII
CONDEMNATION

Section 13.01 Taking.

- (a) In the event of condemnation by eminent domain or similar law, including a sale in lieu thereof to an authority or other entity having the power of eminent domain (a “Taking”, or “Taken”), of all or any portion of the Premises, which (i) affects ingress or egress to the Premises, or (ii) prohibits or inhibits Tenant’s use of the Premises for a period in excess of sixty (60) days, then Tenant may terminate this Lease by giving notice to Owner not more than ninety (90) days after the later of the date on which title vests in the condemning authority or the date Tenant receives notice of said vesting.
- (b) In the event of a Taking of more than fifty percent (50%) of the floor area of the Premises, Tenant shall have the right, within thirty (30) days after such Taking, to terminate this Lease by notice to Owner.

Section 13.02 Restoration. In the event of a Taking, if this Lease is not terminated pursuant to Section 13.01, then Tenant, at its sole cost and expense, shall promptly restore that portion of the Premises not Taken as nearly as practicable to a complete unit of like quality and character as existed prior to the Taking.

Section 13.03 Award. Tenant shall have the right to claim and recover from the condemning authority such compensation as may be awarded or recoverable by Tenant under applicable law, including, without limitation, any award attributable to the value of the improvements located on the Premises.

ARTICLE XIV **ALTERATIONS AND MECHANICS’ LIENS**

Section 14.01 Tenant’s Alteration Rights. Tenant shall have the right, at its own cost and expense, to make alterations to the Premises; provided, however, that such alterations, additions or improvements comply with all applicable Laws. Tenant shall not be required to remove any alterations or restore the Premises to its original condition upon the termination of this Lease, at which time such alterations (excluding Tenant’s Property, as hereinafter defined) shall become the property of Owner. Owner agrees to cooperate reasonably, but at no cost to Owner with Tenant in procuring all necessary permits for any alterations which Tenant is permitted to make.

Section 14.02 Mechanics’ Liens. Tenant shall not permit any mechanic’s or materialmen’s liens to be filed against the Premises, and Tenant covenants that Tenant shall promptly discharge of record (by payment, bond, order of a court of competent jurisdiction or otherwise) any mechanic’s lien filed against the Premises for any work, labor, services or materials claimed to have been performed at, or furnished to, the Premises for or on behalf of Tenant, or at the insistence of Tenant, or anyone acting for, through or under Tenant. If Tenant shall fail to cause such lien to be discharged within thirty (30) days after Owner shall (i) provide notice of the filing of such lien, and (ii) demand in writing that Tenant remove same, then, in addition to any other right or remedy of Owner, Owner may, but shall not be obligated to, discharge the same by paying the amount claimed to be due, by bonding or by any other proceeding deemed appropriate by Owner, and the amount so paid by Owner, including interest at the Default Rate, and/or all costs and expenses including reasonable attorney’s fees incurred

by Owner in procuring the discharge of such lien shall be deemed to be additional rent hereunder payable within thirty (30) days after written demand. Nothing in this Lease contained shall be construed as a consent on the part of the Owner to subject Owner's estate in the Premises to any lien or liability under any law relating to liens.

ARTICLE XV **LAWN AREA**

Section 15.01 Maintenance. Tenant or the developer under the Development Agreement shall cause the Lawn Area to be put into a landscaped, sprinklered, and lit condition, including the removal of any existing concrete slabs. Tenant shall thereafter maintain the landscaping, sprinkler system, and lighting in good condition and repair at Tenant's sole cost and expense. Tenant shall be responsible for the installation of electrical and data systems to the Lawn Area. In the event the Lawn Area is removed from this Lease, then Tenant shall have no further obligation with respect to the Lawn Area.

Section 15.02 Termination of Lease as to Lawn Area. Upon not less than ninety (90) days' prior written notice from Owner to Tenant, Owner shall be permitted to terminate this Lease as it relates to the Lawn Area. Following termination, the Premises shall be defined to exclude the Lawn Area from the definition thereof, and Tenant shall have no further rights or obligations with respect to the Lawn Area. There shall be no adjustment of rent in connection with the removal of the Lawn Area, provided, however, that Tenant shall have no obligation with respect to Additional Charges that relate to the Lawn Area. Tenant shall surrender possession of the Lawn Area in good condition and repair on the termination date.

ARTICLE XVI **TENANT'S PROPERTY**

Section 16.01 Tenant's Property. All of Tenant's movable trade fixtures, equipment, furniture, inventory and other property owned by Tenant and located at, on or in the Premises, (collectively, "Tenant's Property"), shall remain the property of Tenant, exempt from the claims of Owner or any mortgagee or ground lessor, without regard to the means by which or the persons by whom Tenant's Property is installed or attached. Tenant shall have the right at any time and from time to time to remove Tenant's Property, provided that if removal of any of Tenant's Property damages any part of the Premises, Tenant shall repair such damage at Tenant's cost and expense.

ARTICLE XVII **ASSIGNMENT AND SUBLETTING SECTION**

Section 17.01 Assignment and Subletting Rights.

- (a) Owner shall not have the right to assign, pledge, transfer or convey its rights, titles, interest, or obligations under this Lease without the prior written consent of Tenant which shall not be unreasonably withheld.
- (b) Tenant shall not have the right, prior to completion of the Premises, to assign, pledge, transfer or convey its rights, titles, interests, or obligations under this

Lease to any third party, other than to an Affiliate (as defined below) of Tenant, without the prior written consent of the Owner, which consent may be withheld in the Owner's sole discretion; provided that notwithstanding the foregoing:

(i) Tenant shall have the right to assign, pledge, transfer or convey some or all of its rights, title, interests or obligations under this Lease to an Affiliate of Tenant upon delivery to the Owner of a written Assumption Agreement, signed by Tenant and its Affiliate.

(ii) Following the issuance of a certificate of occupancy for the Premises, Tenant shall have the right to assign, pledge, transfer or convey all or any part of this Lease to any third party ("Transferee") upon the delivery to the Owner of a written Assumption Agreement, signed by the Tenant and its Transferee, but without the consent or approval of Owner. Any assignment by the Tenant shall be subject to the provisions and restrictions of this Lease.

(iii) As a condition to any assignment by Tenant pursuant to this Section 17.01, Tenant shall deliver to the Owner an executed and acknowledged assignment and assumption agreement (the "Assumption Agreement") Such Assumption Agreement shall include provisions regarding: (a) the rights and interest proposed to be transferred to the proposed Transferee; (b) the obligations of Tenant under this Lease that the proposed Transferee will assume; and (c) the proposed Transferee's acknowledgment that such Transferee has reviewed and agrees to be bound by this Lease. The Assumption Agreement shall also include the name, form of entity, and address of the proposed Transferee.

An "Affiliate" of Tenant for the purposes herein shall mean any person or entity directly or indirectly controlling, controlled by or under common control with Tenant.

(c) Tenant and any other subsequent Transferee, to the extent the same is permitted hereunder, shall upon the consummation of such transfer, be relieved of all further liability for the obligations of this Lease, except such liability for the obligations of this Lease as may have arisen prior to such transfer to the extent the same remain unsatisfied, provided that the party accepting such transfer at the time of transfer assumes in writing all of the obligations of Tenant under this Lease, Owner covenants and agrees that this Lease shall remain in full force and be unaffected by any such permitted assignments, pledges, transfers or conveyances.

ARTICLE XVIII

DEFAULT SECTION

Section 18.01 Tenant's Default.

(a) If (i) Tenant defaults in the payment of any installment of Annual Minimum Rent or Additional Charges payable hereunder by Tenant; or if (ii) Tenant defaults in the observance of any other material covenant or agreement herein contained and Tenant does not, in either cases of (i) or (ii), within thirty (30) days after receipt of notice thereof from Owner, cure or commence to cure such default (it being

intended in connection with a default not susceptible of being cured with due diligence within said thirty (30) day period that the time allowed Tenant within which to cure same shall be extended for such period as may be necessary to complete same with all due diligence), then Owner may, by giving notice to Tenant at any time thereafter during the continuance of such default, terminate this Lease, without any right by Tenant to reinstate its rights by payment of Annual Minimum Rent or Additional Charges due or other performance of the terms and conditions hereof and upon such termination Tenant shall immediately surrender possession of the Premises to Owner. Notwithstanding anything contained herein to the contrary, if Tenant shall file for protection pursuant to any applicable bankruptcy law, but Tenant shall continue to operate the Premises and to pay all installments of Annual Minimum Rent and Additional Charges payable hereunder by Tenant as and when the same become due and payable, then Tenant shall not be deemed to be in default pursuant to the terms of this Lease. If, after the lapse of all applicable grace periods, Owner reasonably expends any money to cure a default by Tenant, then Tenant shall, on demand, pay Owner the amount so paid by Owner. Owner shall also be entitled to all other rights and remedies available to Owner at law and in equity; provided, however, that Owner shall, in all instances, be required to mitigate damages. Owner expressly waives all rights to any so-called "Owner's lien" or any similar statutory lien, granting Owner a lien for the performance of any obligations of Tenant, on any fixtures, machinery, equipment, goods, wares, merchandise or other personal property, and, at the request of Tenant, Owner shall promptly confirm such waiver by a writing in form satisfactory to Tenant.

- (b) No expiration or termination of this Lease pursuant to subsection (a) above or by operation of law or otherwise (except as expressly provided herein), and no repossession of the Premises or any part thereof pursuant to subsection (a) above or otherwise shall relieve Tenant of its liabilities and obligations hereunder accruing prior to such expiration or termination, subject to Owner's obligation to mitigate damages.

Section 18.02 Owner's Default.

- (a) If Owner shall (i) default in the payments of any amounts or charges payable by Owner hereunder and such default is not cured within ten (10) days after receipt of notice from Tenant thereof or default in the observance of any material covenant or agreement herein contained and Owner does not cure such default within thirty (30) days after notice thereof by Tenant (it being intended in connection with a default not susceptible of being cured with due diligence within said thirty (30) day period that the time allowed Owner within which to cure same shall be extended for such period as may be necessary to complete same with all due diligence), or (ii) fail to pay when due any Taxes or any other charge or assessment, the lien of which is prior to the lien of this Lease, then Tenant may, in addition to all other rights and remedies available to Tenant at law and in equity, including, without limitation, termination of this Lease, cure such default on behalf of and at the expense of Owner and do all necessary work and make all

necessary payments in connection therewith to the extent necessary in Tenant's discretion to protect Tenant's leasehold interest and continued use and occupancy of the Premises. Owner shall, on demand, pay Tenant the amount so paid by Tenant together with interest thereon at the Default Rate, or, at Tenant's option and in lieu thereof, Tenant may (in addition to any other right or remedy at law or in equity) offset such amount against Additional Charges payable by Tenant, apply the same to the payment of such indebtedness and, if Tenant so elects, extend the Term until such time as Tenant, through such offsets, has recouped the entire amount to which Tenant is entitled hereunder. In the event Tenant elects not to so extend the Term, Owner shall immediately pay to Tenant any outstanding balance due that has not been offset upon the termination of this Lease.

Section 18.03 Cross-Termination. This Lease shall automatically terminate coincident with any termination of the Hotel Lease; provided, however, that this Lease shall not terminate coincident with any termination of the Hotel Lease in connection with the purchase of the Hotel Unit by Tenant or one of its affiliates or a successor tenant of the Hotel Lease. Absent an uncured Event of Default by Tenant hereunder, Owner shall under no circumstances be permitted to terminate this Lease absent a termination of the Hotel Lease (excluding termination of the Hotel Lease due to the acquisition of the Hotel Unit as described in the preceding sentence).

ARTICLE XIX **ESTOPPEL CERTIFICATES**

Section 19.01 Owner Estoppel Certificates. Owner agrees, within fifteen (15) days of Owner's receipt of Tenant's written request, to execute and deliver to Tenant or any or any mortgagee, trustee, assignee or transferee an estoppel certificate (a) ratifying the Lease and confirming (i) any amounts due from Owner to Tenant; (ii) Tenant's right to audit Operating Expenses under this Lease; and (iii) that there are no modifications or amendments to the Lease, except as may be stated in the certificate, (b) confirming the commencement and expiration dates of the Lease, (c) certifying to the best of Owner's knowledge and belief that Tenant is not in default under the Lease and that there are no events that which with the giving of notice, the passage of time, or both would constitute a default under the Lease, and that there are no offsets or defenses to enforcement of the Lease, except as may be stated in the certificate, and (d) stating the date through which Annual Minimum Rent and any other applicable charges have been paid.

Section 19.02 Tenant Estoppel Certificates. Tenant agrees, within thirty (30) days of Tenant's receipt of Owner's written request, to execute and deliver to Owner an estoppel certificate (a) ratifying the Lease and confirming that there are no modifications or amendments to the Lease, except as may be stated in the certificate, (b) confirming the commencement and expiration dates of the Lease, (c) certifying to the best of Tenant's knowledge and belief that the Owner is not in default under the Lease, and that there are no offsets or defenses to enforcement of the Lease, except as may be stated in the certificate, (d) stating the date through which Annual Minimum Rent has been paid, and (e) stating whether all improvements to be provided by Owner have been completed

ARTICLE XX
OWNER'S REPRESENTATIONS AND WARRANTIES

Section 20.01 Quiet Enjoyment. Owner covenants and agrees that so long as Tenant performs all of its obligations under this Lease and is not in default hereunder beyond any applicable notice and cure period, Tenant, during the Term hereof, shall freely, peacefully, and quietly occupy and enjoy the use and possession of the Premises in accordance with the terms of this Lease without disturbance, molestation, hindrance or ejection of any kind whatsoever as a result of any act or inaction on the part of Owner or any persons claiming through Owner.

Section 20.02 Owner's Representations and Warranties.

- (a) Owner represents, warrants, covenants and agrees that Owner owns the fee simple title to the Premises; that the Premises, as of the date hereof, is not subject to the lien of any deed of trust, mortgage or other similar encumbering instrument; that Owner has the full power, right and authority to make this Lease for the term hereof without the consent, joinder, or approval of any other party; and that Owner will put Tenant into complete and exclusive possession of the Premises and Owner shall not enter (or have entered) into or cause (or have caused) the passage of any orders, restrictions, covenants, agreements, leases, easements, laws, codes, ordinances, regulations or decrees which would, in any way, prevent or inhibit the use of the Premises for the uses thereof by Tenant as contemplated by this Lease or prevent or restrict the use of the access roads and passageways by Tenant, its agents, employees, contractors or invitees or limit ingress and egress to public thoroughfares.
- (b) Intentionally Omitted.
- (c) Notwithstanding any other provisions of this Lease, at Tenant's option, the Term shall not commence and Annual Minimum Rent and Additional Charges payable under this Lease shall not commence to accrue until the representations and warranties set forth herein shall be true and complete in all material respects.
- (d) If Owner fails to fulfill or cause to be fulfilled, within thirty (30) days after the Commencement Date, any of the representations, warranties and covenants above or any other representation, warranty or covenant of Owner, the failure of which might materially adversely affect Tenant's position or rights under this Lease, then, in addition to any other rights or remedies available to Tenant, Tenant shall have the right to terminate this Lease by notice to Owner, which notice shall state an effective date of termination of not less than thirty (30) days from the date of such notice.

Section 20.03 Tenant's Representations and Warranties.

- (a) Tenant represents and warrants to Owner that Tenant has the full power, right and authority to make this Lease for the Term hereof without the consent, joinder, or approval of any other party.

- (b) Tenant represents and warrants to Owner that the person signing this Lease on behalf of Tenant has authority to do so; that this Lease is fully binding on Tenant; and that Tenant is qualified to do business in the State of Texas.

**ARTICLE XXI
HOLDING OVER**

Section 21.01 Holding Over. If Tenant remains in possession of the Premises after the expiration of the Term without having duly exercised its right, if any, to extend or further extend the Term, such continuing possession shall create a month-to-month tenancy on the terms herein specified, and such tenancy may be terminated at the end of any month thereafter by either party by giving at least thirty (30) days' notice thereof to the other party.

**ARTICLE XXII
NOTICE**

Section 22.01 Where and How Given. All notices, statements, demands, consents and other communications ("Notices") required or permitted to be given by any party to another party pursuant to this Lease or pursuant to any applicable law or requirement of public authority 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 22.02; and (c) sent to the party to which it is addressed at the address set forth below or at such other address as such party may hereafter specify by at least five (5) calendar days prior written notice:

Tenant: _____

Owner: The City of McKinney, Texas
222 N. Tennessee
McKinney, Texas 75069
Attn: _____

The addresses to which Notices and demands shall be delivered or sent may be changed from time to time by Notice served, as hereinbefore provided, by either party upon the other party.

Section 22.02 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.

ARTICLE XXIII MISCELLANEOUS

Section 23.01 Construction. The language in all parts of this Lease shall in all cases be construed according to its fair meaning and not strictly for or against either Owner or Tenant, and the construction of this Lease and any of its various provisions shall be unaffected by any argument or claim, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of Tenant or Owner.

Section 23.02 Section Headings. The section headings in this Lease are for convenience only and do not in any way limit or simplify the terms and provisions of this Lease, nor should they be used to determine the intent of the parties.

Section 23.03 Partial Invalidity. If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 23.04 Waiver. The failure of either party to seek redress for violation of, or to insist upon strict performance of, any term, covenant or condition contained in this Lease shall not prevent a similar subsequent act from constituting a default under this Lease.

Section 23.05 Governing Law. This Lease shall be governed and construed in accordance with the laws of the State of Texas,

Section 23.06 Successors and Assigns. This Lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assign of both Owner and Tenant.

Section 23.07 No Broker. Owner and Tenant represent to each other that no broker or person is entitled to any commission by reason of the negotiation and execution of this Lease other than the Broker, and Owner agrees that Owner shall be solely responsible for the fees and commissions of the Broker in accordance with the provisions of a separate written agreement between Owner and the Broker. Owner and Tenant agree to indemnify, defend and hold each other harmless against any and all claims by any other person for brokerage commissions or fees arising out of any conversation, negotiations or other dealings held by the other party with any other broker regarding this Lease.

Section 23.08 Memorandum of Lease. The parties will, at any time and upon written request of either one, promptly execute duplicate originals of a mutually acceptable instrument, in recordable form, which will constitute a memorandum of lease setting forth only a description of the Premises, the term of this Lease and any renewal options hereof. Any and all costs

associated with the preparation and recordation of such memorandum of lease shall be the responsibility of the party so requesting.

Section 23.09 Entire Lease. This instrument contains the entire and only agreement between the parties and no oral statements or representations or written matter not contained in this instrument shall have any force or effect. Each party to this Lease hereby acknowledges and agrees that the other party has made no warranties, representations, covenants or agreements, expressed or implied, to such party other than those expressly set forth herein and that each party, in entering into and executing this Lease, has relied upon no warranties, representations, covenants or agreements, express or implied, to such party other than those expressly set forth herein. This Lease shall not be amended or modified in any way except by a writing executed by both parties.

Section 23.10 Relationship of Parties. The relationship between the parties hereto is solely that of Owner and tenant and/or Tenant and nothing in this Lease shall be construed as creating a partnership or joint venture between the parties hereto, it being the express intent of Owner and Tenant that the business of Tenant on the Premises and elsewhere, and the good will thereof, shall be and remain the sole property of Tenant. The submission of this Lease for examination does not constitute a reservation of or agreement to lease the Premises, and this Lease shall become effective and binding only upon proper execution hereof by Owner and Tenant.

Section 23.11 Force Majeure. If either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of materially adverse weather conditions, strikes, lockouts, labor troubles, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reasons of a like nature beyond the reasonable control of the party delayed in performing works or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay, and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay, except as otherwise specifically provided herein to the contrary. The provisions of this Section shall not (a) be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Lease because of a lack of funds, or (b) delay or postpone any of the rights specifically granted to Tenant to terminate this Lease.

Section 23.12 Attorneys' Fees. If either party shall file any proceeding against the other party for breach or default under this Lease, whether at law or in equity, the prevailing party shall be entitled to receive reimbursement from the other party for its reasonable attorneys' fees and court costs.

Section 23.13 Tenant's Rights. If at any time Tenant fails to exercise any of Tenant's rights under the provisions of this Lease, Tenant's right shall not expire until fifteen (15) days after Tenant's receipt of Owner's written notice stating such failure by Tenant.

Section 23.14 Waiver of Jury Trial; Remedies Not Exclusive. The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matters arising out of or in any way connected with this Lease, the relationship

of Owner and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage. No right or remedy herein conferred upon or reserved to Owner is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

Section 23.15 Representation of Fair Market Value. Owner and Tenant hereby represent and agree that the Annual Minimum Rent payable to the Owner by the Tenant under this Lease represents the fair market rental value of the Premises, being the amount that generally would be charged by a willing landlord to a willing and unrelated tenant for a lease of the Premises under terms and conditions similar to those set forth in this Lease, neither being under any compulsion to enter into such lease and both having knowledge of relevant facts, including without limitation (a) the Tenant's assumption of risk that the operation of the Event Center will not be profitable and (b) the Tenant's responsibility for paying, as provided under this Lease, (i) maintenance costs of the Common Elements and Project Common Areas, (ii) Taxes, (iii) utility costs, (iv) insurance costs, (v) repair costs of the Premises, (vi) costs of operating, managing, servicing, maintaining and refurbishing the Event Center, and (vii) all other costs that must be paid by the Tenant under this Lease.

Section 23.16 Waiver of Sovereign Immunity. Pursuant to Section 271.152 of the Texas Local Government Code, Owner hereby waives its sovereign immunity with respect to any causes of action, rights of indemnity, and remedies available to Tenant in connection with Owner's indemnity obligations and breaches of Owner's duties under this Agreement.

Section 23.17 Tenant's Financing and Leasehold Mortgage Provisions. Exhibit C contains provisions regarding Tenant's financing and leasehold mortgage rights.

Section 23.18 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, Owner will not enter into any new agreement or permit the recording of an instrument which would encumber the Premises, nor will Owner modify or permit the modification of any existing encumbrance affecting the Premises.

IN WITNESS WHEREOF, Owner and Tenant have caused this Lease to be duly executed and delivered in their respective names as of the date first above written.

OWNER:

CITY OF MCKINNEY, TEXAS,
a municipal corporation

By: _____

Name: _____

Title: _____

TENANT:

_____,
a _____

By: _____

Name: _____

Title: _____

EXHIBIT A

EXHIBIT A-1

EXHIBIT B

EXHIBIT C

1. Tenant's Financing. Owner 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, Owner 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. Owner 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. Owner 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, Owner 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 Owner in the Leased Property or the Lease. Owner further agrees that Owner 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 Mortgage, 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. Owner shall give to Tenant's Mortgagee a duplicate copy of any and all notices which Owner 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 Owner and Tenant without the prior written consent of Tenant's Mortgagee, nor shall the Lease be canceled or terminated by any action of Owner unless Owner 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. Notwithstanding the foregoing, this paragraph shall not limit the Owner's right to terminate the Lease with respect to the Lawn Area in accordance with Article XV.

(e) Default and Tenant's Mortgagee's Rights. If an Event of Default should occur under the Lease, then Owner specifically agrees that Owner 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 Owner of such termination (which notice Owner 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 Owner, 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 Owner agrees to execute such new lease.

(g) Limitation of Tenant's Mortgagee's Liability. Tenant's Mortgagee shall not be or become liable to Owner 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. Owner Estoppels. So long as a Mortgage is in existence, Owner shall provide an estoppel certificate to Tenant's Mortgagee within 20 days of Owner's receipt of a written request from Tenant's Mortgagee. The estoppel certificate must (a) confirm that Owner 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 Owner or an affiliate is the declarant under the Declaration, such declarant shall provide an estoppel certificate to Tenant's Mortgagee within 20 days of Owner's receipt of a written request from Tenant's Mortgagee confirming such matters as Tenant's Mortgagee may reasonably require.

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