

GUARANTY AGREEMENT

This Guaranty Agreement (“Agreement”) is entered into this ____ day of February, 2020, by DSE Hockey Centers, L.P., a Delaware limited partnership (the “Guarantor”), in favor of the City of McKinney, Texas, (the “City”).

WITNESSETH:

WHEREAS, the Guarantor and the City have worked together in a public-private partnership involving the construction and tenancy of the **McKinney StarCenter** (formerly known as the Dr. Pepper StarCenter) in the City of McKinney, Texas (the “Facility”) for more than ten years; and

WHEREAS, the Guarantor and the City desire to expand the Facility to add a new sheet of ice fit for both regulation hockey play and competition figure skating and additional amenities supporting, and appurtenant to, the use and operation of the Facility (the “Project”); and

WHEREAS, the City has solicited proposals for a Design-Builder to perform the design, construction, and services required to fulfill the Design-Builder's obligations under the “Design-Build Agreement” (defined below) for the Project for a guaranteed maximum price of Thirteen Million Eight Hundred Thousand Dollars (\$ 13,800,000.00) (the “GMP”); and

WHEREAS, Stellar Industrial Solutions, Incorporated, a Florida Corporation (“Stellar”), was selected as the “Design-Builder” for the Project; and

WHEREAS, Stellar insists on capping its potential liability under the Design-Build Agreement, as amended, for both breach of contract claims and negligence claims at the limits of Stellar's insurance coverage of \$ 75,000,000.00 for insured claims and \$ 1,000,000.00 for any and all uninsured claims (the “Liability Cap”); and

WHEREAS, the City has agreed to accept the Liability Cap on Stellar's potential liability for claims that are covered by Stellar's insurance, but cannot agree to accept the proposed \$ 1,000,000.00 Liability Cap on breach of contract claims that might be brought by the City against Stellar and/or brought by third-parties against Stellar and the City (as a co-defendant of Stellar) that are not covered by Stellar's insurance (“Uninsured Stellar Claims”) because the potential cost to resolve any and all Uninsured Stellar Claims specifically including by way of illustration and not limitation any and all liabilities, costs, expenses, expert witness costs and fees, reasonable attorney's fees, and costs to complete the Project together with any and all other remedies arising from Stellar's breach of contract (collectively “Damages”) could significantly exceed the Liability Cap for such Uninsured Stellar Claims; and

WHEREAS, the Guarantor has agreed, as an inducement to obtain the City's approval of Stellar's proposed revisions to Section 14.4 and Subsection 14.4.1 of the Addendum to AIA Document A141-2014 (the "Design-Build Agreement") specifically including the Liability Cap and the City's execution of said Design-Build Agreement, that Guarantor will assume responsibility for Stellar's full, complete, and proper performance of the Project and provide the City guaranty against any and all Damages arising out of Uninsured Stellar Claims, provided that Guarantor's liability hereunder is limited to those Damages from Uninsured Stellar Claims that individually, collectively and/or cumulatively exceed the Liability Cap for Uninsured Stellar Claims and result in the total cost to complete the Project to exceed the GMP, thereby leaving the City without recourse against Stellar; **NOW THEREFORE**,

FOR AND IN CONSIDERATION of the City's execution of the Design-Build Agreement with Stellar and the City's acceptance of the Liability Cap proposed by Stellar, the Guarantor hereby agrees with the City as follows:

1. The phrase " Design-Build Agreement," as used in this Agreement, means and refers to the following contract documents:

- a. **AIA Document A141™-2014, "Standard Form of Agreement Between Owner and Design-Builder,"** as amended by that certain Addendum to the *Standard Form of Agreement Between Owner and Design-Builder*, AIA Document A141 – 2014 (collectively the "AIA Design-Build Agreement");
- b. **AIA Document A141™-2014 Exhibit A, "Design-Build Amendment,"** as amended by that certain Addendum to AIA Document A141 - 2014 Exhibit A (collectively "Exhibit A"); and,
- c. **AIA Document A141™-2014 Exhibit B, "Insurance and Bonds,"** as amended by that certain Addendum to AIA Document A141 - 2014 Exhibit B (collectively referred to as "Exhibit B"),

as such documents are hereafter completed and executed by the City and Stellar and as they may thereafter be amended or modified by and between the City and Stellar.

2. Subject to the provisions contained herein, the Guarantor does hereby unconditionally assume responsibility for and guarantee payment to the City for any and all Damages arising out of Uninsured Stellar Claims to the extent that such Damages for Uninsured Stellar Claims exceed the Liability Cap set out in Sections 14.4 and 14.4.1 of the Design-Build Agreement.

In regard to the foregoing Guarantee against Damages arising out of Uninsured Stellar Claims and the Liability Cap set out in Sections 14.4 and 14.4.1 of the Design-Build Agreement, said contractual provisions provide as follows:

“§ 14.4 LIMITS ON DESIGN-BUILDER’S OBLIGATIONS

§ 14.4.1 Design-Builder’s total obligation to the City of McKinney (Owner) and Owner’s officials, officers, agents, and employees for any and all claims is hereby limited to a cumulative amount not to exceed (a) Seventy-Five Million Dollars (\$ 75,000,000.00) for those matters that are covered by Design-Builder’s insurance coverage and One Million Dollars (\$ 1,000,000.00) for those matters that are not covered by Design-Builder’s insurance coverage.”

As the City has agreed to accept the liability cap of \$ 75,000,000.00 for insured claims, the Guarantor shall have no obligation under this Agreement for any claims that might be brought by the City against Stellar and/or claims that might be brought by third-parties against Stellar and the City (as a co-defendant of Stellar) and any Damages arising therefrom that are covered by Stellar’s insurance. Further, the Guarantor shall have no obligation or liability under this Agreement for any Damages arising out of Uninsured Stellar Claims until such time as Stellar’s cumulative liability for Damages arising out of Uninsured Stellar Claims under the Design-Build Agreement exceeds the Liability Cap of One Million Dollars (\$ 1,000,000.00) and until such time as such Damages from Uninsured Stellar Claims result in the total cost to complete the Project to exceed the GMP

By way of example, if the City pays Stellar \$ 12,000,000.00 of the GMP for Stellar’s performance of work on the Project, Stellar quits working on the Project for whatever reason (and doing so is an uninsured claim), the City places Stellar in default under the contract, and the total cost to the City for the Project is \$ 16,000,000.00, the City shall be responsible for the difference in cost between the \$ 12,000,000.00 paid to Stellar and the GMP of \$ 13,800,000.00 or \$ 1,800,000.00, Stellar shall be responsible for the first \$ 1,000,000.00 of the \$ 2,200,000.00 construction overage and the Guarantor shall be responsible for the next \$ 1,200,000.00 construction overage. Also by way of example and subject to Guarantor’s rights as a third-party beneficiary to the construction agreement, if the City has to sue Stellar for Uninsured Stellar Claims under the foregoing scenario and the City either prevails at trial in that lawsuit or reaches a settlement with Stellar for the full amount of Stellar’s Liability Cap of One Million Dollars (\$ 1,000,000.00) and the City incurs \$ 250,000.00 in Damages over and above the cost required to complete the Project as a result of such Uninsured Stellar Claims the additional \$ 250,000.00 in Damages incurred by the City shall be deducted from the \$ 1,000,000.00 paid by Stellar in satisfaction of the Liability Cap on uninsured claims, and the remaining balance of \$ 750,000.00 therefrom will be added to the fund account for completion of the Project resulting in the payment of the cost for completion being modified as follows: the City shall be responsible for the difference in cost between the \$ 12,000,000.00 paid to Stellar and the GMP of \$ 13,800,000.00 or \$ 1,800,000.00, \$ 250,000.00 of Stellar’s Liability Cap payment shall be first applied to City’s Damages other than cost to cure with

the remaining \$ 750,000.00 applied to the \$ 2,200,000.00 construction coverage and the Guarantor shall be responsible for the next \$ 1,450,000.00 construction coverage.

Guarantor hereby irrevocably and unconditionally guarantees to the City, as Payee under this Agreement, that in the event Damages for Uninsured Stellar Claims exceeds Stellar's Liability Cap of One Million Dollars (\$ 1,000,000.00) for such uninsured claims, the Guarantor shall pay such Damages for Uninsured Stellar Claims to City. The obligations of Guarantor under this Guaranty are independent of those of Stellar. Notwithstanding anything herein to the contrary foregoing, City shall designate Guarantor as a third-party beneficiary under the Design-Build Agreement to allow Guarantor to bring an action against Stellar for Damages for Uninsured Stellar Claims, provided in the absence of such third-party beneficiary right of Guarantor, the City as Payee under this Agreement must pursue claims against, and if necessary to enforce such claims bring a separate action against, Stellar for amounts up to the Liability Cap prior to first proceeding against Guarantor.

3. The Guarantor agrees that, in the event that Damages for Uninsured Stellar Claims exceeds the Liability Cap, the Guarantor will, upon demand by the City, pay such Damages for Uninsured Stellar Claims in excess of the Liability Cap to City. No such payment shall discharge the liability of the Guarantor hereunder until all Damages for Uninsured Stellar Claims in excess of the Liability Cap required to complete the Project have been paid in full.

4. Subject to the terms herein, the liability of the Guarantor under this Agreement for any Damages arising out of Uninsured Stellar Claims in excess of the Liability Cap is absolute and unconditional, without regard to the liability of any other person, and shall not in any manner be affected by reason of any action taken or not taken by the City, other than a material breach of the Design-Build Agreement by City, which action or inaction is herein consented and agreed to, nor by the partial or complete unenforceability or invalidity of any other guaranty or surety agreement, pledge, assignment or other security for any Damages arising out of Uninsured Stellar Claims. The liability of the Guarantor hereunder shall not be affected by, and this Agreement shall remain fully enforceable against the Guarantor irrespective of, any defenses which Stellar may have or assert with respect to any Damages arising out of Uninsured Stellar Claims, including, but without limitation, discharge in bankruptcy, confirmation of a plan of reorganization, composition with creditors, failure of consideration, breach of warranty, statute of frauds, statute of limitations, accord and satisfaction, waiver, estoppel, release, usury, and fraud or misrepresentation, but excluding a material breach of the Design-Build Agreement by City. No delay in making demand on the Guarantor for satisfaction of its liability hereunder shall prejudice the City's right to enforce such satisfaction. All of the City's rights and remedies shall be cumulative and any failure of the City to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other right at any time, and from time to time, thereafter.

5. This Agreement shall be a continuing one and shall be binding upon the Guarantor regardless of how long before or after the date hereof any Damages arising out of Uninsured Stellar Claims in excess of the Liability Cap was or is incurred.

6. The Guarantor acknowledges that the statute of limitations applicable to this Agreement shall begin to run only upon the Guarantor's failure or refusal to pay any Damages arising out of Uninsured Stellar Claims following default in the payment or performance thereof by Stellar; provided, however, that if subsequent to such default, the City reaches an agreement with Stellar on any terms causing the City to forbear in the enforcement of its claims against the Guarantor, the statute of limitations shall be reinstated for its full duration until Stellar again defaults.

7. This Agreement shall be governed by the laws of the State of Texas; and, that venue shall be appropriate in the state and federal courts of Collin County, Texas. Guarantor agrees that any controversy arising under or in relation to this Agreement shall be litigated exclusively in Collin County, Texas. The state and federal courts and authorities with jurisdiction in and for Collin County, Texas shall have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. Guarantor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

8. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission or other electronic transmission with suitable proof of receipt (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Guarantor: DSE Hockey Centers, L.P.,
Attention: Damon Boettcher
2601 Avenue of the Stars
Frisco, Texas 75034
Email: dboettcher@dallasstars.com

With a copy to: DSE Hockey Centers, L.P.
Attention: Cara Martin, Legal Counsel
2601 Avenue of the Stars
Frisco, Texas 75034
Email: cmartin@dallasstars.com

[Remainder of page intentionally left blank.]

If to City: City of McKinney, Texas
Attention: City Manager
222 N. Tennessee Street
McKinney, Texas 75070
Facsimile No.: 972-547-2607

With a copy to: Brown & Hofmeister, LLP
Attention: Mark Houser
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
Fax: 214-747-6111

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. "Business Day" shall mean a day upon which commercial banks are not authorized or required by law to close in Collin County, Texas.

9. This Agreement shall inure to the benefit of the City and its successors and assigns and shall be binding upon the Guarantor and the Guarantor's successors and assigns.

10. As to this Agreement, Guarantor and City hereby (i) covenant and agree not to elect a trial by jury of any issue triable of right by a jury, and (ii) waive any right to trial by jury fully to the extent that any such right shall now or hereafter exist. This waiver of right to trial by jury is separately given, knowingly and voluntarily given by Guarantor and City, and this waiver is intended to encompass individually each instance and each issue as to which the right of a jury trial.

EXECUTED as of the day, month and year first above written.

CITY OF MCKINNEY, TEXAS

By: _____

PAUL G. GRIMES
City Manager

ATTEST:

EMPRESS DRANE
City Secretary
LISA SEWELL
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

DSE HOCKEY CENTERS, L.P.,
a Delaware limited partnership

By: DSE Hockey Centers GP, Inc.
its general partner

By: _____
JIM LITES
Chief Executive Officer