

**Location: SW intersection of E Randol Mill Rd and Nolan Ryan Expressway**

**Property Owners: City of Arlington, Texas**

**Convention Center Development Corporation**

**Arlington Ballpark District Entertainment Block, LLC**

**Arlington Ballpark District Entertainment Block, Inc (ABDEB)**

**About the Project**

In a public-private partnership with the Texas Rangers, the City of Arlington is assisting with the development of a 100,000 square-foot entertainment complex near Globe Life Park in the Entertainment District. The complex will have a variety of restaurants, retail spaces, entertainment venues, and a future-planned signature event space including a 300-room hotel and 35,000 square feet of meeting and conference space. The total project cost is an estimated \$200 million. The City will provide development incentives of \$50 million for the entertainment complex, and should the hotel project proceed, up to thirty years of grant payments equivalent to the amount of taxes generated by the hotel project in the following areas: hotel occupancy tax, property tax, sales tax, and mixed beverage tax.

**Goals of the Project**

Business recruitment, job creation, tax base enhancement

**Current Status**

The project is expected to break ground in the fall of 2016.

**Benefit to City**

Approximately 1,800 jobs created (1,000 construction and 800 permanent); the development will expand the City's ability to host more major events and conventions; additional property, sales and hotel occupancy tax revenue associated with the project.

<b>Year Approved by Council</b>	2015
<b>Base Year</b>	2015
<b>Beginning Year</b>	n/a
<b>Ending Year</b>	n/a
<b>Duration</b>	15 years past the substantial completion of the Entertainment Complex Project
<b>Base Year Value</b>	n/a
<b>Property Tax Account Number(s)</b>	n/a
<b>Total Grant</b>	\$ 50,000,000 (entertainment venue only; additional funds if Developer also develops hotel)
<b>Total Estimated Investment by Company</b>	\$ 150,000,000

**Criteria Evaluated**

- Design and construct the Entertainment Complex Project
- Operate the Entertainment Complex Project for at least fifteen years
- Provide City a completion guaranty in writing prior to drawing any grant funds
- Provide written documentation that all permits and approvals have been obtained for commencement of project, and closings on all real estate transactions and all financial transactions necessary to fund the development prior to drawing any grant funds
- If Hotel Project is not developed, spend grant amount on Qualified Project Costs
- If Hotel Project is developed, provide statement from a CPA about amount spent on Qualified Project Costs
- If Hotel Project is not developed, spend a minimum of \$90m, including grant amount, on Qualified Project Costs
- During construction, Developer agrees to use diligent efforts to purchase goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality and price; and is encouraged to use qualified contractors, subcontractors and suppliers where at least 51% of the ownership qualifies as a MWBE Company
- Developer shall not allow the ad valorem taxes owed to City on the Property or the Entertainment Complex to become delinquent beyond the due date
- After grand opening of facility, Developer must provide City with a list of events scheduled to occur at the Entertainment Complex Project
- During term of agreement Developer agrees to participate with City on all bids for Major Special Events, including providing all or portions of the Entertainment Complex Project to the Major Special Event host at the then current market rate for temporary rental of such facilities
- In the event of damage to or destruction of the Entertainment Complex Project during the fifteen year period of the agreement, Developer shall fully repair or restore the Entertainment Project Complex
- Developer shall depict location of Entertainment Complex Project as being geographically located in "Arlington" or "City of Arlington" rather than any other proper geographic name
- Design and construction of the Entertainment Complex Project shall comply with all ordinances of the City
- Developer agrees to work with City to provide space on electronic message boards located within the Entertainment Complex Project for advertisement of City related messages and events when boards are not in use by a Tenant
- Implement Developer's Community Benefits Plan
- Do not employ any undocumented workers

**Incentives**

\$50m grant for agreeing to develop the Entertainment Complex Project

**Allowed**

- City will develop procedure to expedite all City development approvals, including permits and inspections for Project
- City will provide space where available on existing City owned wayfinding signs to direct visitors to the Entertainment Complex Project
- City will provide police and fire protection to Entertainment Complex Project at City's cost for all major special events, so long as Project is included as a venue for which City is seeking reimbursement from the Event Trust Fund
- Option Agreement delivery within 10 days of completion of project
- Construction staging in public rights of way during development and construction
- Use of sidewalks and plazas located adjacent to the Project for café seating and other purposes
- Marketing of Project in marketing of major attractions in the City

**Resolution No. 15-313**

**A resolution authorizing the City Manager or his designee to execute an Economic Development Incentive Agreement by and among Arlington Ballpark District Entertainment Block, LLC, Arlington Ballpark District Entertainment Block, Inc., Arlington Convention Center Development Corporation, and the City of Arlington, Texas, relative to development of the southwest corner of the intersection of East Randol Mill Road and Nolan Ryan Expressway**

WHEREAS, CITY has found that providing a program consisting of a grant of funds to Arlington Ballpark District Entertainment Block, LLC and Arlington Ballpark District Entertainment Block, Inc. (hereinafter referred to as “DEVELOPERS”) in exchange for DEVELOPERS’ completion of the Project proposed by DEVELOPERS will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as “PROGRAM”); and

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; and,

WHEREAS, the Arlington City Council has elected to participate in economic development incentives in accordance with V.T.C.A. Local Government Code, Chapter 380, and has adopted policy statements, guidelines, criteria and procedures for evaluating and considering applications and agreements for such incentives; and,

WHEREAS, the CITY has determined that DEVELOPERS’ Project is not the new development contemplated in the Tax Increment Reinvestment Zone Number Five - Entertainment District Project and Financing Plan for purpose of contribution of sales tax increment; NOW THEREFORE

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:**

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is authorized to execute an Economic Development Incentive Agreement by and among Arlington Ballpark District Entertainment Block, LLC, Arlington Ballpark District Entertainment Block, Inc., Arlington Convention Center Development Corporation, and the City of Arlington, Texas, on behalf of the City, and to administer all matters and execute any and all other documents necessary or appropriate to effectuate the transactions contemplated by the Economic Development Incentive Agreement, provided such documents do not materially alter the relationship of the parties.

III.

The City hereby consents to the Arlington Convention Center Development Corporation's execution of the Economic Development Incentive Agreement and any and all other documents necessary or appropriate to effectuate the transactions contemplated by the Economic Development Incentive Agreement, provided such documents do not materially alter the relationship of the parties.

IV.

In authorizing the execution of and in executing the referenced agreement, the City of Arlington, Texas, through its City Council and City officials, hereby exercises a governmental function in accordance with but not limited to Section 101.0215 of the Texas Civil Practices and Remedies Code.

V.

A substantial copy of the Economic Development Incentive Agreement is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 15th day of December, 2015, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

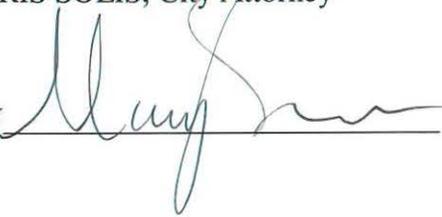
ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:  
TERIS SOLIS, City Attorney

BY



**Resolution No. 15-312**

**A resolution adopting a Phase I Capital Improvement Plan for the Arlington Convention Center**

- WHEREAS, the Arlington Convention Center (“Convention Center”) has been designed to attract more than 200,000 conventioners and visitors annually and is existing as a multi-purpose facility containing approximately 100,000 square feet, consisting of a 50,000 square foot exhibit hall, a conference center with 8,500 square feet of meeting rooms, and a 30,000 square foot main ballroom with pre-function breakout areas; and
- WHEREAS, the City has a decennial census population of 365,930, is located in Tarrant County, which has a decennial census population of 1,809,034, and, upon the adoption of this Resolution, has approved a capital improvement plan for the expansion of existing convention center facilities, and is therefore an eligible central municipality; and
- WHEREAS, visitors to the City of Arlington have access to a variety of publicly owned meeting and convention spaces throughout Arlington’s Entertainment District, including meeting and convention spaces at the Convention Center, Globe Life Ballpark, and AT&T Stadium; and
- WHEREAS, the City desires to expand the existing Convention Center by the construction of additional convention center facilities, an entertainment complex and two hotel projects (“Project A” and “Project B”); and
- WHEREAS, Project A will include, among other things, a hotel with approximately 300 guest rooms; an expansion of the Convention Center to include more than 35,000 square feet of additional convention center facilities (the “Convention Center Annex”); and, 100,000 square feet of retail, restaurant, and entertainment space; and
- WHEREAS, Project B will include, among other things, a hotel with approximately 750 guest rooms and an expansion to the existing Convention Center to include more than 68,000 square feet of additional convention center facilities; and
- WHEREAS, the existing Convention Center and the land upon which Project A and Project B will be constructed will be owned by the City, or the Arlington Convention Center Development Corporation, a non-profit local government corporation acting on behalf of the City (the “ACCDC”), and the two expansions of convention center facilities will be owned by the City as components of the Convention Center with the primary purpose of hosting conventions and meetings; and

WHEREAS, the hotel and related improvements for Project A will be adjacent to and incorporated into the Convention Center Annex, and therefore within 1,000 feet of the Convention Center Annex, an expansion of the Convention Center; and

WHEREAS, the hotel and related improvements for Project B will be adjacent to and incorporated into the existing Convention Center, and therefore within 1,000 feet of the Convention Center; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the City council hereby adopts the attached capital improvement plan (the "Plan") for the expansion of the Arlington Convention Center, described generally as:

Expansion of the Convention Center to construct additional convention center facilities, as well as an entertainment complex and two hotels, on approximately twenty-five acres of City property, immediately adjacent to and incorporated into the existing or expanded Convention Center and therefore within 1,000 feet of the Convention Center.

II.

That the City Manager and City Attorney or designees are authorized and directed to send a copy of this resolution to the State Comptroller of Public Accounts (the "Comptroller"), together with other information as may be requested by the Comptroller, and take such other steps as are reasonable and necessary to assist the Comptroller to perform his role pursuant to the Texas Tax Code, Texas Government Code, and any applicable laws related to the financing of the planned expansions of the Convention Center facility.

III.

That this resolution shall take effect from and after its final date of passage, and it is accordingly so ordered.

PRESENTED AND PASSED on this the 15th day of December, 2015, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



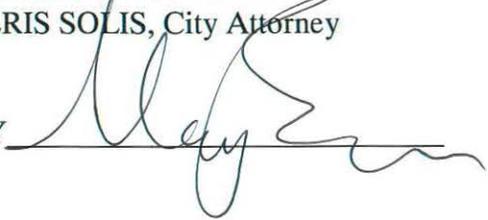
W. JEFF WILLIAMS, Mayor

ATTEST:

  
\_\_\_\_\_  
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:  
TERIS SOLIS, City Attorney

BY

  
\_\_\_\_\_

**Resolution No. 15-311**

**A resolution amending Resolution No. 15-008 relative to authorizing contributions to the Arlington Tomorrow Foundation in accordance with the Arlington Tomorrow Foundation Program and Grant Agreement between the City of Arlington and the Arlington Tomorrow Foundation**

- WHEREAS, on November 14, 2006, by Resolution No. 06-559, the City Council authorized creation of a non-profit corporation known as Arlington Tomorrow Foundation (“Foundation”) for public charitable, literary, and educational programs; and
- WHEREAS, on November 14, 2006, by Resolution No. 06-559, the City Council adopted the Arlington Tomorrow Foundation Program (“Program”) for public charitable, literary and education programs, providing for 90% of gas lease bonus money and 50% of subsequent royalties be granted to the Foundation’s charitable fund; and
- WHEREAS, on August 14, 2007, by Resolution No. 07-482, the City Council amended the Program to create special funds for municipal workforce investment and aviation and development initiatives; and
- WHEREAS, on August 14, 2007, by Resolution No. 07-483, the City Council authorized the grant of \$25,766,530 to the Foundation and execution of the Grant Agreement between the City and Foundation; and
- WHEREAS, on May 6, 2008, by Resolution No. 08-144, the City Council authorized the City Manager or his designee to grant to the Foundation 90% of all gas lease bonus money and 50% of any and all royalty payments that may be received until such time as the City Council directed otherwise; and
- WHEREAS, on October 15, 2013, by Resolution No. 13-269, the City Council authorized the City Manager or his designee to grant to the Foundation 90% of all gas lease bonus money and 50% of any and all royalty payments that may be received until such time as the Foundation’s total corpus reached \$100,000,000 and provided that future contributions to the Foundation in subsequent years would be at the City Council’s discretion; and
- WHEREAS, on January 13, 2015, by Resolution No. 15-008, the City Council authorized the City Manager or his designee to grant to the Foundation 90% of all gas lease bonus money and 50% of any and all royalty payments that may be received until such time as the Foundation’s total corpus reached \$100,000,000 or until September 30, 2014, whichever

occurs first, and provided that once the Foundation's corpus reaches \$100,000,000 there shall be no future contributions from the City to the Foundation; and

WHEREAS, the Grant Agreement, as amended, applies to all grants from the City to the Foundation, NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the City Council hereby approves amendment of Resolution No. 15-008 at Article II relative to authorizing contributions to the Arlington Tomorrow Foundation in accordance with the Arlington Tomorrow Foundation Program and Grant Agreement between the City of Arlington and the Arlington Tomorrow Foundation so that Article II shall be and read as follows:

"II.

That the City Manager or his designee is hereby authorized to contribute to the Foundation, from lawfully available sources, and in accordance with the Program, as amended, and Grant Agreement, as amended, amounts appropriated annually by the City Council in the annual budget."

PRESENTED AND PASSED on this the 15th day of December, 2015, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

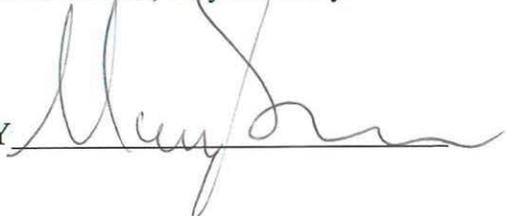
ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:  
TERIS SOLIS, City Attorney

BY



**Resolution No. 15-310**

**A resolution authorizing the execution of the First Amendment to the Second Modified and Restated Grant Agreement entered into by and between the City of Arlington, a Texas home-rule municipal corporation, and the Arlington Tomorrow Foundation, Inc., a Texas non-profit corporation**

- WHEREAS, on November 14, 2006, by resolution No. 06-559, the City Council authorized creation of a non-profit corporation known as the Arlington Tomorrow Foundation (“Foundation”) for public charitable, literary and educational programs; and
- WHEREAS, the City Council authorized the creation of the Foundation in order to promote the quality of life, create lasting enhancements and address community needs in the City and for the residents of the City, as is detailed in the Foundation’s Certificate of Formation and Bylaws; and
- WHEREAS, on August 14, 2007, by resolution No. 07-483, the City Council authorized the execution of the Grant Agreement between the City and the Foundation; and
- WHEREAS, on October 15, 2013, by Resolution No. 13-268, the City Council authorized the execution of the Modified and Restated Grant Agreement between the City and the Foundation; and
- WHEREAS, on September 16, 2014, by Resolution No. 14-236, the City Council authorized the execution of the Second Modified and Restated Grant Agreement with the Arlington Tomorrow Foundation; and
- WHEREAS, on September 23, 2014, by Resolution No. ATF-14-001, the Arlington Tomorrow Foundation authorized the execution of the Second Modified and Restated Grant Agreement with the City of Arlington; and
- WHEREAS, the grant contributions authorized to the Foundation as described in the First Amendment to the Second Modified and Restated Grant Agreement will allow the Foundation to further the objectives authorized by the City; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the City Manager, or his designee, is hereby authorized to execute the First Amendment to the Second Modified and Restated Grant Agreement with the City of Arlington.

II.

A substantial copy of the First Amendment to the Second Modified and Restated Grant Agreement is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 15th day of December, 2015, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:  
TERIS SOLIS, City Attorney

BY 

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

**THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT** (this "**Agreement**") by and among the **CITY OF ARLINGTON, TEXAS** a home-rule city and municipal corporation of Tarrant County, Texas (the "**City**"), **ARLINGTON CONVENTION CENTER DEVELOPMENT CORPORATION**, a Texas non-profit local government corporation ("**ACCDC**"), **ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC**, a Delaware limited liability company ("**Developer**"), and **ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, INC.**, a Maryland corporation ("**ABDEB**"), is executed as of this 28<sup>th</sup> day of December, 2015 (the "**Execution Date**").

**WITNESSETH:**

**WHEREAS**, the City is a municipality with a population of 365,930, which is more than 140,000 but less than 1.5 million, is located in Tarrant County, a county with a population of one million or more, and has adopted a capital improvement plan for the expansion of an existing convention center facility, and thus is an eligible central municipality per Section 351.001(7)(A) of the Texas Tax Code; and

**WHEREAS**, Developer has the right to acquire (via a contribution by one of its members) a portion of Parking Lot A, containing approximately seven (7) acres of land, which land is located at the southwest intersection of East Randol Mill Road and Nolan Ryan Expressway, in the City of Arlington, Texas (the "**Property**"), which property is described on Exhibit "A" hereto; and

**WHEREAS**, ABDEB is a member of Developer; and

**WHEREAS**, Developer, subject to the terms of this Agreement, desires to develop, construct and operate on a portion of the Property the Entertainment Complex (as that term is hereinafter defined) and the City desires that Developer do so; and

**WHEREAS**, Project Tenant (as that term is hereinafter defined), a subsidiary of Developer, will be leasing all or a substantial portion of the Entertainment Complex Project (as that term is hereinafter defined); and

**WHEREAS**, the City has found that providing a grant of funds to ABDEB, which in turn will contribute same to Developer in exchange for Developer's completion of the Entertainment Complex Project, will promote local economic development and stimulate business and commercial activity and create jobs within the City and that providing a grant of funds to Developer in exchange for Developer's completion of the Hotel Project will also promote local economic development and stimulate business and commercial activity and create jobs within the City (the "**Program**"); and

- WHEREAS**, the City has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the Program contain controls likely to ensure that public purpose is accomplished; and
- WHEREAS**, but for the Program and the payment of the Grant to ABDEB, Developer would not develop the Entertainment Complex Project as same would not likely be economically viable; and
- WHEREAS**, Developer, subject to the terms of this Agreement, including Section 7 hereof, may elect to develop, construct and operate on a portion of the Property the Hotel Project (as that term is hereinafter defined), which would consist of an expansion of the Arlington Convention Center (the “**Convention Center Annex**”) and a minimum 300 room hotel; and
- WHEREAS**, in the event that Developer proceeds with the development of the Hotel Project, Developer, in accordance with the terms of this Agreement, will cause fee simple title to the portion of the Property that will contain the Entertainment Complex Project and the Hotel (as that term is hereinafter defined) to be transferred to the ACCDC and will cause fee simple title to the portion of the Property that will contain the Convention Center Annex to be transferred to the City; and
- WHEREAS**, in the event that fee simple title to the portion of the Property that will contain the Entertainment Complex Project and the Hotel is transferred to the ACCDC, the ACCDC intends to ground lease such property to Developer in accordance with the terms of this Agreement pursuant to two ground leases, the Entertainment Complex Ground Lease and the Hotel Ground Lease (as those terms are hereinafter defined); and
- WHEREAS**, in the event that fee simple title to the portion of the Property that will contain the Convention Center Annex is transferred to the City, the City intends to ground lease such property to Developer in accordance with the terms of this Agreement pursuant to the Convention Center Annex Ground Lease (as that term is hereinafter defined); and
- WHEREAS**, if Developer proceeds with the development of the Hotel Project, the Hotel Project will be located on land, a portion of the Property, that will be owned by the ACCDC, a Texas non-profit local government corporation acting on behalf of the City, and that is located within 1,000 feet of the Convention Center Annex, an expansion of the Arlington Convention Center and a convention center facility owned by the City, which Convention Center Annex will be owned by the City; and
- WHEREAS**, pursuant to section 351.102(c) of Texas Tax Code, the City, as an eligible central municipality, is entitled to receive all funds from the Hotel Project that an owner of a qualified hotel project may receive under Section

151.429(h) of the Texas Tax Code and Section 2303.5055 of the Texas Government Code, and such funds will consist of refunds to the City of the State of Texas's share of hotel occupancy taxes and the State of Texas's share of sales and use taxes generated by the Hotel Project for a period of ten (10) years after the date of initial occupancy; and

**WHEREAS**, the construction and operation of the Hotel Project will generate new City hotel occupancy taxes, City sales and use taxes, City mixed beverage taxes, and City ad valorem taxes; and

**WHEREAS**, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code provide constitutional and statutory authority for establishing and administering the Program to provide grants or incentives of public money to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, the City, in order to induce Developer to develop the Hotel Project, is willing to provide ABDEB or its designee with the Hotel Grants (as that term is hereinafter defined) pursuant to the terms of this Agreement and but for the payment of such Hotel Grants to ABDEB, Developer would not be willing to develop the Hotel Project as same would not likely be economically viable; **NOW THEREFORE**,

In consideration of the foregoing and the mutual agreements, covenants, and payments authorized herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.**

**“Alternative Hotel Developer”** means a Person (and/or a direct or indirect affiliate of such Person) that: (i) owns a major league baseball or football team; (ii) is an affiliate of one of the direct or indirect owners of Developer; or (iii) has demonstrated experience in owning and/or operating on a full-service basis comparable hotel properties and has a net worth in excess of Fifty Million Dollars (\$50,000,000).

**“Arbitration”** is defined in Section 13(l) of this Agreement.

**“Arbitration Notice”** is defined in Section 13(l) of this Agreement.

**“Arbitration Procedures”** is defined in Section 13(l) of this Agreement.

**“Arbitrator”** is defined in Section H.1 of the Arbitration Procedures.

**“Area Reports”** means reports from the Comptroller to the City as provided in Section 321.3022 of the Texas Tax Code that identify amounts paid from the Comptroller to the City, by period, of City Sales Taxes and City Mixed Beverage Taxes. If during the Term due to a change in law or policy the Comptroller

ceases providing such reports with respect to either or both City Sales Taxes and City Mixed Beverage Taxes, “Area Report” means alternative documentation that is acceptable to the City, Developer and Developer’s lenders that establishes the amounts of City Sales Taxes or City Mixed Beverage Taxes received by the City for Grant Periods.

“**Base City Property Tax**” means the total amount of ad valorem tax, if any, levied and collected by the City on the Property based on the total taxable appraised value of the Property as of January 1, 2015.

“**Business Day**” means any day except Saturday, Sunday, or any other day on which banking institutions are legally authorized to close in the City of New York or Tarrant County, Texas.

“**City HOT**” means the City’s seven percent (7%) municipal hotel occupancy tax received by the City pursuant to Chapter 351 of the Texas Tax Code that is generated by the Hotel Project. From and after the date hereof, the City shall not pledge or assign the City HOT except, at the request of Developer, to Developer or its Mortgagee or other lender.

“**City Chapter 351 HOT Grant**” means the economic development incentive grant described in Section 6(d) of this Agreement.

“**City HOT Returns**” means City of Arlington Hotel/Motel Occupancy Tax Reports on which Developer or other Persons report and remit City of Arlington hotel occupancy taxes imposed under Chapter 351 of Texas Tax Code on amounts paid for rooms in the Hotel Project.

“**City Manager**” means the City Manager of the City.

“**City Mixed Beverage Tax**” means payments or allocations to the City from the Comptroller of mixed beverage taxes imposed by Chapter 183 of the Texas Tax Code, paid by any mixed beverage permittee, and attributable to mixed beverages sold at the Entertainment Complex Project and/or the Hotel Project.

“**City Property Tax**” means (i) the total amount of City ad valorem taxes levied and collected by the City on Property and all improvements thereon in a given year minus (ii) the Base City Property Tax.

“**City Property Tax Appropriated Grant**” means the economic development incentive grant described in Section 6(a)(5) of this Agreement.

“**City Representative**” is defined in Section 13(t) of this Agreement.

“**City Sales/Beverage Tax Appropriated Grant**” means the economic development incentive grant described in Section 6(a)(3) of this Agreement.

**“City Sales/Beverage Tax Chapter 351 Grant”** means the economic development incentive grant described in Section 6(a)(2) of this Agreement.

**“City Sales Taxes”** means City 1% general municipal sales and use taxes imposed pursuant to Section 321.103(a) of the Texas Tax Code arising (i) from any Person’s collection of City Sales Taxes as a result of sales of Taxable Items consummated at the Hotel Project and/or the Entertainment Complex Project during a Grant Computation Period, (ii) from any Person’s payments to vendors or directly to the Comptroller of City Sales Taxes on purchases of Taxable Items consummated at the Hotel Project and/or the Entertainment Complex Project during a Grant Computation Period, and (iii) from City Sales Taxes paid by any Person in connection with the construction or equipping of the Hotel Project and/or the Entertainment Complex Project.

**“City Total Property Tax Rate”** means in a given year the total City ad valorem tax rate adopted by ordinance and imposed pursuant to Section 26.05 of Texas Tax Code.

**“Comparable Districts”** Patriot Place in Foxborough, Massachusetts; Gaslamp Quarter, San Diego, California; The Power and Light District, in Kansas City, Missouri; Ballpark Village in St. Louis, Missouri; and L.A. Live, in Los Angeles, California.

**“Comptroller”** means the Office of the Texas Comptroller of Public Accounts or any successor governmental agency that administers functions relevant to this Agreement.

**“Consummated”** shall have the meaning assigned by Section 321.203 of Texas Tax Code, or its successor, including after a change of law the applicable principles for determining the incidence of local sales and use taxes.

**“Construction”** means labor, materials, and essential related services provided by a general contractor and/or construction manager to complete real property improvements, including clearing, dredging, excavating, and grading of land and other activity associated with buildings, structures, and site work.

**“Convention Center Annex”** has the meaning assigned in the Recitals to this Agreement.

**“Convention Center Annex Ground Lease”** means a lease substantially in the form of Exhibit “G-1”, as same may be modified by Developer in accordance with the terms of this Agreement.

**“Dedicated Fund”** means a separate and segregated fund maintained by the City into which the City shall deposit on the Execution Date \$50,000,000 to be used solely to pay the Grant installments as provided in this Agreement.

**“Default”** has the meaning assigned in Section 9 of this Agreement.

**“Disallowed Amount”** has the meaning assigned in Section 3(e) of this Agreement.

**“Disposition”** shall mean a sale, lease, assignment, or other transaction by which all or a part of Developer’s interest in the Entertainment Complex Project and/or the Hotel Project is passed on to another Person; but such term shall not include Operation Agreements, Leases, Mortgages or transfers resulting from a foreclosure or deed in lieu of foreclosure of a Mortgage.

**“Dispute or Controversy”** is defined in Section 13(1) of this Agreement.

**“Entertainment Complex Project”** means the improvements to be constructed on a portion of the Property, consisting of a building containing a minimum of approximately 100,000 square feet of space containing restaurants, food and beverage establishments, entertainment venues and/or ancillary retail stores. The Entertainment Complex Project will be generally similar to the first phase of the St. Louis Cardinal’s Ballpark Village in St. Louis, Missouri. The Entertainment Complex Project may contain parking areas, landscape, sidewalks and other related and ancillary facilities.

**“Entertainment Complex Project Ground Lease”** means a lease substantially in the form of Exhibit “G-2”, as same may be modified by Developer in accordance with the terms of this Agreement.

**“Event Trust Fund”** means trust fund program managed by the Office of the Texas Governor used to help pay costs related to preparing for or conducting certain events which are competitively bid and which communities are competing with cities outside of Texas to host.

**“Grant(s)”** means any or all of the grants for the Entertainment Complex Project provided for in Section 4 of this Agreement.

**“Hotel”** means the Hotel Project, excluding the Convention Center Annex.

**“Hotel Grant(s)”** means any or all of the State Refund Grant, City Sales/Beverage Tax Chapter 351 Grant, City Sales/Beverage Tax Appropriated Grant, City Chapter 351 HOT Grant and City Property Tax Appropriated Grant.

**“Hotel Grant Computation Period”** has the meaning assigned in Section 6(b)(8) of this Agreement.

**“Hotel Grant Period”** means the total period during which tax receipts are used to compute Grant payment amounts due. Solely by way of example, the City Sales/Beverage Tax Chapter 351 Grant is for a Grant Period of ten (10) years following Initial Occupancy and is computed with reference to City Sales Taxes and City Mixed Beverage Taxes. The total City Sales/Beverage Tax Chapter 351 Grant will be an amount equal to all City Sales Taxes plus all City Mixed Beverage Taxes reported on all tax returns for tax periods occurring during the

period that commences with the date of Initial Occupancy and that ends with the date that is the tenth anniversary of the Initial Occupancy date. Tax amounts reported for tax reporting periods that are partially in and partially out of a Grant Period may be prorated for purposes of computing Grant amounts due, based on the number of days in the tax reporting period that fall within a Grant Computation Period divided by the total number of days in the tax reporting period.

**“Hotel Project”** means the improvements to real property and any related personal property located on a portion of the Property, consisting of a minimum of three hundred (300) room hotel and convention center facility (i.e., the Convention Center Annex) that contains a minimum thirty-five thousand (35,000) square foot of front of the house and back of the house space and other related and ancillary facilities. The Convention Center Annex will have a maximum capacity of approximately 1,500. The hotel portion of the Hotel Project will be designed and constructed generally comparable to or greater than the quality level of at least one of the hotels operated under one of the hotel trade names listed on the “Upper Upscale” category of the 2015 STR Chain Scales published by STR, Inc.

**“Hotel Project Dedicated Account”** is defined in Section 6(a)(1).

**“Hotel Ground Lease”** means a lease substantially in the form of **Exhibit “G-3”**, as same may be modified by Developer in accordance with the terms of this Agreement.

**“Hotel Project Property”** means, as of the date on which ad valorem tax taxable appraised value is determined for each tax year for which the City is required to make a Grant payment pursuant to Section 6 of this Agreement, (i) all “tangible personal property” as defined in Section 1.04(5) of the Texas Tax Code including but not limited to equipment, furniture and fixtures, vehicles, and inventory that is located in or on the Hotel Project and that is used in connection with operation of the Hotel Project, and (ii) all “real property” as defined in Section 1.04(2) of the Texas Tax Code that is part of the Hotel Project. Hotel Project Property includes tangible personal property and real property described in this Definition that is owned by any Person.

**“Initial Occupancy”** means the first night a person pays for the use or possession of or for the right to the use or possession of a room or space at the Hotel Project.

**“Lease”** means a lease, license or other occupancy agreement for all or part of the Property.

**“Major Special Event”** means events that qualify as an event for purposes of the State of Texas’ Special Events Trust Fund, Events Trust Fund, or Major Events Trust Fund, including but not limited to: NFL Super Bowl, NCAA Final Four Tournament, NBA All-Star Game, American Country Music Award Show, and national political conventions.

**“Mortgage”** is defined in Section 12 of this Agreement.

**“Mortgagee”** is defined in Section 12 of this Agreement.

**“Operation Agreements”** means an operation or management agreement between Developer and a hotel operator for operation of all or part of the Hotel Project.

**“Party”** or **“Parties”** means Developer, ABDEB, ACCDC, and the City.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, unincorporated organization or other entity or any government or any agency or political subdivision thereof.

**“Project Costs”** means the following costs and expenses incurred or paid by ABDEB, Developer and/or each Tenant in connection with the due diligence, planning, developing, constructing, equipping, fixturing, tenanting and opening of the Entertainment Complex Project: all broker commissions, leasing commissions, tenant allowances paid by ABDEB and/or Developer to a Tenant, tenant improvement costs incurred by ABDEB and/or Developer to a Tenant, leasing and tenant procurement costs and expenses, hard and soft costs incurred by a Tenant in connection with the build out, fixturing and equipping of its space in the Entertainment Complex Project, costs associated with closing of the construction loan, construction interest, environmental study costs and fees, surveyor costs and fees, civil engineering expenses, title insurance premiums, costs and expenses, legal fees and expenses, a development fee equal to five percent (5%) of the total Project Costs payable or deemed payable to Developer, the salaries and cost of benefits of all employees of Developer and/or its Affiliates that are working on the Project and whose principal place of employment is located in the City, land and/or easement acquisition costs of Developer or its owners or affiliates, public works and/or public improvement costs and expenses, utility infrastructure costs and expenses, geotechnical costs and fees, architectural, interior design, consulting and engineering costs, fees and expenses, general contractor and/or construction manager fees and expenses, general condition expenses, labor and material costs and expenses, subcontractor costs and expenses, costs and expenses of Developer’s personnel located in the City for purposes of developing the Project, site work costs and expenses, landscape costs and expenses, hardscape costs and expenses, furniture, fixtures and equipment costs and expenses, audio and visual equipment expenses and pre-opening costs and expenses. Project Costs include Qualified Project Costs.

**“Project Tenant”** means Arlington Ballpark District Entertainment Block Operating Tenant, LLC, a Texas limited liability company, a subsidiary of Developer, and its successors and assigns.

**“Property”** is defined in the Recitals. Developer reserves the right, at any time during the Term, to modify the Property, including modifying the property line and adding and/or deleting land area from the Property. In the event the Hotel Project is not being developed, the Property will consist of approximately five (5) acres of land area, as determined by Developer.

**“Property Tax Data”** means information regarding ad valorem tax disbursements that the Tarrant County Tax Assessor-Collector provides or makes available to the City that establishes the amounts of City Property Taxes, or to the extent such information is unavailable or inadequate, documentation provided by Developer such as ad valorem tax bills and proof of payment that reasonably establishes the amounts of City Property Taxes.

**“Qualified Project Costs”** means costs, fees and expenses of the general contractor, subcontractors, architects, engineers, surveyors, consultants and similar Persons incurred after the Execution Date of this Agreement by Developer, ABDEB and/or each Tenant in connection with the planning, design, engineering, construction, equipping and furnishing of the Entertainment Complex Project and the cost and fees associated with the obtaining of all permits and approvals associated with the development and construction of the Entertainment Complex Project. Qualified Project Costs shall also include: (i) amounts paid by Developer to each Tenant of the Entertainment Complex Project as a “tenant allowance” to pay for all or part of the costs incurred by Tenant in connection with the planning, design, engineering, construction, equipping and furnishing of such Tenant’s premises at the Entertainment Complex Project; and (ii) the salaries and cost of benefits of each employee of Developer and/or its Affiliates that is working on the Project, pro rata based on the amount of time or number of days such employee is working on the Entertainment Complex Project.

**“State HOT”** means hotel occupancy taxes received by the Comptroller pursuant to Chapter 156 of the Texas Tax Code attributable to amounts paid for rooms in the Hotel Project.

**“State Refund Grant”** means the economic development incentive grant described in Section 6(a)(1) of this Agreement.

**“State Sales Taxes”** means limited sales and use taxes imposed pursuant to Chapter 151 of the Texas Tax Code and arising (i) from any Person’s collection of State Sales Tax as a result of sales of Taxable Items Consummated at the Hotel Project and the Entertainment Complex Project, (ii) from any Person’s payments to vendors or directly to the Comptroller of State Sales Tax on purchases of Taxable Items Consummated at the Hotel Project and/or the Entertainment Complex Project, and (iii) from State Sales Tax paid by any Person in connection with the construction of the Hotel Project and/or the Entertainment Complex Project.

**“Substantial Completion”** means that the Entertainment Complex Project has been initially opened for business to the public with a minimum of seventy percent (70%) of the interior space of the Entertainment Complex Project (including back of the house space) open and operational. Substantial Completion shall be deemed achieved even though punch list items and landscaping of the Work are substantially, but not fully, completed.

**“Substantial Completion of the Hotel Project”** means Initial Occupancy has occurred and the Convention Center Annex is available for use for its intended purpose. Substantial Completion shall be deemed achieved even though punch list items and landscaping are substantially, but not fully, completed.

**“Taxable Items”** has the meaning assigned by Section 151.010 of the Texas Tax Code.

**“TIRZ”** means the Tax Increment Reinvestment Zone No. 5 – Entertainment District, that was established in 2006 by the City and that includes the Property.

**“Tenant”** means any tenant, licensee or other occupant of the Entertainment Complex Project. Tenant includes the Project Tenant and any and all Third Party Tenants.

**“Tenant Improvements”** means any tenant improvements, buyer selections or other work done by or on behalf of a Tenant to prepare space in the Entertainment Complex Project for such Tenant’s use or occupancy.

**“Term”** means the term of this Agreement as specified in Section 2 of this Agreement.

**“Third Party Tenant”** means a Tenant that is not an affiliate or subsidiary of Developer.

**“Third Party Tenant Improvements”** means Tenant Improvements done by or on behalf of a Third Party Tenant.

**“Work”** means all work to be performed with respect to the Entertainment Complex Project by Developer and Tenants, necessary to prepare the Entertainment Complex Property and to construct or cause the construction and Substantial Completion of the Entertainment Complex Project, including, but not limited to: (a) demolition and removal of all existing buildings, structures and other improvements on the Entertainment Complex Property; (b) site preparation, including clearing and grading of the Property; (c) construction of the buildings and structures, parking structures, and screening and site landscaping that comprise the Entertainment Complex Project; (d) construction, reconstruction, renovation and/or rehabilitation of related infrastructure and/or improvements, including without limitation surrounding roads, sidewalks, utilities and installation of lighting; (e) environmental remediation; and (f) all other

Construction reasonably necessary to effectuate the intent of this Agreement; provided, however, Third Party Tenant Improvements shall not be deemed part of the Work.

2. **Term.**

This Agreement shall be effective as of the date of execution by all parties hereto and shall remain in full force and effect until all Hotel Grants have been paid to Developer; provided, however, in the event that only the Entertainment Complex Project is developed, this Agreement shall expire on the fifteenth (15th) anniversary of Substantial Completion.

3. **Developer's Obligations for the Entertainment Complex Project.**

In consideration of the City entering into this Agreement and provided that the City complies with its obligations hereunder concerning the Grants provided for in Section 4 of this Agreement and such Grants are timely disbursed in accordance with the terms hereof, Developer agrees to:

- (a) Design and construct or cause to be designed and constructed the Entertainment Complex Project (exclusive of Third Party Tenant Improvements) and cause Substantial Completion to occur. Developer intends to initially develop the Entertainment Complex Project in a manner that is generally consistent with the concept plans that are attached hereto as **Exhibit "C"**. Developer reserves the right to modify such concept plans, provided that the Entertainment Complex Project meets the definition of "Entertainment Complex Project" contained in this Agreement. Developer, if requested, shall provide the City with the opportunity to provide Developer with input on the schematic plans for the Entertainment Complex Project. Subject to delays caused by Force Majeure and the City complying with its obligations hereunder concerning the Grants, Developer shall apply for the necessary permits and approvals to commence the Work within twelve (12) months of the Execution Date. Developer and the Tenants may "fast track" the construction of the Work by obtaining permits and approvals for discrete portions of the Work, such as a permit for the grading of the Entertainment Complex Project, the construction of the foundation of the Entertainment Complex Project and a building permit for the Entertainment Complex Project (exclusive of Tenant Improvements). If Developer so elects to "fast track" the permitting of the Work, Developer shall diligently pursue the issuance of all necessary permits and approvals for the Work. Subject to delays caused by Force Majeure, issuance of necessary governmental permits and approvals, the City complying with its material obligations hereunder and the timely disbursement of the Grants in accordance with the terms hereof, Developer shall achieve Substantial Completion within twenty-four (24) months after the issuance of a final building permit (as opposed to the grading permit or foundation permit) for the Work. Subject to the

provisions of this Agreement, the date by which Developer must cause Substantial Completion to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the Work to be completed within a reasonable time.

- (b) It is the intent of Developer to operate the Entertainment Complex Project in a manner similar to the operation of Comparable Districts for a period of fifteen (15) years, commencing on the date the Entertainment Complex Project initially opens for business to the public.
- (c) Prior to drawing down any amount of the Grant, provide a completion guaranty to the City guaranteeing Substantial Completion from the Person or Persons that has provided the completion guaranty to the Mortgagee that has provided Developer with a construction loan to finance the development and construction of the Work in fulfillment of the obligation of Arlington Ballpark District Entertainment Block Investors, LLC to Rangers Baseball Development, LLC under the Limited Liability Company Agreement of Developer. Such completion guaranty shall be conditioned upon the City complying with its material obligations hereunder, including the timely disbursement of the Grants in accordance with the terms hereof.
- (d) Provide documentation to City that all permits and approvals necessary for commencement of the Work have been secured as well as all closings on all real estate transactions and all financial transactions necessary to fund the development of the Work pursuant to Developer's budget that was provided to its lender have occurred prior to Developer's request for disbursement of any Grants from City under Section 4 of this Agreement.
- (e) In the event that the Hotel Project is not being developed, spend, with Tenants and ABDEB, an amount equal to or greater than the amount of the Grants actually distributed to ABDEB by the City under Section 4 of this Agreement, on Qualified Project Costs. Within one hundred eighty (180) days of Substantial Completion of the Entertainment Complex Project, Developer shall provide, at Developer's expense, a statement to the City from a certified public accountant confirming or denying that all Grant disbursements provided by the City under Section 4 have been utilized by Developer, Tenants and ABDEB to pay Qualified Project Costs. When preparing such statement, the certified public accountant shall have the right: (i) to utilize reasonable accounting procedures to confirm such expenditure on Qualified Project Costs; and (ii) to rely on written statements made by Third Party Tenants of the Project Costs incurred by such Third Party Tenant. In the event that such statement establishes that

any portion of any Grant disbursement was utilized by Developer and Tenants to pay for items other than Qualified Project Costs (the “**Disallowed Amount**”) then Developer shall deposit into a separate, segregated bank account of Developer an amount equal to the Disallowed Amount and shall use such funds during the Term to pay for Qualified Project Costs, the design, permitting and construction of capital improvements to the Entertainment Complex Project and the payment of tenant allowances to Third Party Tenants. As long as funds remain in such account, each year of the Term Developer shall provide, at Developer’s expense, a statement to the City from a certified public accountant certifying the amount then contained in such account and the amount that has been expended over the previous year for Qualified Project Costs, the design, permitting and construction of capital improvements to the Entertainment Complex Project and the payment of tenant allowances to Third Party Tenants. If any amount remains in such account at the end of the Term, Developer shall cause such amount to be paid to the City.

- (f) In the event that the Hotel Project is developed, within one hundred eighty (180) days of the Substantial Completion of the Hotel Project, Developer shall provide, at Developer’s expense, a statement to the City from a certified public accountant confirming or denying that the amounts expended by Developer, Tenants and ABDEB on Qualified Project Costs related to the construction of the Hotel Project and the Entertainment Complex Project exceed all Grant disbursements provided by the City under Section 4. When preparing such statement, the certified public accountant shall have the right: (i) to utilize reasonable accounting procedures to confirm such expenditures and shall not have to account for every expenditure once such accountable expenditures exceed the amount of such Grant disbursements; and (ii) to rely on written statements made by Third Party Tenants of the Project Costs incurred by such Third Party Tenant. For purposes of this Section 3(f), the term “Entertainment Complex Project” as used in definition of Qualified Project Costs shall mean the Entertainment Complex Project and the Hotel Project.
- (g) In the event that the Hotel Project is not being developed, spend, with Tenants and ABDEB, a minimum of Ninety Million Dollars (\$90,000,000), inclusive of Grants provided by the City under Section 4 of this Agreement, on Project Costs. Within one hundred eighty (180) days of Substantial Completion of the Entertainment Complex Project Developer shall provide, at Developer’s expense, a statement to the City from a certified public accountant confirming or denying the expenditure by Developer, Tenants and ABDEB of at least Ninety Million Dollars (\$90,000,000) on Projects Costs. When preparing such statement, the certified public accountant shall have the right: (i) to utilize reasonable accounting procedures to confirm such expenditure on Project Costs; and (ii) to rely on written statements made by Third Party Tenants of the Project Costs incurred by such Third Party Tenant. In the event that such

statement establishes that less than One Hundred Million Dollars (\$100,000,000) has been expended on Project Costs, Developer shall reserve the shortfall amount (less the Disallowed Amount, which shall be governed by Section 3(e)) and utilize same in connection with the Entertainment Complex Project during the Term of this Agreement. As long as such reserved funds have not been expended, each year of the Term Developer shall provide, at Developer's expense, a statement to the City from a certified public accountant certifying the unexpended amount of such reserved funds and the amount of such reserved funds that has been expended over the previous year in connection with the Project. If any such reserved funds remain unexpended at the end of the Term, Developer shall cause such amount to be paid to the City.

- (h) During the Construction of the Work, Developer agrees to use diligent efforts and to cause the Project Tenant to use diligent efforts, to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality and price. Developer will require its contractors and the Project Tenant's contractors to provide a "Contractor's Certificate of Target Arlington Compliance," attached hereto as Exhibit "D".

City also encourages the use, if applicable, by Developer and the Project Tenant, during the Construction of the Work of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women ("MWBE Companies"). Developer agrees to work with the City to develop a policy that establishes a goal of twenty-five percent (25%) use by Developer and Project Tenant of qualified MWBE Companies for the Construction of the Work, which policy shall contain reasonable exclusions.

- (i) During the Term of this Agreement Developer shall not allow the ad valorem taxes owed to City on the Property or the Entertainment Complex Project to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any personal property owned by Developer and located within the Entertainment Complex Project. In the event that the Hotel Project is developed, the term "**Property**" as used in this Section 3(i) shall mean the portion of the Property upon which the Entertainment Complex Project is located (which may consist of a condominium unit).
- (j) It is Developer's intention that the Entertainment Complex Project will not only serve as a premiere restaurant and entertainment venue but also serve to host numerous community and family oriented events, including art festivals, live performances, watch parties, holiday celebrations and family friendly events. It is Developer's intention that many of these events will

be free to the community or involve admittance that would be shared with local charitable organizations. On and after the grand opening of the Entertainment Complex Project, on a quarterly basis Developer will provide City with a listing of events scheduled to occur at the Entertainment Complex Project.

- (k) During the Term of this Agreement Developer agrees to participate with the City on all bids for Major Special Events, including providing all or portions of the Entertainment Complex Project to the Major Special Event host at the then current market rate for temporary rental of such facilities.
- (l) In the event of damage to or destruction of the Entertainment Complex Project during the fifteen (15) year period that commences on the date the Entertainment Complex Project initially opens for business to the public, Developer shall cause the full repair or restoration of the Entertainment Complex Project (exclusive of Third Party Tenant Improvements), as same existed at the time of such damage or destruction (as same may be modified by Developer or the Project Tenant at the time of such repair or restoration, provided that such modification is of equal or greater value), whether done by application of insurance proceeds or other financial means. On or after the expiration of such fifteen (15) year period, in the event of damage to or destruction of the Entertainment Complex Project, Developer and the Project Tenant shall have the right to determine whether, and to what extent the Entertainment Complex Project should be restored or replaced. Notwithstanding the above, a Mortgagee and any Person that acquires title to the Entertainment Complex Project as a result of a foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 3(l).
- (m) Whenever marketing and promotional materials of the Entertainment Complex Project for Developer or the Project Tenant contain the location of the Entertainment Complex Project, the Entertainment Complex Project will be depicted as being geographically located in "Arlington" or "City of Arlington" rather than any other proper geographic name.
- (n) The design and construction of the Work shall comply with all ordinances of the City applicable to the Entertainment Complex Project. In addition Developer and the Project Tenant, as applicable, at its expense, shall obtain all permits, licenses, and inspections by City, State or federal agencies necessary for the construction of its portion of the Work.
- (o) Developer agrees to work with City to provide space on electronic message boards located within the Entertainment Complex Project for advertisement of City related messages and events when such boards are not in use by Developer or any Tenant (which use may include the display of messages and advertising for third parties).

- (p) Developer agrees that it will implement the following Developer's Community Benefits Plan to provide meaningful community benefits and appropriate opportunities for local residents, minorities and women in all aspects of its operations; including contracting, consulting and supply of goods and services. Developer's Community Benefits Plan will focus on promoting, assisting and ensuring diverse, local participation through the following policies and practices:
1. **APPRENTICESHIPS:** Developer will use good faith efforts to assist qualified local minority and women journey person workers and apprentices to enter the region's pool of skilled labor by promoting apprenticeship and journey person opportunities during construction.
  2. **LOCAL & DIVERSE WORKFORCE HIRING:** Developer will use good faith efforts to implement recruitment, training and employment policies to achieve a diverse workforce at all levels of its organization, sourced to the greatest extent possible from local residents. To this end, Developer will endeavor to implement the following:
    - (A) Developer will host a series of pre-opening community based job fairs to educate members of the local and minority community of job opportunities.
    - (B) Developer will partner with local government and non-profit agencies to host a series of workshops to educate job prospects of the job placement process.
    - (C) Developer will work in partnership with local colleges, universities and trade schools to develop job placement programs for students pursuing careers in hospitality, culinary arts and/or music.
    - (D) Developer will create scholarship and internship programs targeting minority and women students.
    - (E) Developer will cooperate with local workforce agencies that provide on-line job posting, job matching and customized recruitment services.
  3. **EVENT BOOKINGS:** If requested by the University of Texas at Arlington, Developer will use good efforts to assist the City in the event booking of College Park Center at the University of Texas, at Arlington.
  4. **COMMUNITY ADVISORY COMMITTEE:** Developer, in cooperation with the City, will establish a committee consisting of

representatives from the City, appropriate community and civic organizations, non-profit organizations and colleges/universities, which will meet regularly, for the purposes of providing advice and assistance with respect to the successful implementation of the above Developer's Community Benefits plan.

- (q) Covenant and certify that Developer does not and will not, during the term of this Agreement, knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay to the City the full amount of the Grant made under Section 4 of this Agreement, plus ten percent (10%) interest per annum from the date the Grant was made. Repayment shall be paid within one hundred twenty (120) days after the date Developer receives notice of violation from the City, which notice shall not be given by the City until after such conviction has become final and non-appealable. Notwithstanding anything to the contrary contained in this Section 3(q), Developer shall not be in breach of this Section 3(q) and shall not be obligated to make such repayment of the Grant in the event that a subsidiary or affiliate of Developer, such as a the Project Tenant, a Tenant or property manager that is an affiliate or subsidiary of Developer or a direct or indirect equity owner of Developer, or a Person with whom Developer contracts, such as a general contractor or a Third Party Tenant is convicted of a violation under 8 U.S.C. Section 1324a(f).

4. **Grants by City for the Entertainment Complex Project and City Obligation concerning the Entertainment Complex Project.**

- (a) In consideration for Developer agreeing to develop the Entertainment Complex Project in accordance with the terms of this Agreement, the City shall provide ABDEB with a grant in the amount of Fifty Million Dollars (\$50,000,000) (the "Grant") to be contributed by ABDEB to Developer and to be used by Developer, ABDEB and Tenants for Qualified Project Costs. On the Execution Date, the City shall cause to be deposited into the Dedicated Fund the sum of Fifty Million Dollars (\$50,000,000). The Dedicated Fund and the sums deposited therein shall only be used to pay the Grant and for no other purposes, and the City does hereby commit such Dedicated Fund and the sums deposited therein to its obligations under this Agreement to pay the installments of the Grant as set forth in this Agreement. The Grant shall be paid to ABDEB in eight (8) monthly installments of Six Million Two Hundred Fifty Thousand Dollars (\$6,250,000) each. The first installment of the Grant shall be due and payable within fifteen (15) days after the date Developer provides the City Representative with the following: (i) evidence that Developer has obtained all necessary permits to commence construction of the Work; (ii) evidence that Developer has obtained a guaranteed maximum price

contract from a general contractor or construction manager for the construction of the Work (exclusive of Tenant Improvements); (iii) evidence that Developer has obtained construction financing for the development of the Entertainment Complex Project; (iv) a fully executed completion guaranty in compliance with the provisions of Section 3(b); and (v) evidence that Developer has acquired the site of the Entertainment Complex Project. Each subsequent monthly installment of the Grant shall be due and payable to ABDEB on or before the 15th of each consecutive month following the initial payment. Notwithstanding the foregoing, if the Work is suspended or abandoned for a period of at least three (3) weeks the City may cease the monthly installments to ABDEB until such time as Developer has notified the City that the Work has commenced again. In no event will the total Grant installments made from the City to ABDEB for the Entertainment Complex Project exceed Fifty Million Dollars (\$50,000,000.)

- (b) City will work with Developer to establish a procedure by which the City can expedite all City development approvals, including permits and inspections for the Entertainment Complex Project. At a minimum, the City agrees to act on an administratively complete building permit application within forty five (45) days after the application is filed with the City, and the City agrees to issue a certificate of occupancy within ten (10) days after receipt of a request for a final inspection if the Entertainment Complex Project complies with applicable requirements of the issuance of a certificate of occupancy. Delays resulting from the City's wrongful act or failure to act will extend the schedule for Developer's performance obligation under Section 3(a) by a like amount of days. In addition, the City will provide a dedicated staff member to assist with real time plan review and inspection.
- (c) City agrees to provide space, where available, on existing City owned way-finding signs to direct visitors to the Entertainment Complex Project. In addition, City agrees to seek placement of directional signage by the State of Texas on state highways; however, all costs related to such signage are the responsibility of Developer.
- (d) City will provide police and fire protection to the Entertainment Complex Project at City's costs (and not Developer's costs) for all Major Special Events at the Entertainment Complex Project so long as the Entertainment Complex Project is included as a venue for which the City is seeking reimbursement from the Event Trust Fund. The City will provide police and emergency service protection to the areas surrounding the Entertainment Complex Project as part of the routine patrol of the area. At Developer's request, the City's police department and Developer will meet periodically to discuss security and police protection in the areas surrounding the Entertainment Complex Project. If Developer and City determine a police substation in the Entertainment Complex Project is

desired both parties will use reasonable efforts to work together to address staffing such substation.

- (e) Within ten (10) Business Days of the last to occur of Substantial Completion and Substantial Completion of the Hotel, the City shall execute and unconditionally deliver to Developer at least two (2) counterpart originals of that certain option agreement that is in the form attached hereto as **Exhibit "E"** (the "**Option Agreement**"). The Option Agreement shall apply to all of the land that is subject to that certain Development Option Agreement, dated June 13, 2007, between the City and Ballpark Parking Partners, LLC, as same may be amended, extended or otherwise modified from time to time and which has not been acquired by Ballpark Parking Partners, LLC, its successors or their respective designees pursuant to the terms of such agreement. Developer shall promptly countersign and deliver to the City at least one (1) counterpart original of the Option Agreement.
- (f) In connection with the development and construction of the Entertainment Complex Project (and any reconstruction, remodeling or renovation of same), if requested by Developer, the City shall grant Developer an easement or license, at no cost or expense, to stage construction on the public rights of ways located adjacent to the Entertainment Complex Property.
- (g) The City agrees that in connection with the operation of the Entertainment Complex Project, Developer and its designees shall have the right, at no cost or expense, to utilize the sidewalks and plazas located adjacent to the Entertainment Complex Project that are part of the public right of way for café seating and other purposes; notwithstanding the foregoing, any ordinances controlling the location of improvements in sidewalks or on public right of way shall still apply to assure that the public right of way is not unreasonably obstructed.
- (h) The City shall cause the City's destination marketing organization to market and promote the Entertainment Complex Project whenever marketing any of the major attractions in the City. Such marketing and promotion shall be coordinated with Developer. In addition, the City agrees to seek an amendment to the Arlington Convention and Visitors Bureau, Inc. Bylaws to provide membership on the Board of Directors for a representative of the Entertainment Complex Project nominated by Developer.

5. **Developer's Obligations if it elects to proceed with the Hotel Project.**

In the event that Developer elects to proceed with the Development of the Hotel pursuant to Section 7, in consideration of the City entering into this Agreement providing

for the payment of funds constituting Hotel Grants to Developer under the terms and conditions set forth in Section 6 herein, Developer agrees to:

- (a) Design and construct or cause to be designed and constructed the Hotel Project (exclusive of Third Party Tenant Improvements) and cause Substantial Completion of the Hotel Project to occur. Developer intends to initially develop the Hotel Project in a manner that is generally consistent with the concept plans that are attached hereto as **Exhibit "B"**. Developer reserves the right to modify such concept plans, provided that the Hotel Project meets the definition of "Hotel Project" contained in this Agreement. Developer, if requested, shall provide the City with the opportunity to provide Developer with input on the schematic plans for the Hotel Project. Subject to delays caused by Force Majeure and the City complying with its obligations hereunder concerning the Hotel Grants, Developer shall apply for the necessary permits and approvals to commence the Work within eighteen (18) months of the date that Developer has elected to proceed with the development of the Hotel Project. Developer may "fast track" the construction of the Hotel Project by obtaining permits and approvals for discrete portions of the Hotel Project, such as a permit for the grading of the Hotel Project, the construction of the foundation of the Hotel Project and a building permit for the Hotel Project (exclusive of Tenant Improvements). If Developer so elects to "fast track" the permitting of the Hotel Project, Developer shall diligently pursue the issuance of all necessary permits and approvals for the construction of the Hotel Project. Subject to delays caused by Force Majeure, issuance of necessary governmental permits and approvals, the City complying with its material obligations hereunder and the timely disbursement of the Hotel Grants in accordance with the terms hereof, Developer shall achieve Substantial Completion of the Hotel Project within thirty-six (36) months after the issuance of a final building permit (as opposed to the grading permit or foundation permit) for the construction of the Hotel Project. Subject to the provisions of this Agreement, the date by which Developer must cause Substantial Completion of the Hotel Project to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Hotel Project, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the construction of the Hotel Project to be completed within a reasonable time.
- (b) During the Term of this Agreement Developer shall not allow the ad valorem taxes owed to City on the portion of the Property that contains the Hotel Project (which may consist of up to two condominium units, one for the Convention Center Annex and one for the balance of the Hotel Project) or the Hotel Project to become delinquent beyond the date when due, as

such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any personal property owned by Developer and located at the Hotel Project.

- (c) During the Term of this Agreement Developer agrees to participate with the City on all bids for Major Special Events, including providing all or portions of the Hotel Project to a Major Special Event host at the then current market rate for such facilities.
- (d) In the event of damage to or destruction of the Hotel Project during the Term, Developer shall cause the full repair or restoration of the Hotel Project as same existed at the time of such damage or destruction (as same may be modified by Developer at the time of such repair or restoration, provided that such modification is of equal or greater value), whether done by application of insurance proceeds or other financial means. On or after the expiration of the Term, in the event of damage to or destruction of the Hotel Project, Developer shall have the right to determine whether, and to what extent the Hotel Project should be restored or replaced. Notwithstanding the above, a Mortgagee and any Person that acquires title to the Hotel Project as a result of a foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 5(d).
- (e) Whenever marketing and promotional materials of the Hotel Project for Developer contain the location of the Hotel Project, the Hotel Project will be depicted as being geographically located in "Arlington" or "City of Arlington" rather than any other proper geographic name.
- (f) The design and construction of the Hotel Project shall comply with all ordinances of the City applicable to the Hotel Project. In addition Developer at its expense, shall obtain all permits, licenses, and inspections by City, State or federal agencies necessary for the construction of the Hotel Project.
- (g) Provide documentation necessary to support a claim by the City to the Comptroller under Sections 351.102(c) and 151.429(h) of Texas Tax Code for a refund of State Sales Taxes and State HOT. As of the Execution Date, the Comptroller requires for such refunds the following items that Developer shall provide:
  - 1. Name and address of the Hotel Project and the Texas taxpayer identification number and outlet number that the operator of the Hotel Project is using to report State Sales Taxes and State HOT.
  - 2. Name, Texas taxpayer identification, and outlet numbers for all vendors doing business in the Hotel Project.

3. Waiver of Confidentiality forms signed by an authorized office or director from each vendor operating in the Hotel Project that allow the Comptroller to release tax information to the City. The Waiver of Confidentiality forms shall be in the form attached as **Exhibit “F”** or any successor form promulgated by the Comptroller.

Developer shall provide updated and supplemental documentation as necessary to allow the City to claim refunds of State Sales Tax and State HOT for all periods during the Term for which Developer is entitled to receive State Refund Grants.

- (h) The provisions of Section 3(h) and (p)(1) and (2) are hereby incorporated into this Section 5 and shall apply to the Hotel Project, mutatis mutandis.
- (i) Covenant and certify that Developer does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay to the City the full amount of the Hotel Grant made under Section 6 of this Agreement, plus ten percent (10%) interest per annum from the date the Hotel Grant was made. Repayment shall be paid within one hundred twenty (120) days after the date Developer receives notice of violation from the City, which notice shall not be given by the City until after such conviction has become final and non-appealable.
- (j) The Developer shall comply with the provisions of the Entertainment Complex Project Ground Lease, the Convention Center Annex Ground Lease and the Hotel Ground Lease.
- (k) Prior to conveying the Property to ACCDC and the City, as provided herein, Developer shall, at the sole cost and expense of Developer, impose on and encumber the Property with a condominium regime that contains three (3) condominium units (one for the Convention Center Annex, one for the Hotel and one for the Entertainment Complex Project), common areas and limited common areas utilizing condominium declarations, by-laws and plats prepared by or for Developer. The ACCDC and the City acknowledge and agree that at the time the Property is conveyed to the ACCDC and the City, the Property will be subject to such condominium regime and will also be subjected to covenants, conditions and restrictions imposed on the Property by Developer or with the consent of Developer.

6. **Hotel Grants by City for the Hotel Project and City obligations concerning the Hotel Project.**

- (a) In the event that Developer elects to develop the Hotel Project, in exchange for Developer’s compliance with all terms and provisions of this

Agreement concerning the development of the Hotel Project, City shall, as an incentive, make the following Hotel Grants to ABDEB:

1. **State Refund Grant.** For a Grant Period of ten (10) years following Initial Occupancy, the City shall provide ABDEB an economic development incentive grant in an amount equal to all refunds received by the City from the Comptroller of State Sales Taxes and State HOT. The City shall deposit such refunds into a bank account designated by Developer (the “**Hotel Project Dedicated Account**”) and the Hotel Project Dedicated Account shall be pledged to ABDEB and/or Developer’s designee, such as a Mortgagee pursuant to an agreement or agreements prepared by Developer, such as an account control agreement and/or a pledge agreement. At the request of Developer, the City Manager on behalf of the City, shall execute and deliver such agreement or agreements to Developer and/or its designee. ABDEB (and/or its designee) shall have the right to withdraw funds from the Hotel Project Dedicated Account. At the election of Developer, the Hotel Project Dedicated Account may contain two or more sub accounts. The City represents and warrants to Developer and ABDEB that the State Refund Grant is not subject to annual appropriation of the City Council of the City or any other governmental authority.
2. **City Sales/Beverage Tax Chapter 351 Grant.** For a Grant Period of ten (10) years following Initial Occupancy, City shall provide ABDEB an economic development incentive grant in an amount equal to all City Sales Taxes and City Mixed Beverage Taxes. The City Sales/Beverage Tax Grant shall also include an amount equal to City Sales Taxes attributable to periods prior to Initial Occupancy, if any, such as City Sales Taxes paid with regard to expansion of the Convention Center. The City represents and warrants to Developer and ABDEB that the City Sales/Beverage Tax Grant is not subject to annual appropriation of the City Council of the City or any other governmental authority.
3. **City Sales/Beverage Tax Appropriated Grant.** For a Grant Period of twenty (20) years beginning in the eleventh year following Initial Occupancy, the City shall provide ABDEB an economic development incentive grant in an amount of lawfully available funds equal to all City Sales Tax and City Mixed Beverage Taxes. Such grant shall be subject to annual appropriation by the City Council of the City in the annual budget and the City’s obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas.

4. **City Chapter 351 HOT Grant.** For a Grant Period of thirty (30) years following Initial Occupancy, the City shall provide ABDEB an economic development incentive grant in an amount equal to the City HOT pursuant to Section 351.102(b) of Texas Tax Code. At the request of Developer, the City shall deposit such funds into the Hotel Project Dedicated Account. The City represents and warrants to Developer and ABDEB that the City Chapter 351 HOT Grant is not subject to annual appropriation of the City Council of the City or any other governmental authority. The City represents and warrants to Developer and ABDEB that on the Execution Date the City HOT has not been pledged or assigned by the City in any way.
5. **City Property Tax Appropriated Grant.** City shall provide ABDEB with consecutive annual economic development incentive grants, for each calendar year during the period that commences on the January 1<sup>st</sup> the follows the date of Initial Occupancy and that ends on December 31, 2036 (the expiration of the TIRZ) from lawfully available funds in amounts equal to 30% of the City Property Taxes for each year. The first such Grant shall be paid and computed with respect to City Property Taxes for the tax year that follows Initial Occupancy and the last such Grant shall be paid and computed with respect to City Property Taxes for tax year 2036 (the expiration of the TIRZ). Beginning in tax year 2037 and continuing for each year until ABDEB has received a total of thirty (30) annual Grant payments pursuant to this Section 6(a)(5), the City shall provide ABDEB consecutive annual economic development incentive grants from lawfully available funds in amounts equal to all City Property Taxes for each year. Such grants shall be subject to annual appropriation by the City Council of the City in the annual budget and the City's obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas.
6. ABDEB shall have the right, at any time, and from time to time, to transfer and assign its rights to receive any or all of the Hotel Grant to Developer or the designee of Developer. ABDEB shall notify the City of any such transfer and assignment.

(b) Computation and Payment of Hotel Grants.

1. **Area Reports.** No later than the date of Initial Occupancy, the City shall submit a request to the Comptroller for Area Reports. During the Term the City shall take such other actions as are necessary to cause the Comptroller to issue Area Reports throughout the Term, including but not limited to supplementing

its request for Area Reports to include any new sales tax permit holders or mixed beverage tax permittees that should be included in the Area Reports if and to the extent Developer identifies any such new sales tax permit holders or mixed beverage tax permittees and if necessary provides Waiver of Confidentiality forms.

2. **State Refund Grant.** The City shall make or cause to be made a State Refund Grant payment to ABDEB or its designee within thirty days of the City's receipt from the Comptroller of each refund of State Sales Taxes and State HOT pursuant to Sections 351.102(c) and 151.429(h) of Texas Tax Code. Each State Refund Grant payment shall be equal to the amount of the State Sales Taxes and State HOT refund received by the City. At the request of Developer, the State Refund Grant payments shall be deposited directly into the Hotel Project Dedicated Account.
3. **City Sales/Beverage Tax Chapter 351 Grant.** The City shall make quarterly payments to ABDEB of the City Sales/Beverage Tax Chapter 351 Grant. After the conclusion of each calendar quarter beginning with the calendar quarter that includes the Initial Occupancy date, the City shall make a Grant payment to ABDEB or its designee equal in amount to the City Sales Taxes and the City Mixed Beverage Taxes for such calendar quarter, as identified in the Area Reports for such quarter. Developer, if necessary, may establish the amounts of City Sales Taxes attributable to periods prior to Initial Occupancy using any reasonable documentation acceptable to the City other than Area Reports. The City shall make such Grant payments within thirty (30) days after the later of (i) the City's receipt of Area Reports that identify amounts of City Sales Taxes and City Mixed Beverage Taxes for all months in a quarter and (ii) the City's receipt of the City Sales Taxes and the City Mixed Beverage Taxes for all periods in the quarter. At the request of Developer, such payments shall be deposited by the City into the Hotel Project Dedicated Account.
4. **City Sales/Beverage Tax Appropriated Grant.** The City shall make quarterly payments to ABDEB or its designee of the City Sales/Beverage Tax Appropriated Grant. After the conclusion of each calendar quarter beginning with the calendar quarter that includes the date that is eleven years subsequent to Initial Occupancy date, the City shall make a Grant payment to ABDEB or its designee from lawfully available funds equal in amount to the City Sales Taxes and the City Mixed Beverage Taxes for such calendar quarter, as identified in the Area Reports for such quarter, following appropriation by such amounts by the City Council of the City as set forth above. The City shall make such Grant

payments within thirty (30) days after the later of (i) the City's receipt of Area Reports that identify amounts of City Sales Taxes and City Mixed Beverage Taxes for all months in a quarter, (ii) the City's receipt of the City Sales Taxes and the City Mixed Beverage Taxes for all periods in the quarter; and (iii) the City Council appropriation of the grant amounts. At the request of Developer, such payments shall be deposited by the City into the Hotel Project Dedicated Account.

5. **City Chapter 351 HOT Grant.** The City shall make quarterly payments to ABDEB or its designee of the City Chapter 351 HOT Grant. After the conclusion of each calendar quarter beginning with the calendar quarter that includes the Initial Occupancy date, the City shall make a Grant payment to ABDEB or its designee equal in amount to the City HOT for such calendar quarter, determined with reference to the City HOT Returns. The City shall make each such Grant payment within thirty (30) days after the later of (i) the City's receipt of the City HOT Returns for all periods in a quarter and (ii) the City's receipt of the City HOT for all periods in a quarter. At the request of Developer, such payments shall be deposited by the City into the Hotel Project Dedicated Account.
  
6. **City Property Tax Appropriated Grant.** Commencing with the tax year that begins on the January 1<sup>st</sup> the follows Initial Occupancy, the City shall make a City Property Tax Appropriated Grant payment to ABDEB or its designee annually after the end of the each of such tax years in accordance with the provisions of Section 6(a)(5) hereof. Each City Property Tax Appropriated Grant payment shall be from lawfully available and appropriated funds equal to 30% or 100%, as applicable, of all City Property Taxes received by the City for the applicable tax year as provided in Section 6(a)(5) hereof. The City shall make each such Grant payments within 30 days after the City's receipt of the later of (i) the Property Tax Data for the tax year, (ii) the City Property Taxes for the tax year, or (iii) the appropriation of such grant amounts by the City Council of the City as set forth above. Developer each tax year shall provide prompt written notice to the City of the payment of property taxes with respect to the Property. After receipt of such notice, the City shall download or access Property Tax Data from the Tarrant County Tax Assessor-Collector within fifteen (15) days after it becomes available with regard to a particular tax year, and shall promptly notify Developer if such Property Tax Data from the Tarrant County Tax Assessor-Collector appears inadequate to establish the amounts of taxes used to compute the City Property Tax Appropriated Grant, in which event Developer

shall provide alternative documentation, acceptable to the City, necessary to establish the amounts of such taxes.

7. **Adjustments to Hotel Grant Amounts.** If (i) the final result of an assessment, audit, refund claim or other action by a taxpayer or taxing authority results in a change in the amount of tax liability for a prior tax period of any City tax revenue that was used as the basis for the computation of any Hotel Grant payment due under this Agreement, and (ii) such change in tax liability results in a payment to or from the City of such taxes, whether by actual payment, credit, offset, or otherwise, then (iii) for the Hotel Grant type computed with reference to that type of tax, the City, after notice to Developer and ABDEB will adjust the Hotel Grant payment otherwise due for the Hotel Grant Computation Period in which the City makes or receives such payment up or down, as the case may be, to account for such prior period's tax liability adjustment and payment. If the adjustment required by this Section 6(b)(7) cannot be fully accomplished by adjusting the Hotel Grant payment for the Hotel Grant Computation Period in which the City makes or receives such payment, the Hotel Grant payment due for subsequent Hotel Grant Computation Periods shall be adjusted as necessary.
  
8. **Deferral of Certain City Hotel Grant Payments.** Section 6(a) and (b) of this Agreement require the City to make or cause to be made Hotel Grant payments to ABDEB or its designee after the City's receipt of State HOT, City Sales Tax, City Mixed Beverage Tax, and City HOT with respect to specified periods for computation of the Hotel Grant amounts (a "**Hotel Grant Computation Period**"). If for a Hotel Grant Computation Period the City does not receive actual payment of a net positive amount of a tax type that exceeds the City's computation of a Hotel Grant payment obligation to ABDEB with respect to that tax type for that Hotel Grant Computation Period, the City shall not be required to pay immediately to ABDEB the portion of the Hotel Grant amount equal to the excess of the Hotel Grant amount otherwise due over the net positive amount of that tax type received by the City, but instead the City shall defer and pay such portion of the Hotel Grant amount after the first subsequent Hotel Grant Computation Period or Periods for which the City receives actual payment of a net positive amount of that tax type at least equal to the Hotel Grant payment currently due for that tax type plus Hotel Grant payments for prior periods deferred as a result of the application of this Section. Notwithstanding, for the City Sales/Beverage Tax Appropriated Grant and City Property Tax Appropriated Grant such amounts shall not be paid to ABDEB until the City Council has taken action to appropriate such payments as set forth above.

The provisions of this Section shall survive the termination of this Agreement and the Term.

- (c) City will work with Developer to establish a procedure by which the City can expedite all City development approvals, including permits and inspections for the Hotel Project. At a minimum, the City agrees to act on an administratively complete building permit application within forty five (45) days after the application is filed with the City, and the City agrees to issue a certificate of occupancy within ten (10) days after receipt of a request for a final inspection if the Hotel Project complies with applicable requirements of the issuance of a certificate of occupancy. Delays resulting from the City's wrongful act or failure to act will extend the schedule for Developer's performance obligation under Section 5(a) by a like amount of days. In addition, the City will provide a dedicated staff member to assist with real time plan review and inspection.
- (d) City agrees to provide space, where available, on existing City owned way-finding signs to direct visitors to the Hotel Project. In addition City agrees to seek placement of directional signage by the State of Texas on state highways; however all costs related to such signage are the responsibility of Developer.
- (e) City will provide police and fire protection to the Hotel Project at City's costs (and not Developer's costs) for all Major Special Events at the Hotel Project so long as the Hotel Project is included as a venue for which the City is seeking reimbursement from the Event Trust Fund. The City will provide police and emergency service protection to the areas surrounding the Hotel Project as part of the routine patrol of the area. At Developer's request, the City's police department and Developer will meet periodically to discuss security and police protection in the areas surrounding the Hotel Project. If Developer and City determine a police substation in the Hotel Project is desired both parties will use reasonable efforts to work together to address staffing such substation.
- (f) In connection with the development and construction of the Hotel Project (and any reconstruction, remodeling or renovation of same), if requested by Developer, the City shall grant Developer an easement or license, at no cost or expense, to stage construction on the public rights of ways located adjacent to the Hotel Property.
- (g) The City agrees that in connection with the operation of the Hotel Project, Developer and its designees shall have the right, at no cost or expense, to utilize the sidewalks and plazas located adjacent to the Hotel Project that are part of the public right of way for café seating and other purposes; notwithstanding the foregoing any ordinances controlling the location of improvements in sidewalks or on public right of way shall still apply to assure that the public right of way is not unreasonably obstructed.

- (h) The City shall cause the City's destination marketing organization to market and promote the Hotel Project whenever marketing any of the major attractions in the City. Such marketing and promotion shall be coordinated with Developer. In addition, the City agrees to seek an amendment to the Arlington Convention and Visitors Bureau, Inc. Bylaws to provide membership on the Board of Directors for a representative of the Hotel Project nominated by Developer.
  
- (i) The ACCDC shall accept title to the portion of the Property (as determined by Developer) that contains the Hotel and the Entertainment Complex Project pursuant to a deed or deeds prepared by Developer that are substantially in the form attached hereto as **Exhibit "I"** (Developer shall have the right to determine the property to be conveyed by each such deed, and such property may consist of one or more condominium units and to complete Exhibit B to each such deed) and will immediately lease the Property to Developer pursuant to the Entertainment Complex Project Ground Lease and the Hotel Ground Lease. The City shall accept title to the portion of the Property (as determined by Developer) that contains the Convention Center Annex pursuant to a deed prepared by Developer that is substantially in the form attached hereto as **Exhibit "I"** (Developer shall have the right to determine the property to be conveyed by such deed, and such property may consist of a condominium unit and to complete Exhibit B to such deed) and will immediately lease the Property to Developer pursuant to the Convention Center Annex Ground Lease. Developer shall prepare the Entertainment Complex Project Ground Lease, the Convention Center Annex Ground Lease and the Hotel Ground Lease and shall have the right to determine the description of the property that is the subject of each such ground lease. Developer shall have the right to make reasonable modifications to the form of each such ground lease prior to execution of same, such as modifications: (i) to reflect that the property demised under such ground lease consists of one or more condominium units and granting the tenant under such ground lease the exclusive right and power to exercise all of the rights and privileges of the "owner" of the unit or units that comprise the demised premises under such ground lease; or (ii) to reflect that the such property is subject to covenants, conditions and restrictions and granting the tenant under such ground lease the exclusive right and power to exercise all of the rights and privileges of the "owner" under such covenants, conditions and restrictions as if it were the owner of the property demised under the applicable ground lease. The President of the ACCDC Board of Directors, on behalf of the ACCDC, is hereby authorized to accept title to the portion of the Property that will contain the Entertainment Complex Project and the Hotel and to execute and deliver the Hotel Ground Lease and the Entertainment Complex Project Ground Lease as well as any other documents or agreements, such as a ground lease recognition agreement that a Mortgagee may require. The City Manager, on behalf of the City, is hereby authorized to accept title to the portion of the Property that will

contain the Convention Center Annex and to execute and deliver the Convention Center Annex Ground Lease as well as any other documents or agreements, such as a ground lease recognition agreement that a Mortgagee may require. The ACCDC shall comply with the provisions of the Entertainment Complex Project Ground Lease and the Hotel Ground Lease and the City shall comply with the provisions of the Convention Center Annex Ground Lease.

7. **Developer Determination of the Economic Feasibility of the Hotel Project.**

Unless such date is extended, as provided below, on or before the earlier of: (a) the first day of the ninth (9th) full calendar month that follows the date that the City has provided the Developer with the Comptroller Letter Ruling and (b) the first (1st) anniversary of the Execution Date, Developer will determine whether the development of the Hotel Project is economically feasible and financeable on terms acceptable to Developer in its sole discretion and will notify the City of its election to proceed or not to proceed with the development of the Hotel Project. In making such determination, Developer will evaluate whether the Hotel Grants are financeable on terms and in an amounts satisfactory to Developer, in its sole discretion, and whether the Hotel Grants, as structured, may create adverse federal income tax consequences for Developer or its direct or indirect members. To assist Developer in making such determination, the City will seek to obtain a private letter ruling (the “**Comptroller Letter Ruling**”), for the benefit of Developer and its successors and assigns and potential and actual Mortgagees from the Texas Comptroller concerning the qualifications of the City, in connection with the construction of the Entertainment Complex Project and Hotel Project, to receive funds that an owner of a qualified hotel project may receive under Section 151.429(h) of Texas Tax Code and Section 2303.5055 of Texas Government Code. The request for such private letter ruling shall be in a form reasonable acceptable to Developer.

If Developer elects not to proceed with the Development of the Hotel Project, which election it may make in its sole discretion, Developer will not be obligated to proceed with the development of the Hotel Project.

The date by which Developer must make the above determination and notify the City of such determination, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests.

8. **Indemnification.**

DEVELOPER IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY AND ACCDC ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE ENTERTAINMENT COMPLEX PROPERTY OR IMPROVEMENTS. DEVELOPER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE ACCDC, CITY, THEIR OFFICERS, AGENTS,

EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND REASONABLE ATTORNEYS' FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF, LOSS OF USE, OR DAMAGE TO THE ENTERTAINMENT COMPLEX PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, EXCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. FOR PURPOSES OF THIS SECTION 8, THE TERM DEVELOPER INCLUDES ABDEB.

9. **Termination and Default.**

Developer is considered to be in default under this Agreement if (i) Developer fails to fulfill its obligations under Section 3 and Section 5 (if Developer has elected to proceed with the development of the Hotel Project). The City is considered to be in default under this Agreement if the City fails to fulfill its obligations under Section 4 and Section 6 (if Developer has elected to proceed with the development of the Hotel Project). The ACCDC is considered in default under this Agreement if the ACCDC fails to fulfill its obligations under Section 6 (if Developer has elected to proceed with development of the Hotel Project). If Developer, ACCDC or the City defaults (a “**Default**”), the defaulting Party shall cure such Default within forty-five (45) days after the delivery of written notice of such Default from the other Party, or if such failure cannot be cured within such forty-five (45) day period in the exercise of all due diligence, then if the defaulting Party commences an attempt to cure within such forty-five (45) day period, such longer period as the Party thereafter continues diligently to prosecute the cure of such Default.

If Developer does not cure a Default of Section 3(a) in the time period allowed by this Agreement, the City may terminate this Agreement and the City may seek repayment by Developer of Grants paid. Repayment of Grants paid shall become due 60 days following receipt of such demand. In the event that this Agreement has not been terminated prior to Substantial Completion, the City and ACCDC shall no longer have the right to terminate this Agreement pursuant to this paragraph.

If Developer does not cure a Default of Section 5(a) (if Developer has elected to proceed with the development of the Hotel Project) in the time period allowed by this Agreement, the City and ACCDC may terminate this Agreement as it relates to the Hotel Project (but not the Entertainment Complex Project) and the City may seek repayment by Developer of the Hotel Grants paid. Repayment of Hotel Grants paid shall become due 60 days following receipt of such demand. In the event that this Agreement has not been terminated prior to Substantial Completion, the City and ACCDC shall no longer have the right to terminate this Agreement as it relates to the Hotel Project pursuant to this paragraph.

The City's ability to seek repayment and Developer's obligation to repay shall survive the termination of this Agreement.

10. **Restriction against Dispositions.**

- (a) Dispositions of the Entertainment Complex Project. Until the third (3rd) anniversary of Substantial Completion, Developer shall not make or create, or suffer to be made or created, any Disposition of the Entertainment Complex Project, without the prior written approval of the City Representative, which approval shall not be unreasonably withheld and which approval shall be granted or withheld within thirty (30) Business Days of the City's receipt of such request, time being of the essence. Thereafter, Developer may, without the need to request or obtain the consent of the City, make or create, or suffer to be made or created, a Disposition of the Entertainment Complex Project during the Term of this Agreement, provided that the counterparty to such Disposition (and/or a direct or indirect affiliate): (i) owns a major league baseball or football team; (ii) is an affiliate of one of the direct or indirect owners of Developer; or (iii) has demonstrable experience in owning and/or operating entertainment complexes, food and beverage projects and/or retail/entertainment projects and has a net worth in excess of Fifty Million Dollars (\$50,000,000). In the event such counterparty (and/or a direct or indirect affiliate) does not satisfy at least one of the above, such Disposition shall require the prior written approval of the City, acting by and through the City Representative, which approval shall not be unreasonably withheld and which approval shall be granted or withheld within thirty (30) Business Days of the City's receipt of such request, time being of the essence. Notwithstanding the above, on or any time after the first day of the fifteenth (15<sup>th</sup>) anniversary of the date Substantial Completion is achieved Developer may, without the need to request or obtain the consent of the City, make or create, or suffer to be made or created, a Disposition of the Entertainment Complex Project.
- (b) Dispositions of the Hotel Project. Until the third (3rd) anniversary of Initial Occupancy, Developer shall not make or create, or suffer to be made or created, any Disposition of the Hotel Project, without the prior written approval of the City Representative, which approval shall not be unreasonably withheld and which consent shall be granted in the event the counterparty to such Disposition is an Alternative Hotel Developer. Any such approval or disapproval shall be made within thirty (30) Business Days of the City's receipt of such request, time being of the essence. Thereafter, Developer may, without the need to request or obtain the consent of the City, make or create, or suffer to be made or created, a Disposition of the Hotel Project during the Term of this Agreement, provided that the counterparty to such Disposition (and/or a direct or indirect affiliate): (i) owns a major league baseball or football team; (ii) is an affiliate of one of the direct or indirect owners of Developer; or (iii) has

demonstrated experience in owning and/or operating on a full-service basis comparable hotel properties and has a net worth in excess of Fifty Million Dollars (\$50,000,000). In the event such counterparty (and/or a direct or indirect affiliate) does not satisfy any of the above, such Disposition shall require the prior written approval of the City, acting by and through the City Representative, which approval shall not be unreasonably withheld and which approval shall be granted or withheld within thirty (30) Business Days of the City's receipt of such request, time being of the essence. Notwithstanding the above, on or any time after the first day of the fifteenth (15th) anniversary of the date Substantial Completion of the Hotel is achieved Developer may, without the need to request or obtain the consent of the City, make or create, or suffer to be made or created, a Disposition of the Hotel Project.

- (c) Assumption Agreement. In connection with a Disposition made during the Term of this Agreement, the counterparty to such Disposition shall assume all obligations of Developer under this Agreement accruing from and after the Execution Date of such Disposition by a written agreement (the "**Assumption Agreement**") to which the City is either a party or in which the City is specified to be a beneficiary, a copy of which Assumption Agreement shall be promptly provided to the City following the Disposition to evidence the assignment and assumption in question. The provisions of this Section 10(b) shall not apply to Operation Agreements, Leases or Mortgages.
- (d) Permitted Dispositions to Tenants. Notwithstanding anything in this Section 10 or other Sections of this Agreement to the contrary, Developer may enter into Leases or other contractual agreements with Tenants for parts (but less than all) of Developer's interest in the Entertainment Complex Project and/or the Hotel Project, at any time and from time to time from and after the Execution Date, with such Tenants and upon such terms and conditions as Developer shall, in its sole discretion, deem fit and proper. Notwithstanding anything in this Section 10(d) to the contrary, a Lease or Leases may not be used as a way to circumvent the assignment limitations or other provisions of Section 10, provided, however, Developer shall have the right, from time to time, to lease all or any part of the Entertainment Complex Project to one or more Tenants, that may or may not be an affiliate of Developer, that operate one or more businesses in the Entertainment Complex Project, such as a bar, restaurant or nightclub. Such a Tenant shall have the right to sublease or license portions of its leased premises to third parties for the operation of businesses.
- (e) Liability. In the event of a Disposition of all of the interest of Developer concerning the Entertainment Complex Project and/or Hotel Project, upon Developer's delivery of an Assumption Agreement pursuant to Section 10(b) hereof, Developer shall be relieved of all further liability arising

hereunder except for monetary obligations of Developer under this Agreement that accrued before such Disposition which remain unpaid.

- (f) Obligations of Tenants. Any Tenant is not a successor or assignee of Developer's obligations to the City merely by being a Tenant.
- (g) Project Financing and Mortgages. The provisions of this Section 10 are not intended to modify or supersede any of the rights granted Developer, any Mortgagee and any Tenant under Sections 11 and 12 hereof. In the event that the provisions of this Section 10 conflict with or are inconsistent with the any of the other provisions of Sections 11 and/or 12 hereof, the provisions of Sections 11 and 12 hereof shall control and the provisions of this Section 10 shall be construed and interpreted accordingly.
- (h) Disposition of one Project. In the event of a Disposition of the Hotel Project, but not the Entertainment Complex Project, or vice versa, Developer may cause this Development Agreement to be bifurcated pursuant to the provisions of Section 13(z)(1).

11. Leases.

From and after the Execution Date, Developer shall have the right, without the need to request or obtain the consent of the City or ACCDC to Lease all or any part of the Entertainment Complex Project and/or the Hotel Project at any time and from time to time to Tenants. The City and ACCDC acknowledges and agrees that Developer may enter into Leases with affiliated companies to Developer, such as the Project Tenant, and acknowledge that part of Developer's strength is this ability. Notwithstanding anything in this Section to the contrary, a Lease or Leases may not be used as a way to circumvent the assignment limitations of this Agreement.

12. Mortgagee Rights.

- (a) Right to Mortgage. Notwithstanding any other provisions of this Agreement, Developer shall at all times have the right to encumber, pledge, grant, or convey its rights, title and interest in and to the Property, the Hotel Project, or any portions thereof, and/or the Entertainment Complex Project, or any portion or portions thereof, and/or to this Agreement by way of a mortgage, pledge, assignment or other security agreement (a "**Mortgage**") to secure the payment of any loan or loans obtained by Developer to finance or refinance any portion or portions of the Entertainment Complex Project and/or the Hotel Project. The beneficiary of or mortgagee under any such Mortgage is hereby referred to herein as a "**Mortgagee**". The City and ACCDC recognizes and acknowledges that the Hotel Project and the Entertainment Complex Project may be separately financed by Developer (or its Affiliate) and may be encumbered by separate Mortgages. The Mortgagee of the Hotel Project and the Mortgagee of the Entertainment Complex Project shall

have the benefit of the provisions of this Section 12 with regard to its Mortgage and the property and project its Mortgage encumbers.

- (b) Notice of Breaches to Mortgagees. In the event the City and/or ACCDC gives notice to Developer and/or ABDEB of a breach of its obligations under this Agreement, the City and/or ACCDC shall forthwith furnish a copy of the notice to the Mortgagees that have been identified to the City and/or ACCDC by Developer. To facilitate the operation of this Section 12(b), Developer shall at all times keep the City and ACCDC provided with an up-to-date list of Mortgages.
  
- (c) Mortgagee May Cure Breach of Developer and/or ABDEB.
  - (i) In the event that Developer and/or ABDEB receives notice from the City and/or ACCDC of a breach by Developer and/or ABDEB of any of its obligations under this Agreement and such breach is not cured by Developer and/or ABDEB pursuant to the provisions of this Agreement, the City and/or ACCDC shall, in addition to the notice provided in Section 9 hereof, give notice of the failure to cure on the part of Developer and/or ABDEB to the Mortgagees at the expiration of the period within which Developer and/or ABDEB may cure as set forth in this Agreement. Any one of the Mortgagees may elect to cure such default by giving the City and/or ACCDC written notice of its intention so to cure within thirty (30) days after the receipt of the additional notice herein set forth. In the event that any Mortgagee elects to proceed to cure any such default, such Mortgagee shall do so within the applicable cure period contained in this Agreement; provided, however, that the commencement of the cure period for the Mortgagee shall commence on the date the Mortgagee notifies the City and/or ACCDC of the Mortgagee's election to cure such default and each applicable cure period shall be deemed doubled in length for Mortgagee.
  
  - (ii) In the event any Mortgagee elects to exercise its rights of foreclosure under a Mortgage (or appoint a receiver or accept a deed and/or assignment-in-lieu of foreclosure), after foreclosure of Developer's and ABDEB's interest in and to the Entertainment Complex Project or any portion thereof and/or the Hotel Project or any portion thereof, as applicable (or after the appointment of a receiver or the obtaining of Developer's and/or ABDEB's interest in and to the Entertainment Complex Project or any portion thereof and/or the Hotel Project or any portion thereof, as applicable, via deed and/or assignment-in-lieu of foreclosure), such Mortgagee may at its option:

- (A) elect to assume the position of Developer hereunder in which case, in the event the City and/or ACCDC has terminated this Agreement or suspended the distribution of any funds, including the Grants and/or the Hotel Grants that the City are obligated to provide to ABDEB and/or Developer pursuant to this Agreement, the City and ACCDC agrees that this Agreement shall be deemed reinstated and the City shall commence the distribution of such funds, including the Grants and/or Hotel Grants, in accordance with the provisions of this Agreement and, in which case, such Mortgagee shall cure any default by ABDEB and/or Developer hereunder that the Mortgagee had received notice of in accordance with the provisions of Section 12(b) hereof within the timeframes contained in this Agreement and shall cause Substantial Completion to occur; or
- (B) elect not to assume the provisions of this Agreement.

The Mortgagee shall have the right so to elect (A) above of this Section 12(c)(ii) only if it shall exercise such right within six (6) months after the receipt of the additional notice herein set forth. For purposes of this Section 12(c), the term "Mortgagee" shall include not only the "Mortgagee", as that term is defined in this Section 12 hereof, but shall also include any Person that obtains Developer's and/or ABDEB's interest in and to all or any portion of the Property as a result of a Mortgagee's exercise of its foreclosure rights or the transfer of Developer's and/or ABDEB's interest in and to all or any part of the Property, the Entertainment Complex Project and/or the Hotel Project at the direction of the Mortgagee by Developer and/or ABDEB to a Person by deed and/or assignment-in-lieu of foreclosure.

- (d) Rights and Duties of Mortgagee. In no event shall any Mortgagee be obliged to perform or observe any of the covenants, terms or conditions of this Agreement on the part of Developer and/or ABDEB to be performed or observed, or be in any way obligated to complete the improvements to be constructed in accordance with this Agreement, nor shall it guarantee the completion of improvements as hereinbefore required of Developer, whether as a result of (i) its having become a Mortgagee, (ii) the exercise of any of its rights under the instrument or instruments whereby it became a Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (iii) the performance of any of the covenants, terms or conditions on the part of Developer and/or ABDEB to be performed or observed under this Agreement, or (iii) otherwise, unless such Mortgagee shall either make the election set forth in Section 12(c)(ii)(A) of this Agreement or shall specifically elect under this Section

12(d) to assume the obligations of Developer and/or ABDEB by written notice to the City and ACCDC whereupon such Mortgagee, upon making such election as aforesaid, shall then and thereafter for all purposes of this Agreement be deemed to have assumed all of the obligations of Developer and/or ABDEB, as applicable, hereunder.

- (e) Mortgagee's Rights Agreements. The ACCDC and the City, acting by and through the City Representative, shall, at the request of Developer made from time to time and at any time, enter into a lender's rights agreement with any Mortgagee (or potential Mortgagee) identified by Developer, which lender's rights agreement shall be consistent with the terms and provisions contained in this Section 12 that apply to Mortgagees and Mortgages. Within twenty (20) days of Developer's request for a lender's rights agreement pursuant to the provisions of this Section 12(e), time being of the essence, the ACCDC and City, acting through the City Representative, shall execute and deliver to Developer such a lender's rights agreement benefiting the identified Mortgagee (or potential Mortgagee) and such Mortgagee's Mortgage (or potential Mortgagee's potential Mortgage), which executed lender's rights agreement shall be in a form and substance that are reasonably acceptable to such Mortgagee (or potential Mortgagee) and that is consistent with, and at the option of such Mortgagee (or potential Mortgagee) incorporates, the terms and provisions of this Section 12 that apply to Mortgagees and Mortgages.

13. General Provisions.

- (a) Representations and Warranties. Developer and ABDEB each represents and warrants to the City and ACCDC that it has the requisite authority to enter into this Agreement. Developer and ABDEB each represents and warrants to the City and ACCDC that it will not violate any federal, state or local laws in operating the Entertainment Complex Project and Hotel Project, that all proposed improvements of the Entertainment Complex Project and Hotel Project (exclusive of Third Party Tenant Improvements) shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations. Nothing in this Section 13(a) or any other part of this Agreement, however, shall be construed to (i) limit or prevent Developer from challenging at law or in equity the applicability of any applicable law and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (ii) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Agreement, no provision of this Agreement shall be construed to require Developer, the Project Tenant and/or ABDEB to comply with any applicable law during the period that Developer, the Project Tenant and/or ABDEB may be pursuing a bona fide challenge of the applicability, lawfulness, and/or enforceability of such applicable law (unless such law requires compliance during any such challenge). If Developer's, the Project Tenant's and/or ABDEB's

challenge is successful, Developer, the Project Tenant and ABDEBC shall not be required by the provisions of this Agreement to comply with such applicable law.

- (b) **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- (c) **Attorneys' Fees.** In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action, in accordance with Section 271.153 of Texas Local Government Code.
- (d) **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by Developer, ABDEB, the ACCDC and the City and approved by the City through its City Council.
- (e) **Assignment by the City or ACCDC.** This Agreement may not be assigned by the City or ACCDC until such time as the eight (8) Grant installments under Subsection 4(a) has been made to ABDEB and, in the event the Hotel Project is being developed, Developer and its lenders are provided with assurances that all Hotel Grants will be timely paid and that the City is not being released from its obligations under Section 6 to cause such Hotel Grants to be timely paid.
- (f) **Binding Agreements; Successor Tenant.** This Agreement shall be binding on and inure to the benefit of the parties hereto, their respective permitted successors and assigns.
- (g) **Notice.** All notices or statements given pursuant to or concerning this Agreement shall be in writing and sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any notice sent by (a) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (b) personal messenger shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the Business Day following the date the notice is deposited with the overnight delivery service addressed as specified below:

DEVELOPER  
& ABDEB:

Ballpark Parking Partners, LLC  
c/o Secretary  
1000 Ballpark Way, Suite 400  
Arlington, Texas 76011

With a copy to: Ballpark Parking Partners, LLC  
c/o General Counsel  
1000 Ballpark Way, Suite 400  
Arlington, Texas 76011

CITY: City of Arlington, Texas  
City Manager's Office  
c/o City Manager  
101 W. Abram Street  
Arlington, Texas 76004-3231

ACCDC: Arlington Convention Center Development  
Corporation  
City Manager's Office  
c/o City Manager  
101 W. Abram Street  
Arlington, Texas 76004-3231

Such addresses may be changed by giving the other Party ten (10) days' notice in writing. In addition, Developer & ABDEB may add additional notice addressees.

- (h) **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.
- (i) **Applicable Law.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas without regard to any conflict of law rules, and, subject to the provisions of Section 13(1) hereof, venue shall lie in Tarrant County, Texas.
- (j) **Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable. Notwithstanding the above, Developer shall have the right to terminate this Agreement in the event that it determines that the obligation of the City to timely pay ABDEB or Developer the Grants and, if applicable, the Hotel Grants in accordance with the terms of this Agreement has been declared invalid or unenforceable. In the event any provision of this Agreement is illegal, invalid or unenforceable under present or future laws, each Party reserves the right to pursue any and all remedies available to them at law or

equity (including arbitration proceedings). In the event that any of the provisions of this Agreement concerning the Hotel Grants and/or the Grants are challenged by any other Person as “illegal, invalid, or unenforceable under present or future laws”, the parties shall reasonably cooperate with each other to defend the validity and enforceability of such provisions. The provisions of this Section 13(j) shall survive the termination of this Agreement.

- (k) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.
  
- (l) **Dispute Resolution.** In the event any dispute, controversy or claim between or among the parties hereto arises under this Agreement (a “**Dispute or Controversy**”), including a claim that a Party is in default of this Agreement, the parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement. In the event a Dispute or Controversy arises, any Party shall have the right to notify the other Party hereto that the notifying Party has elected to implement the procedures set forth in this Section 13(l). Within fifteen (15) days after delivery of any such notice by one Party to the other Party regarding a Dispute or Controversy, a representative of each of the parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained within fifteen (15) days after the meeting of the parties representatives for such purpose, or such longer period as the parties may agree upon, then either Party may by notice to the other Party (the “**Arbitration Notice**”) submit the Dispute or Controversy to arbitration in accordance with the provisions of this Section 13(l) and **Exhibit “H”** attached hereto (the “**Arbitration Procedures**”). The Arbitration Notice must comply with the Arbitration Procedures. Upon receipt of the Arbitration Notice, all parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section 13(l) and **Exhibit “H”** without regard to the justifiable character or executor nature of such Dispute or Controversy. Each Party hereto agrees that any Dispute or Controversy which is not resolved pursuant to this Section shall be submitted to binding arbitration hereunder and shall be resolved exclusively and finally through such binding arbitration in accordance with the Arbitration Procedures (the “**Arbitration**”). This Section 13(l) and **Exhibit “H”** hereto are and hereby constitute a written agreement by the parties hereto to submit to arbitration any such Dispute or Controversy arising after the Execution Date of this Agreement within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code. Notwithstanding any provision of this Agreement to the contrary, any Party may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Tarrant County, Texas. In the event that a Dispute or Controversy requires emergency relief before

the matter may be resolved under the Arbitration Procedures, notwithstanding that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the parties hereto expressly agree that the Arbitration Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

- (m) **Force Majeure.** If either Party (for purposes of this provision, Developer and ABDEB shall be collectively deemed a “Party”) shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, failure, refusal or delay in issuing permits, approvals or authorizations), injunction or court order, terrorist attacks, riots, insurrection, war, fire, earthquake, flood or other natural disaster, a default hereunder by the other Party or other reason of a like nature not the fault of the Party delaying in performing work or doing acts required under the terms of this Agreement (but excluding delays due to financial inability), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.
- (n) **Independent Parties.** Nothing herein shall be construed as creating a partnership or joint enterprise between the City, ACCDC and Developer. Furthermore, the Parties acknowledge and agree that the doctrine of respondeat superior shall not apply between the City, ACCDC and Developer, nor between the City, ACCDC and any officer, director, member, agent, employee, contractor, subcontractor, licensee, or invitee of Developer.
- (o) **No Rights Conferred on Others.** Nothing in this Agreement shall confer any right upon any Person other than the City, ACCDC and Developer and no other Person is considered a third party beneficiary to this Agreement.
- (p) **Approval Not Guaranteed.** Nothing contained in this Agreement shall be construed as obligating the City to approve any application required for development of the Property that is not in conformity with the City’s adopted development regulations, except as expressly otherwise contemplated herein.
- (q) **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the transaction contemplated herein.
- (r) **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor will there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

- (s) **Approval by City of Arlington, Texas. This** Agreement was approved by the City Council of the City of Arlington, Texas at its meeting on December 15, 2015.
- (t) **City Representative.** From and after the date hereof, the City shall designate a representative (a "**City Representative**") who shall be authorized to give all directions, consents, approvals, waivers or other acknowledgements under this Agreement on the part of the City and to receive any and all submissions from Developer under this Agreement. Developer shall be entitled to rely on, and Developer and City agree to be bound by, any direction, consent, approval, waiver or other acknowledgement given by the City Representative, unless prior to the time such direction, consent, approval, waiver or other acknowledgement is given, the City Manager (or his designee) gives written notice to Developer that the City Representative has been changed. For the purpose of this Agreement, Developer shall not be required to rely on and may refuse to accept directions, consents, approvals, waivers or other acknowledgements from any other Person, even if such Person has apparent or actual authority for the City. The City Manager, and only the City Manager, shall be entitled to change the City Representative at any time upon five (5) days written notice to Developer, provided that the City Manager shall appoint a replacement City Representative upon such removal of the prior City Representative or promptly in the event of death or disability of such City Representative. The initial City Representative shall be the City Manager.
- (u) **Representatives Not Individually Liable.** No member, official, representative, or employee of the City or ACCDC shall be personally liable to Developer or ABDEB or any successor in interest of either of them in the event of any default or breach by the City or ACCDC for any amount which may become due to Developer, ABDEB or successor of either of them or on any obligations under the terms of the Agreement. No partner, member, representative, or employee of Developer, ABDEB or any of their respective members shall be personally liable to the City or ACCDC in the event any default or breach by Developer and/or ABDEB for any amount which may become due to the City or ACCDC or on any obligations under the terms of this Agreement.
- (v) **Confidentiality.** The City acknowledges and agrees that any information provided by Developer or ABDEB to the City concerning the cost of developing the Entertainment Complex Project or Hotel Project, the terms of any financing of the Entertainment Complex Project or Hotel Project, the identity of any potential Tenant, the terms of any lease of a Tenant, the actual sales of any Tenant and the cash flow, profit and loss of the Entertainment Complex Project or Hotel Project is considered by Developer to be "confidential financial information" and may contain "trade secrets" and "confidential information".

The City shall notify Developer within five (5) Business Days after receiving any Public Information Act request that seeks disclosure of information provided by or concerning Developer, and the parties shall reasonably cooperate to determine whether or to what extent the requested information may be released without objection and without seeking a written opinion of the Texas Attorney General. If Developer takes the positions that responsive information provided by or concerning Developer is information not subject to release to the public pursuant to section 552.110 of Texas Government Code, or other applicable law, then the City shall seek a written opinion from the Texas Attorney General; however, Developer must submit written comments to the Attorney General to establish reasons why the information should be withheld. The burden of establishing the applicability of exceptions to disclosure for such information resides with Developer. Should the Texas Attorney General issue an opinion that the requested information, or any part thereof, should be released, the City may release said information without penalty or liability. This Section shall survive termination of this Agreement for any reason whatsoever.

- (w) **City Representations and Warranties.** The City represents and warrants to Developer and ABDEB that the City (i) is a constitutionally chartered city validly existing under the laws of the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.
  
- (x) **Estoppel Certificates.** The City and Developer, at any time and from time to time, upon not less than thirty (30) days prior written notice from a Party hereto, or to a Person designated by such Party, such as a Tenant or a Mortgagee, shall execute, acknowledge, and deliver to the Party requesting such statement, a statement in reasonably acceptable form to the requested Party certifying, among other matters, (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) stating whether or not, to the best knowledge of the signer of such certificate, the City or Developer is in breach and/or default in performance of any covenant, agreement, or condition contained in this Agreement and, if so, specifying each such breach and/or default of which the signer may have knowledge, and (iii) any other factual matters reasonably requested in such estoppel certificate concerning this Agreement, it being intended that any such statement delivered hereunder may be relied upon by the Party requesting such statement and/or any Person not a Party to this Agreement (if such other Person is identified at the time such certificate was requested). The City Representative is hereby authorized to execute, acknowledge, and deliver

such certificates on behalf of the City. For purpose of this Section 13(x) the term “Developer” shall be deemed to include ABDEB.

(y) **Waiver of Immunity.** The City hereby waives its governmental immunity from suit and immunity from liability as to any arbitration proceeding and/or legal action brought by Developer or ABDEB resulting from an uncured default by the City. To effectuate such waiver, the Parties hereby agree, for purposes of this Agreement only, that this Agreement is a contract subject to Subchapter I, Chapter 271, Texas Local Government Code, as amended.

(z) **Separate Agreements.**

1. In the event that Developer has elected to proceed with the development of the Hotel Project, at the request of the Developer, made at any time after such election, the City and ACCDC, acting by and through the City Representative, shall, within thirty (30) Business Days of such request, enter into an amendment to this Agreement (the “**Amendment**”) with Developer and ABDEB (or, at the election of Developer, with a subsidiary of Developer and either ABDEB or a member of such subsidiary) that deletes all references to the Hotel Project and shall enter into a separate economic development incentive agreement for the Hotel Project with Developer and ABDEB (or at the election of Developer, an affiliate or subsidiary of Developer and either ABDEB or a member of such subsidiary, an Alternative Hotel Developer (and a member of such Alternative Hotel Developer in lieu of ABDEB) or a permitted transferee or assignee hereunder) for the Hotel Project (the “**Hotel Project Agreement**”). The Hotel Project Agreement shall contain all of the provisions of this Agreement that concern the Hotel Project (but none of the provisions that concern the Entertainment Complex Project). Developer shall prepare the Amendment and the Hotel Project Agreement. The Amendment may consist of an amendment and restatement of the Agreement in lieu of an amendment to the Agreement. The purpose of the Amendment and the Hotel Project Agreement is to satisfy a future lender’s requirement that the owner of the Hotel Project and the owner of the Entertainment Complex Project are each single purpose bankruptcy remote entities. To that end this Agreement, as amended by the Amendment and the Hotel Project Agreement shall not be cross defaulted.

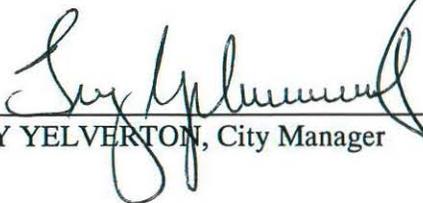
2. In the event that Developer has elected not to proceed with the development of the Hotel Project, at the request of the Developer, made at any time after such election, the City and ACCDC, acting by and through the City Representative, shall, within thirty (30) Business Days of such request, enter into an amendment to this

Agreement (the “**Single Project Amendment**”) with Developer and ABDEB that deletes all references to the Hotel Project, including the deletion of Sections 5 and 6 of this Agreement and all references to the Hotel Grants. Developer shall prepare the Single Project Amendment. The Single Project Amendment may consist of an amendment and restatement of the Agreement in lieu of an amendment to the Agreement.

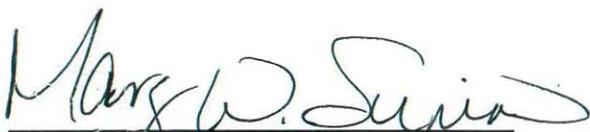
**SIGNATURES ON NEXT PAGE**

EXECUTED on this 28<sup>th</sup> day of December, 2015.

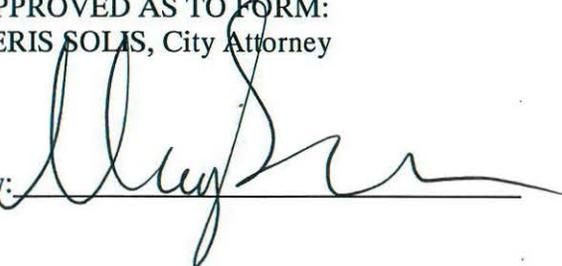
CITY OF ARLINGTON, TEXAS

By:   
TREY YELVERTON, City Manager

ATTEST:

  
MARY W. SUPINO, City Secretary

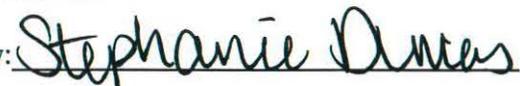
APPROVED AS TO FORM:  
TERIS SOLIS, City Attorney

By: 

ARLINGTON CONVENTION CENTER  
DEVELOPMENT CORPORATION

By:   
President of the Board of Directors

WITNESS

By: 

EXECUTED on this 28th day of December, 2015.

**DEVELOPER:**

**ARLINGTON BALLPARK DISTRICT  
ENTERTAINMENT BLOCK, LLC, a  
Delaware limited liability company,**

By: Arlington Ballpark District  
Entertainment Block Investors, LLC, its  
Managing Member

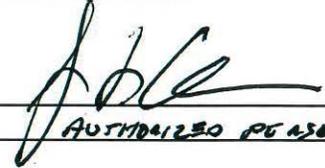
By:   
Its: AUTHORIZED PERSON

**WITNESS:**

By:   
Name: W. Chase Martin  
Its: Development Director

**ABDEB:**

**ARLINGTON BALLPARK DISTRICT  
ENTERTAINMENT BLOCK, INC.,  
a Texas corporation**

By:   
Its: AUTHORIZED PERSON

**ATTEST:**

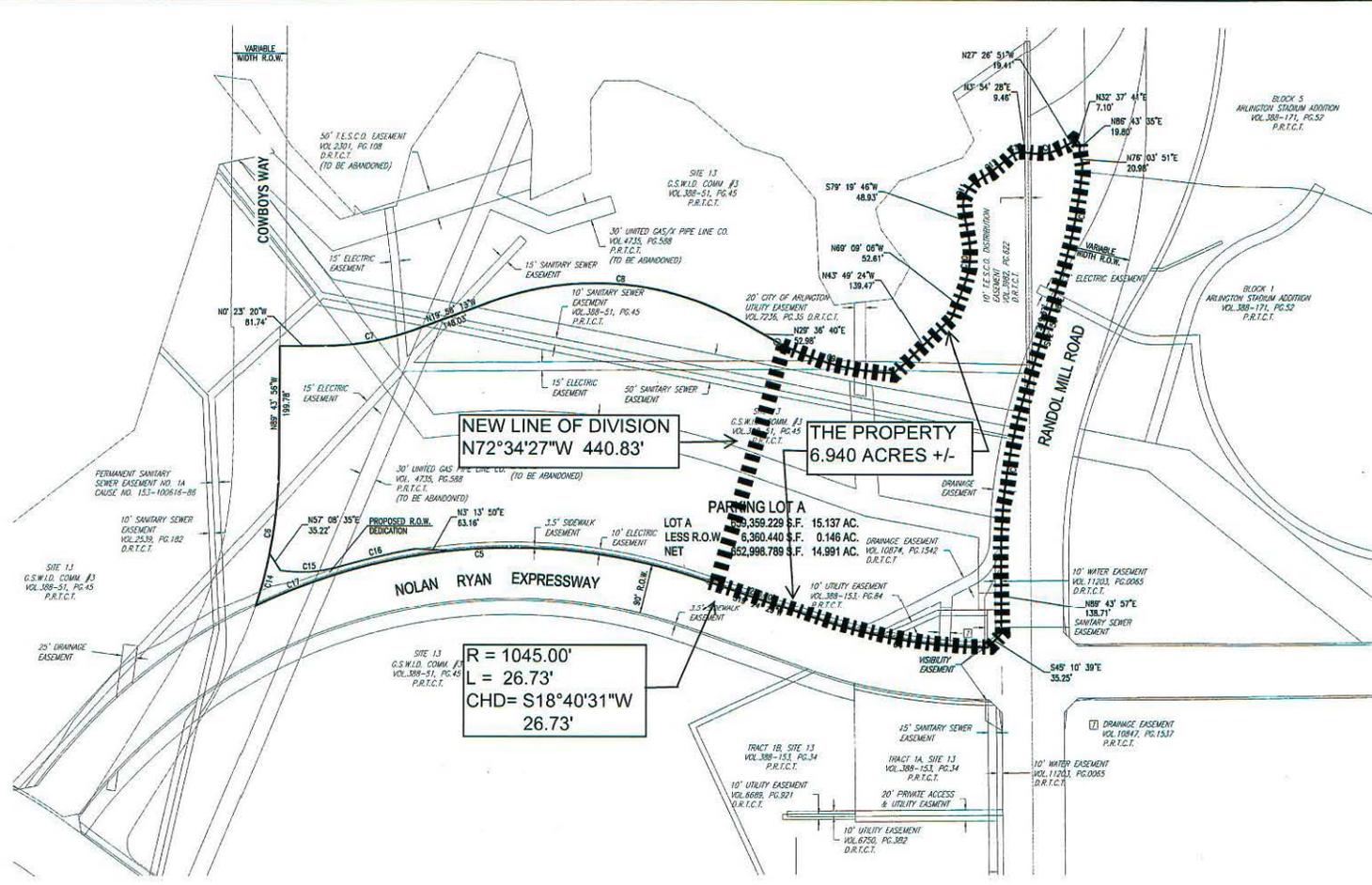
By:   
Name: W. Chase Martin  
Its: Development Director

### **Schedule of Exhibits**

Exhibit "A":	Property description
Exhibit "B":	Hotel Project Concept Plan
Exhibit "C":	Entertainment Complex Project Concept Plan
Exhibit "D":	Contractor's Certificate of Target Arlington Compliance
Exhibit "E":	Form of Option Agreement
Exhibit "F":	Waiver of Confidentiality Forms
Exhibit "G-1":	Form of the Convention Center Annex Ground Lease
Exhibit "G-2":	Form of the Entertainment Complex Project Ground Lease
Exhibit "G-3":	Form of the Hotel Ground Lease
Exhibit "H":	Arbitration Procedure
Exhibit "I":	Form of the Deed

**Exhibit "A"**  
**Property Description**

PLANNED BY: G.M. ROLLINS  
 DATE: 10/22/2008  
 PROJECT NO. 0738-1082  
 SHEET NO. 04 OF 11



**NEW LINE OF DIVISION**  
 N72°34'27"W 440.83'

**THE PROPERTY**  
 6.940 ACRES +/-

**R = 1045.00'**  
**L = 26.73'**  
**CHD = S18°40'31"W**  
**26.73'**

**CAUTION:**  
 EXISTING UTILITIES AND UNDERGROUND FACILITIES OF THESE PLANS HAVE BEEN LOCATED FROM REFERENCE INFORMATION AND AS-BUILT PLANS. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY HORIZONTAL AND VERTICAL LOCATION OF ALL EXISTING UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL TAKE NECESSARY PRECAUTIONS TO PROTECT ALL EXISTING UTILITIES AND WILL BE RESPONSIBLE FOR ANY DAMAGE TO SAID UTILITIES. THE CONTRACTOR SHALL NOTIFY ALL UTILITY COMPANIES PRIOR TO CONSTRUCTION.

CURVE TABLE						
CURVE #	Δ	RADIUS	TANGENT	LENGTH	CHORD BEARING	DISTANCE
C1	47° 02' 32"	86.13'	37.46'	70.72'	N11° 06' 30"W	68.75
C2	10° 02' 58"	981.50'	86.30'	172.15'	S80° 06' 36"E	171.93
C3	18° 32' 31"	986.03'	180.96'	318.10'	S80° 07' 53"E	317.71
C4	18° 44' 32"	955.00'	157.61'	312.39'	S10° 02' 12"W	311.00
C5	49° 05' 20"	1046.00'	433.80'	822.36'	S3° 08' 12"E	801.31
C6	17° 41' 57"	845.00'	131.56'	261.03'	N80° 32' 57"W	259.99
C7	19° 34' 53"	468.00'	80.41'	159.26'	N10° 10' 46"W	158.49
C8	49° 34' 53"	534.00'	246.64'	462.10'	N4° 49' 14"E	447.82
C9	28° 17' 43"	468.00'	117.46'	238.13'	N19° 27' 49"E	227.80
C10	38° 40' 56"	160.15'	53.09'	102.53'	N84° 07' 39"W	100.79
C11	58° 41' 34"	50.45'	28.37'	51.89'	N63° 51' 45"W	49.45
C12	12° 14' 33"	376.43'	40.37'	80.43'	N38° 25' 46"W	80.28
C13	39° 22' 59"	28.98'	10.37'	19.82'	N14° 39' 41"W	19.53
C14	8° 28' 59"	845.00'	47.86'	95.61'	N79° 16' 28"W	95.56
C15	29° 04' 29"	238.00'	52.93'	104.16'	N3° 38' 59"W	103.33
C16	5° 20' 12"	1498.03'	89.82'	138.53'	N13° 12' 56"W	138.48
C17	19° 46' 36"	1046.00'	182.16'	360.70'	S19° 47' 34"E	358.91



**LOT A BOUNDARY EXHIBIT**

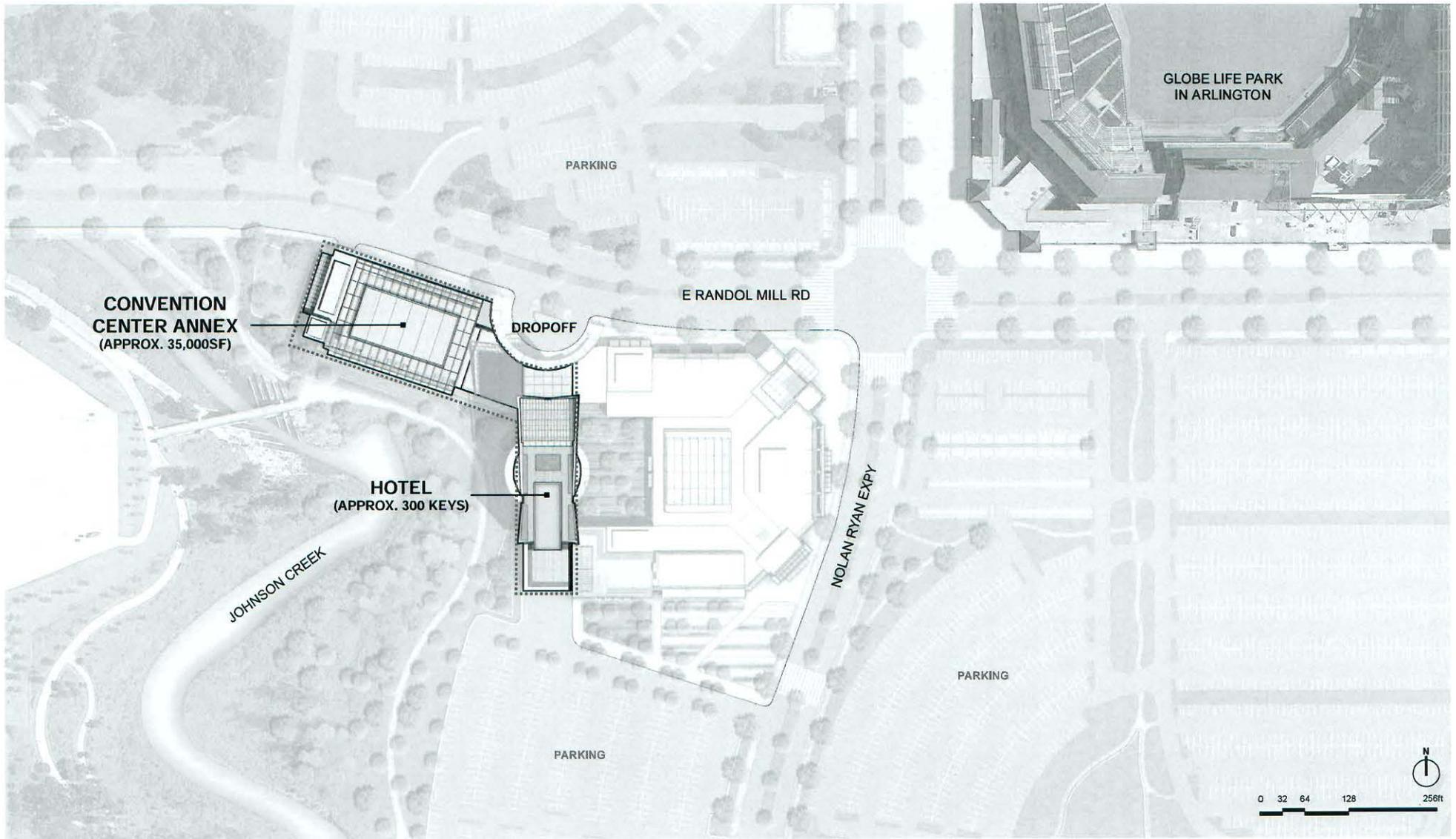
**PARKING LOT A RECONSTRUCTION**

TEXAS RANGERS  
 CITY OF ARLINGTON, TEXAS  
 TARRANT COUNTY, TEXAS

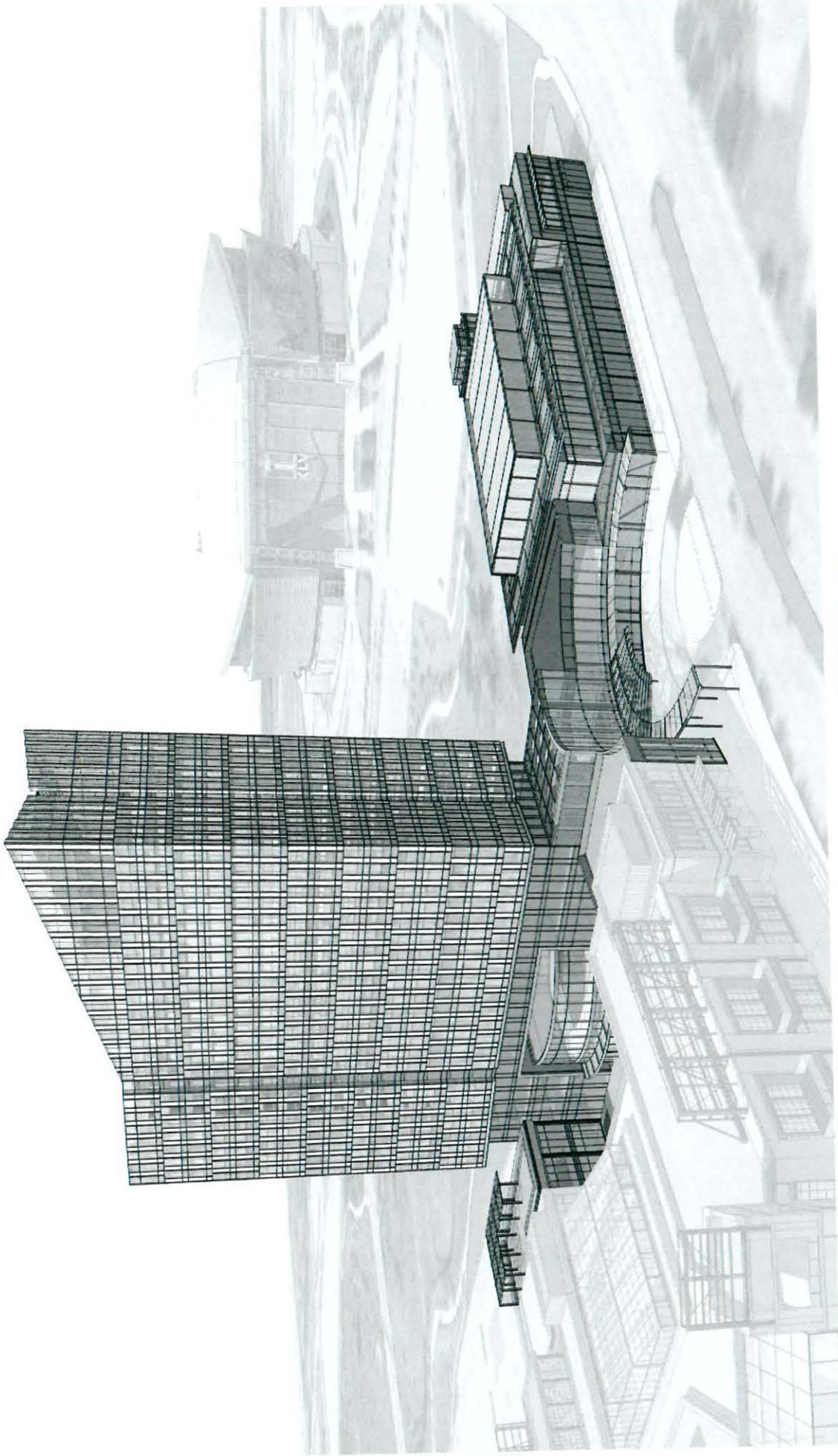
**Graham Associates, Inc.**  
 CONSULTING ENGINEERS & PLANNERS  
809 SHELLS DRIVE, SUITE 200  
 ARLINGTON, TEXAS 76011 (817) 444-8888

DRAWN BY: G.A.L.	PROJECT NO. 0738-1082	SHEET
DATE: 10/22/2008	FILE NO. GRAMA-TEMPLATE.dwg	04

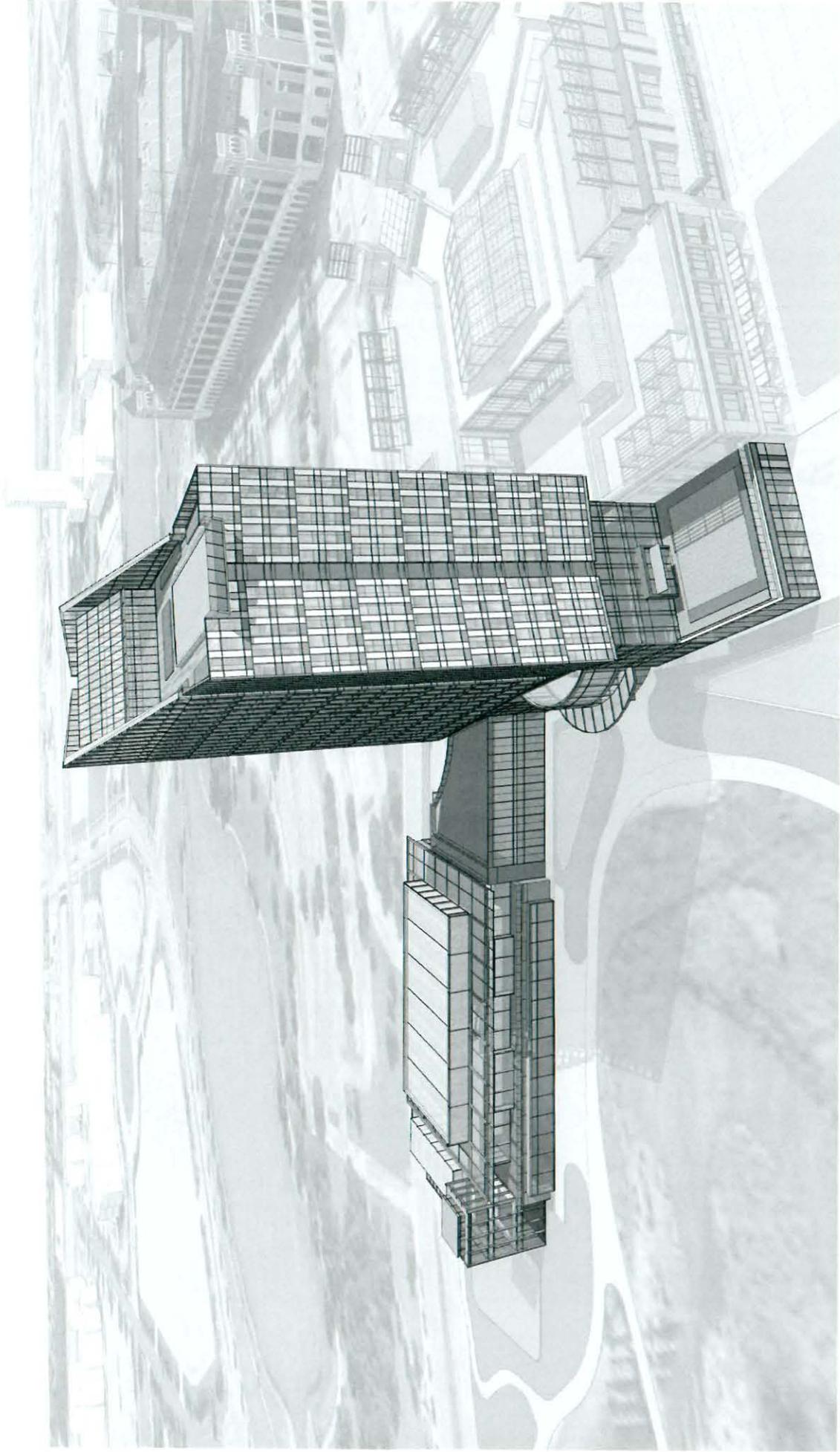
**Exhibit "B"**  
**Hotel Project Concept Plan**



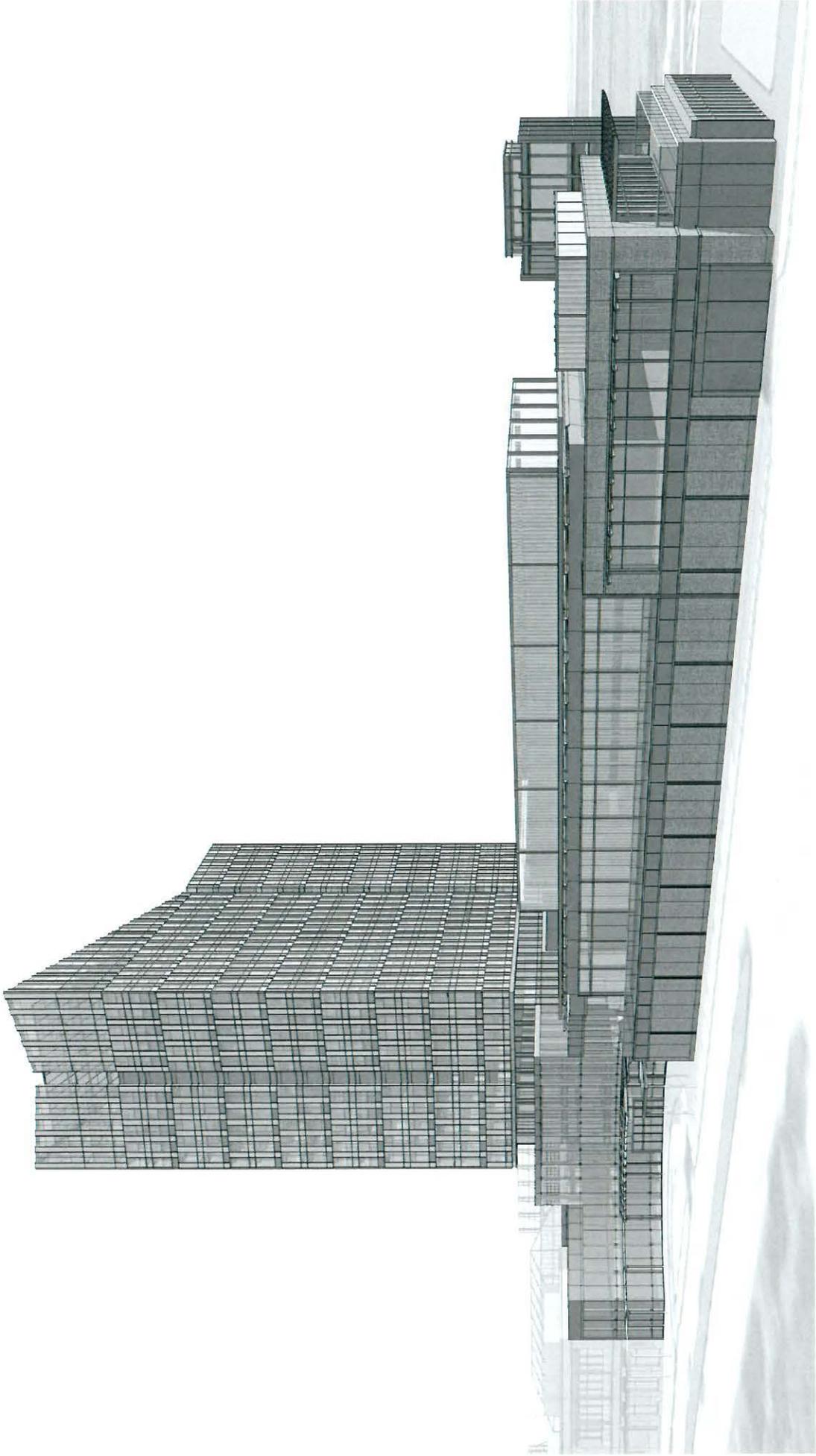
**HOTEL PROJECT CONCEPT PLAN**



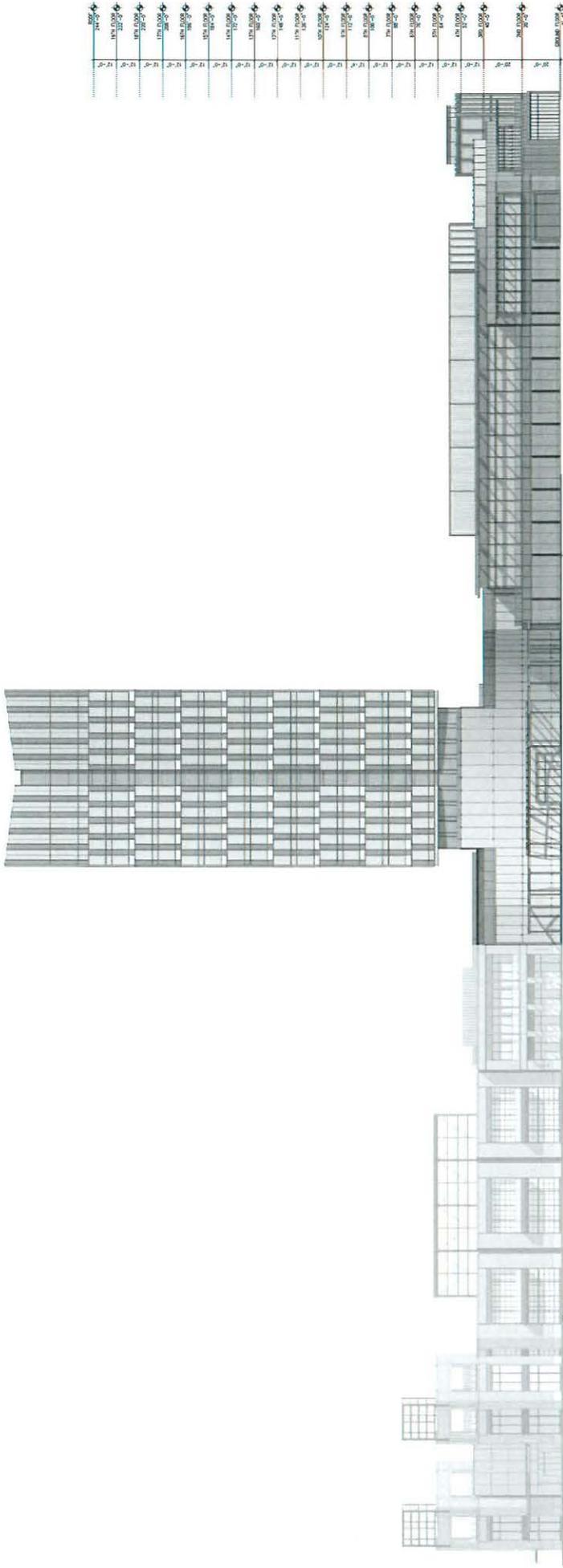
HOTEL PROJECT CONCEPT PLAN



**HOTEL PROJECT CONCEPT PLAN**



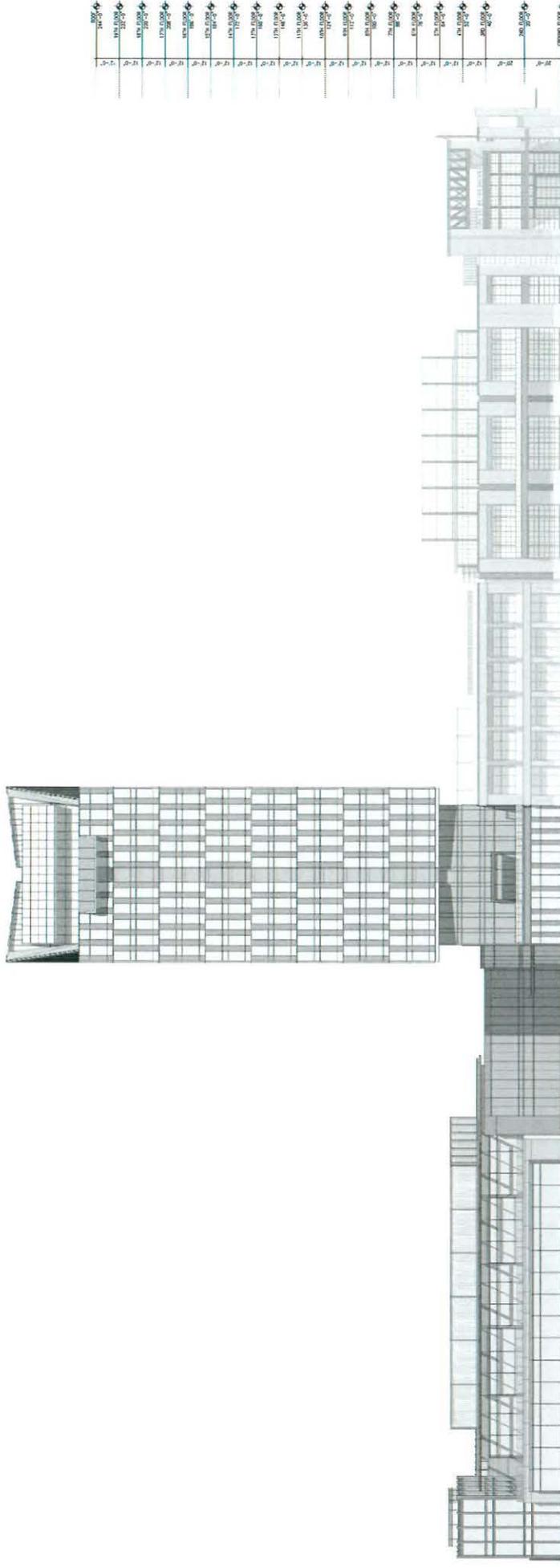
**HOTEL PROJECT CONCEPT PLAN**



**NORTH ELEVATION**  
 SCALE 1/50" = 1'-0"

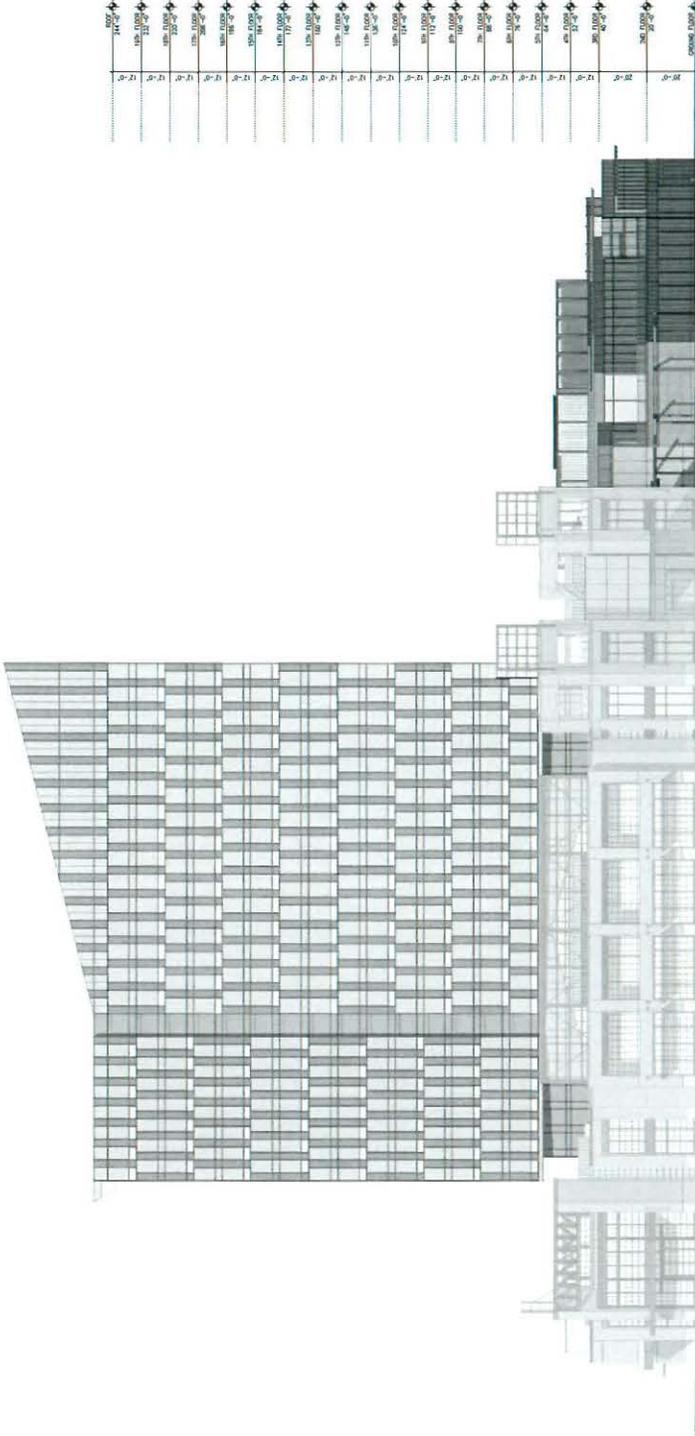
**HOTEL PROJECT CONCEPT PLAN**





**SOUTH ELEVATION**  
SCALE 1/50" = 1'-0"

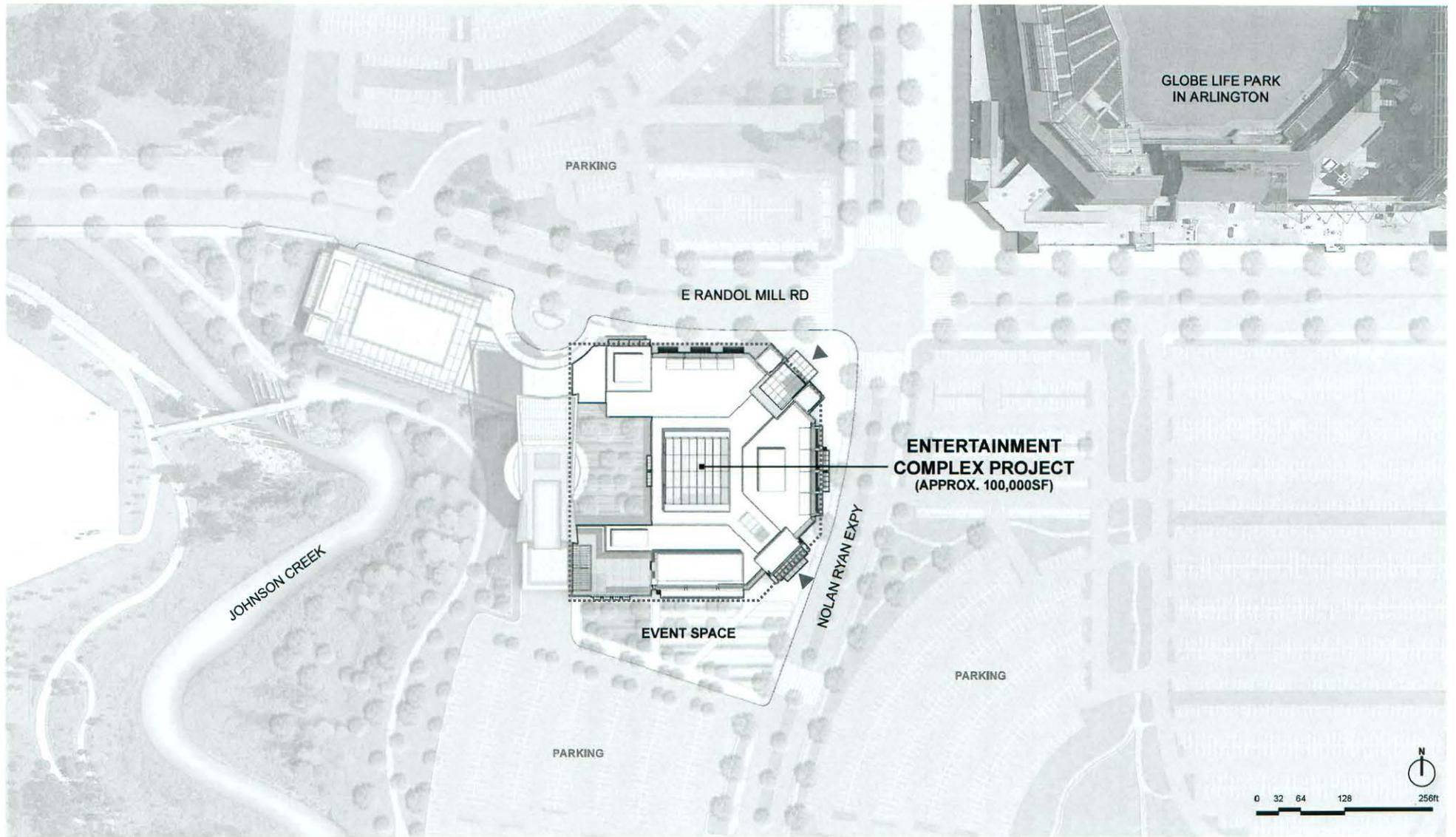
**HOTEL PROJECT CONCEPT PLAN**



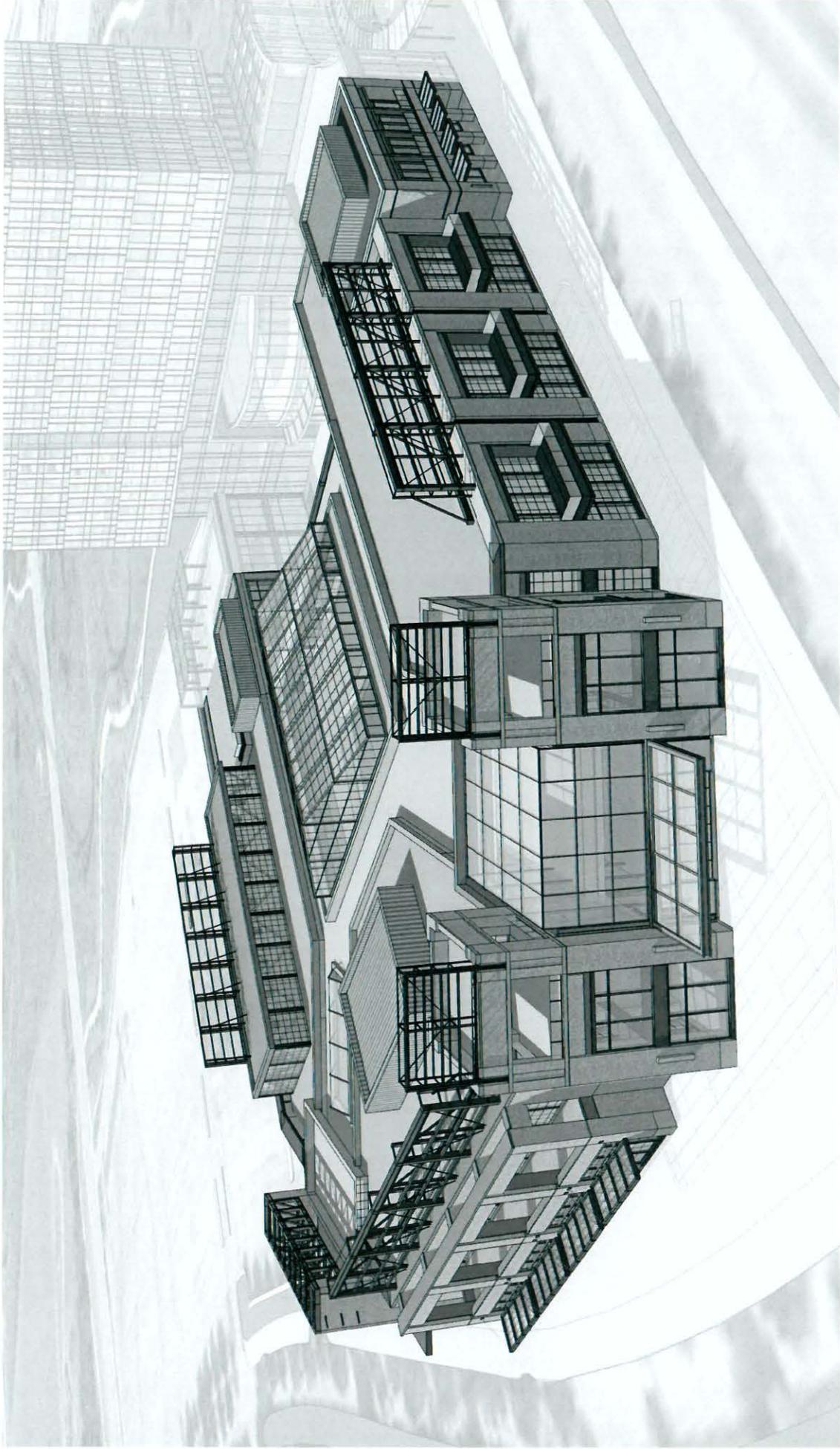
**EAST ELEVATION**  
 SCALE 1/50" = 1'-0"

**HOTEL PROJECT CONCEPT PLAN**

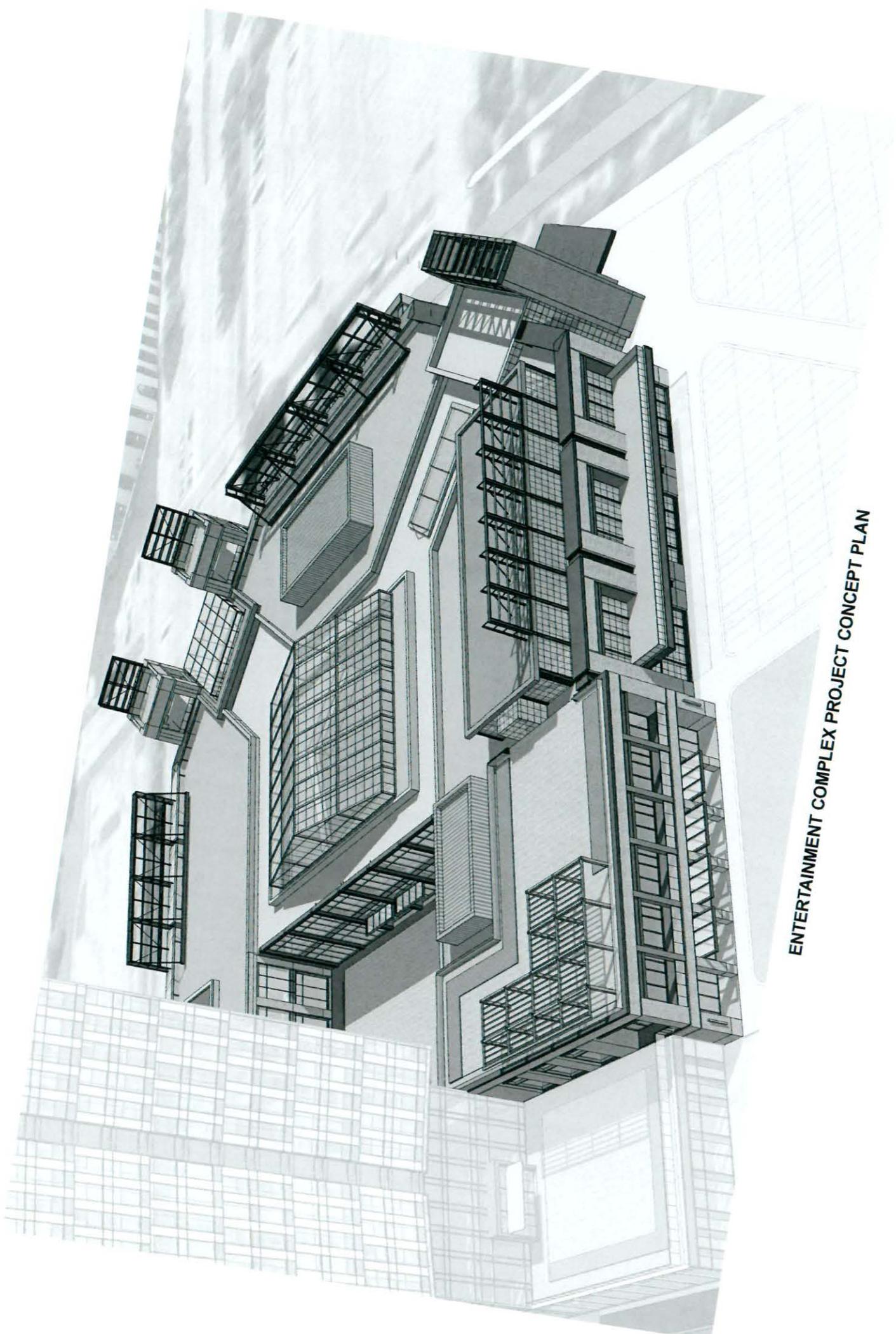
**Exhibit "C"**  
**Entertainment Complex Project Concept Plan**



**ENTERTAINMENT COMPLEX PROJECT CONCEPT PLAN**



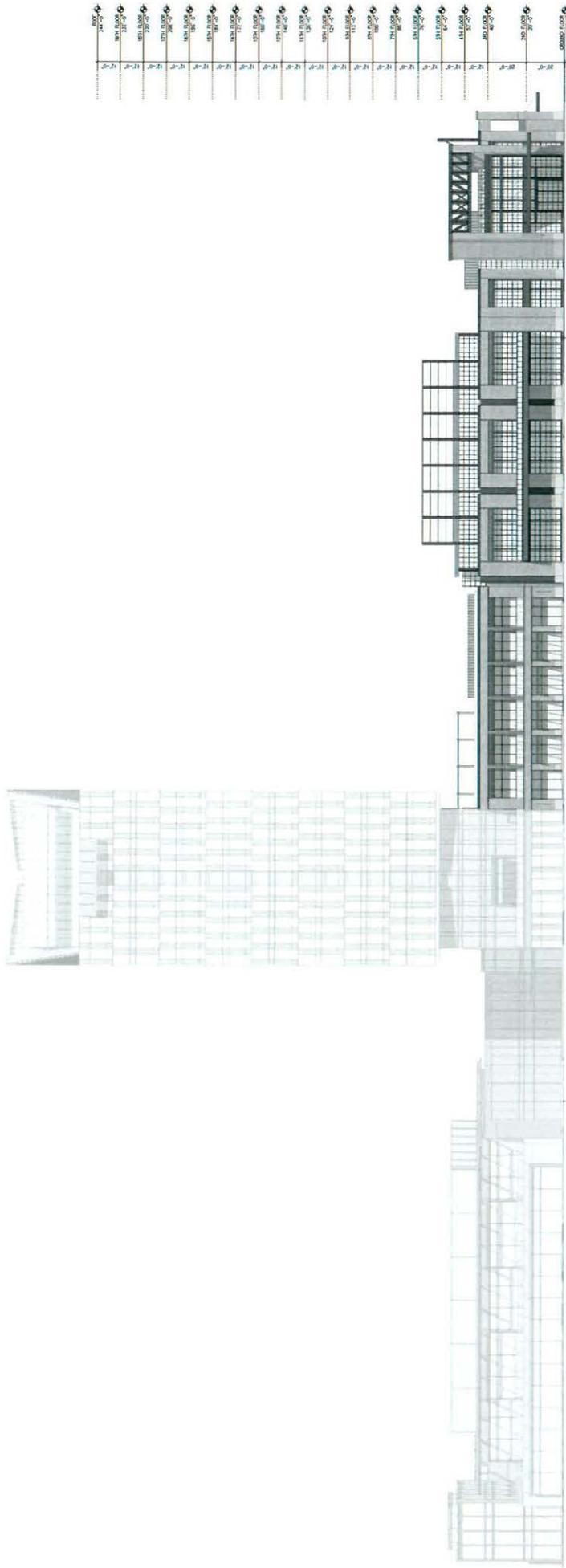
**ENTERTAINMENT COMPLEX PROJECT CONCEPT PLAN**



**ENTERTAINMENT COMPLEX PROJECT CONCEPT PLAN**



**ENTERTAINMENT COMPLEX PROJECT CONCEPT PLAN**



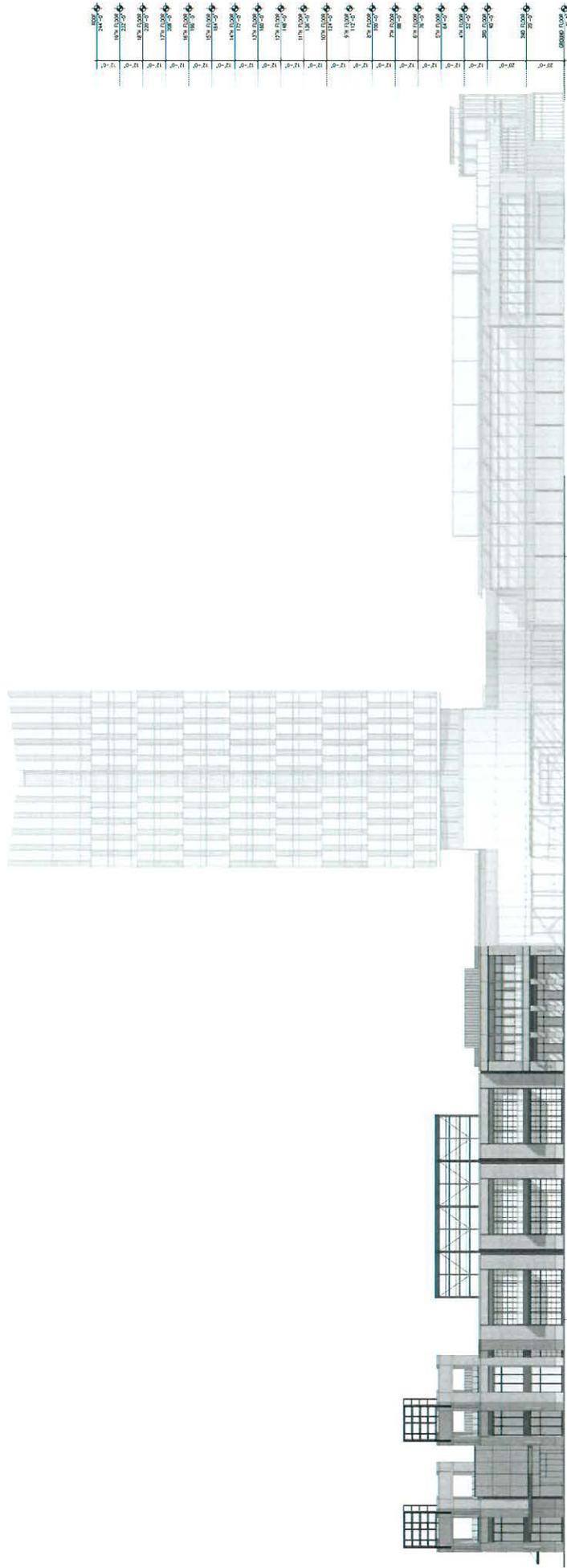
**SOUTH ELEVATION**  
 SCALE 1/50" = 1'-0"

**ENTERTAINMENT COMPLEX PROJECT CONCEPT PLAN**



**EAST ELEVATION**  
 SCALE 1/50" = 1'-0"

**ENTERTAINMENT COMPLEX PROJECT CONCEPT PLAN**



**NORTH ELEVATION**  
 SCALE 1/50" = 1'-0"

**ENTERTAINMENT COMPLEX PROJECT CONCEPT PLAN**

**Exhibit "D"**  
**Contractor's Certificate of Target Arlington Compliance**

**CONTRACTOR'S CERTIFICATE  
OF TARGET ARLINGTON COMPLIANCE**

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Bid or Project Number: \_\_\_\_\_

Project Title: \_\_\_\_\_

The undersigned hereby states that, to the best of his/her knowledge, information and belief, the contractor has used diligent efforts to purchase goods and services from Arlington businesses and/or historically underutilized businesses on this project whenever such goods and services were comparable in availability, quality and price during the performance of this contract.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name and Title

\_\_\_\_\_  
Date

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**Exhibit "E"**  
**Form of Option Agreement**

**OPTION AGREEMENT**

**Among**

**CITY OF ARLINGTON, TEXAS**

**and**

**ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC**

\_\_\_\_\_ , \_\_\_\_\_

## OPTION AGREEMENT

This **OPTION AGREEMENT** (this “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and among the **CITY OF ARLINGTON, TEXAS** (the “City”), a duly incorporated municipality and home-rule city of the State of Texas, on the one hand, and **ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC** (“ABDEB”), a Delaware limited liability company, on the other hand.

### RECITALS

WHEREAS, the City and ABDEB have entered into an Economic Development Incentive Agreement whereby the City will provide a series of incentives to ABDEB in exchange for ABDEB’s development of an area located at the southwest intersection of East Randol Mill Road and Nolan Ryan Expressway, inside Tax Increment Reinvestment Zone Number Five – Entertainment District (the “TIRZ”), in the City of Arlington, Texas; and

WHEREAS, in accordance with the terms of the Economic Development Incentive Agreement, the City agrees to provide ABDEB with an option to purchase certain land (the “Option”) upon the Substantial Completion (as defined in the Economic Development Incentive Agreement) of the Entertainment Complex Project (as defined in the Economic Development Incentive Agreement) and the Hotel Project (as defined in the Economic Development Incentive Agreement); and

WHEREAS, but for the City’s agreement to grant the Option, ABDEB would not have entered into the Economic Development Incentive Agreement to develop the Entertainment Complex Project and the Hotel Project (each as described above);

WHEREAS, the Entertainment Complex Project and Hotel Project have been Substantially Completed; and

WHEREAS, the City Council has found, determined and concluded that the Option will substantially enhance the value of taxable property within the TIRZ and will greatly benefit the City; NOW, THEREFORE,

For and in consideration of the mutual covenants hereinafter set forth, the City and ABDEB hereby contract, covenant and agree as follows:

## ARTICLE I

### PURPOSE AND EFFECT OF AGREEMENT, DEFINITIONS

#### Section 1.1. Purpose and Effect of Agreement; Approval of Plan Details.

ABDEB and the City are entering into this Agreement for the purpose of defining the details and the terms and conditions of the Option as contemplated by the Economic Development Incentive Agreement and to bind the City and ABDEB thereto.

#### Section 1.2. Definitions.

Unless the context requires otherwise, the following terms shall have the meanings hereinafter set forth:

Affiliate – means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, controlled by, or is under common control with the specified Person. For the purpose of this definition, “**control**” means the ability to directly or indirectly, by voting securities, partnership or member interests, contract or otherwise, direct or cause the direction of the policies or management of the specified Person. Two persons may be Affiliates even if such Persons have different minority equity owners that each have the right to approve certain actions of such Person, such as the sale, financing or leasing of an asset of such Person.

Agreement – means this Option Agreement.

Ballpark – means any major league baseball facility located in the TIRZ.

City Council – means the duly elected governing body and council of the City.

Development Option Agreement – means that certain Development Option Agreement between the City and Ballpark Parking Partners, LLC, as amended, extended or otherwise modified from time to time.

Option – means the right and option granted to ABDEB in Article II hereof to acquire fee simple title to all or any portion of the Premises.

Person – means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, unincorporated organization or other entity or any government or any agency or political subdivision thereof.

Premises – the real property constituting the “Premises” at the termination of the Development Option Agreement between the City and Ballpark Parking

Partners, LLC and not transferred to Ballpark Parking Partners, LLC under such agreement.

Mineral Revenues – the bonus payments, profits, rents and royalties, if any, that may be derived from the production of oil, gas, water and other minerals on, under or with respect to the Development Property or the land within Lot 1 of Block A of The Ballpark Addition of the City of Arlington, Texas.

Transfer Parcel – has the meaning set forth in Section 2.2(a).

## ARTICLE II

### THE OPTION

#### Section 2.1. Grant of Option.

(a) As contemplated by the Economic Development Incentive Agreement, and in furtherance of the TIRZ Project and Financing Plan, an Option is hereby granted to ABDEB under and subject to the terms, conditions and provisions of this Article II.

(b) Under the Option, ABDEB, for the period of **ninety (90) days**, commencing on the day following the last home game played by the Texas Rangers Major League Baseball Club (or its Affiliates) in a Ballpark in the TIRZ, shall have the right to acquire ownership of all or portions of the Premises for the purpose of constructing public and private improvements thereon, and the City agrees to convey and transfer fee simple title to all or a portion of the Premises to ABDEB upon satisfaction of the conditions and subject to the requirements set forth in Section 2.2 and, if applicable, Section 2.3.

#### Section 2.2. Transfer of Land Pursuant to the Option.

(a) So long as the Option is in effect, the City agrees, from time to time, to transfer title to all or a portion of the Premises to ABDEB for the payment of one dollar (\$1.00) and upon its receipt of a request for title thereto (each, a “Title Request”), but only if each of the following conditions is satisfied (or expressly waived in writing by the City):

(i) Each Title Request must contain the following items:

(A) A general conceptual layout showing the locations of proposed structures on, and a general description of any public infrastructure expected to serve, the parcel to be transferred (the “Transfer Parcel”).

(B) A general description of the intended uses of the Transfer Parcel.

(C) A metes and bounds description and drawing of the parcel to be transferred, if not a legally platted lot.

(D) At ABDEB's option, a title commitment issued by a title company selected by ABDEB, and a survey showing the then-current status of the title to the Transfer Parcel.

(ii) ABDEB is not in default, beyond last day for cure, of the Economic Development Incentive Agreement.

(iii) The tenant under the Ballpark Lease has not theretofore exercised its option to acquire the Transfer Parcel nor has Ballpark Parking Partners, LLC exercised its option to acquire the Transfer Parcel under the Development Option Agreement. It is specifically acknowledged that the right of ABDEB hereunder is subordinate to the existing right of Ballpark Parking Partners, LLC (as such rights may be transferred or assigned to any Affiliate) under the Development Option Agreement, and Ballpark Parking Partners, LLC, and its Affiliates, retain the right, in their sole discretion, to amend, extend or otherwise modify the terms of the Development Option Agreement with the City without the prior consent or approval of ABDEB.

(b) The City shall not have the right to disapprove any Title Request that contains the information and certification required by subsection (a) of this Section, and, if the Title Request satisfies such requirements, the City shall convey title to the land described in the Title Request, and the City and ABDEB shall mutually arrange for a satisfactory closing of the transfer of such property occurring within 10 days after the City's receipt of the Title Request therefor. It is intended that the items described in Subsections 2.2(a)(i)(A) and (B) above will be provided for informational purposes only. If the Transfer Parcel is not a legally platted lot, the closing shall occur within 10 days after a conveyance plat or, at ABDEB's option, a final plat in conformance with the City's subdivision regulations, for such parcel has been approved by the City. The City shall not unreasonably withhold, condition or delay approval of the application for such plat.

(c) Nothing in this Section shall in any way limit the City in its governmental capacity to enforce the then applicable zoning ordinance to the maximum and full extent permitted by applicable law with respect to the development or use of a Transfer Parcel.

(d) Each such transfer of property shall be by special warranty deed to the Transfer Parcel in substantially the form and substance attached hereto as **Exhibit 1**, and such transfer shall be subject to any encumbrances created by prior owners of such land and appearing of record.

(e) Upon receipt of reasonable requests by ABDEB, the City shall reasonably cooperate with ABDEB to cure any defects or irregularities in title to a Transfer Parcel before the transfer, but the City, under no circumstances warrants that such defects will be cured. The parties agree to extend the 10-day period for transfer as may be reasonably

necessary to attempt to cure such defects. The City agrees to provide such traditional certifications, documents and other instruments as may be reasonably requested by the title company issuing title insurance in connection with such transfer based upon receipt from a seller of land by delivery of a special warranty deed, and without other warranty of any nature or kind.

(f) ABDEB shall pay on demand all reasonable out-of-pocket expenses incurred by itself, by the City, and by the City in connection with the transfer(s) of title to Transfer Parcels in accordance with this Article, including but not limited to, reasonable legal expenses, and title insurance premiums and survey costs.

Section 2.3. Termination of Agreement.

(a) If the Economic Development Incentive Agreement is terminated by the City as a result of breach thereof by ABDEB then this Agreement shall terminate on the same date.

Section 2.4. Reservation of Mineral Rights.

Conveyances of Transfer Parcels pursuant to Section 2.2 shall reserve to the City, and shall save and except from the conveyances, 100% of any and all interests in oil, gas, water and other minerals in, under, produced from or constituting part of the Transfer Parcels so acquired (whether such minerals are considered part of the surface estate or mineral estate).

Section 2.5 Assignments of Option.

This Agreement may not be assigned by ABDEB unless such assignment is to an Affiliate of ABDEB.

**ARTICLE III**

**MISCELLANEOUS**

Section 3.1. Assignments.

This Agreement is binding upon and shall inure to the benefit of the City and ABDEB and their respective successors and assigns.

Section 3.2. Entire Agreement.

This Agreement, and the Economic Development Incentive Agreement, incorporates all prior negotiations and discussions between the parties regarding its subject matter and represents the entire agreement of the City and ABDEB with respect thereto. This Agreement may only be modified by written instrument executed by the City and ABDEB.

Section 3.3. Notices.

(a) A notice, communication, or request under this Agreement by the City to ABDEB, or by ABDEB to the City, shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable parties as follows:

If to ABDEB:           Arlington Ballpark District Entertainment Block, LLC  
                              c/o Ballpark Parking Partners, LLC  
                              Attention: Secretary  
                              1000 Ballpark Way, Suite 400  
                              Arlington, Texas 76011

With a copy to:        Ballpark Parking Partners, LLC  
                              c/o General Counsel  
                              1000 Ballpark Way, Suite 400  
                              Arlington, Texas 76011

If to the City:         City of Arlington  
                              City Hall  
                              Attention: City Manager  
                              101 West Abram  
                              Arlington, Texas 76004

With a copy to:        City of Arlington  
                              City Hall  
                              Attention: City Attorney  
                              101 West Abram  
                              Arlington, Texas 76004

Any party may at any time change the place of receiving notice by 10 days' written notice of such change of address to the other party in accordance with the manner of giving notice described below. In addition, ABDEB may add additional notice addresses.

(b) Any notice, communication, or request so sent shall be deemed to have been "given" (i) as of the next Business Day after being sent, if sent by nationally recognized express mail service, (ii) as of the fifth Business Day after being sent, if sent by registered or certified U.S. Mail or (iii) upon receipt, if sent by hand delivery. Either party may change its address for notice purposes by giving notice thereof to the other parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

Section 3.4. Partial Invalidity.

If any term, covenant, condition, or provision of this Agreement, or the application to any person or circumstance shall, at any time or to any extent be invalid or unenforceable, the remainder of this Agreement, 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 (except to the extent such result is clearly unreasonable) not be affected thereby, and under such circumstances each term, covenant, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, insofar as such enforcement is not clearly unreasonable.

Section 3.5. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

Section 3.6. Representatives Not Individually Liable.

No member, official, representative, or employee of the City shall be personally liable to ABDEB or any successor in interest in the event of any default or breach by the City for any amount which may become due to ABDEB or successor or on any obligations under the terms of the Agreement. No partner, member, representative, or employee of ABDEB or any successor, or any of its respective members or any institutional lender providing construction or permanent financing to ABDEB or such successor, shall be personally liable to the City in the event of any default or breach by ABDEB for any amount which may become due to the City or on any obligations under the terms of this Agreement.

Section 3.7. Ancillary Documents.

The City Manager is hereby authorized, on behalf of the City, to execute any and all other documents necessary or appropriate to effectuate the transactions contemplated by this Agreement, provided such documents do not materially alter the relationship of the parties, and to grant such approvals and consents on behalf of the City.

Section 3.8. Waiver of Immunity.

The City hereby waives its governmental immunity from suit and immunity from liability as to any arbitration proceeding and/or legal action brought by ABDEB resulting from an uncured default by the City. To effectuate such waiver, the City and ABDEB hereby agree, for purposes of this Agreement only, that this Agreement is a contract subject to Subchapter 1, Chapter 271, Texas Local Government Code, as amended.

[Signature page follows]

EXECUTED as of the day and year first above written, but actually executed on the dates set forth in the respective acknowledgments below.

ATTEST:

CITY:

CITY OF ARLINGTON, TEXAS

\_\_\_\_\_  
City Secretary

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:  
TERIS SOLIS, City Attorney

\_\_\_\_\_

ABDEB:

ARLINGTON BALLPARK DISTRICT  
ENTERTAINMENT BLOCK, LLC,  
a Delaware limited liability company

By: Arlington Ballpark District  
Entertainment Block Investors, LLC,  
its Managing Member

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

## **Exhibit 1**

**FORM OF SPECIAL WARRANTY DEED**

After Recording, Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER AND DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

KNOW ALL MEN BY THESE PRESENTS:

\_\_\_\_\_, a \_\_\_\_\_ (hereinafter called "**Grantor**"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD, and CONVEYED and by these presents does GRANT, BARGAIN, SELL, AND CONVEY unto \_\_\_\_\_, a \_\_\_\_\_ ("**Grantee**"), the real property in Tarrant County, Texas, fully described in Exhibit A hereto, together with all rights, titles, and interests appurtenant thereto (collectively, the "**Property**").

[Grantor hereby excepts and reserves unto itself, its successors and assigns, 100% of the oil, gas, water, and other minerals on, in and under the land described in this deed, except that the Grantor shall not enter or intrude upon the surface of any of the Property for the purpose of drilling for or recovering any oil, gas, water, or other minerals on, in, or under the Property.]

This Special Warranty Deed and the conveyance hereinabove set forth is executed by Grantor and accepted by Grantee subject to the matters described in Exhibit B hereto, to the extent the same are validly existing and applicable to the Property (collectively, the "**Permitted Encumbrances**").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anywise belonging, unto Grantee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the title to the Property unto the said Grantee, its successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Grantor but not otherwise, subject to the Permitted Encumbrances.

Grantee's address is: \_\_\_\_\_  
\_\_\_\_\_.

EXECUTED as of \_\_\_\_\_, 20\_\_.

**ATTEST:**

\_\_\_\_\_,  
a \_\_\_\_\_

\_\_\_\_\_  
SECRETARY

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

STATE OF TEXAS       §  
                                  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT A**

**LEGAL DESCRIPTION**

[SEE ATTACHED]

**EXHIBIT B**

**PERMITTED ENCUMBRANCES**

[SEE ATTACHED]

**Exhibit "F"**  
**Waiver of Confidentiality Forms**

**AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL  
TAX INFORMATION**

This agreement is entered into between the City of Arlington (hereafter the "City") and \_\_\_\_\_ (hereinafter the "taxpayer") for the purposes indicated herein.

I, \_\_\_\_\_, \_\_\_\_\_ (title), and the duly authorized agent of \_\_\_\_\_, Arlington, Texas \_\_\_\_\_, do hereby stipulate and agree as follows:

I hereby authorize the Texas Comptroller's Office to release and disclose any and all Sales and Use tax information relating to the operation of the above referenced taxpayer's business location to the City. I understand and agree that this release will be made by the Comptroller's Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed. This Agreement waives any and all rights with respect to the parties regarding the confidentiality of tax information under Sections 111.006, 151.027, Tax Code, or other state law.

The City agrees that it will use the tax information disclosed by the Comptroller pursuant to this Agreement solely and exclusively for the purposes of the allocation of sales tax revenue. This agreement will be renewed in three years on the date below.

This Agreement is entered into in Arlington, Tarrant County, Texas and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_

Signature

Printed Name

Title

Texas Taxpayer Identification Number

WITNESS:

\_\_\_\_\_

**CITY OF ARLINGTON, TEXAS**

BY \_\_\_\_\_  
TREY YELVERTON  
City Manager

ATTEST:

\_\_\_\_\_  
MARY SUPINO, City Secretary

APPROVED AS TO FORM:  
TERIS SOLIS, City Attorney

BY \_\_\_\_\_



**Exhibit "G-1"**  
**Form of the Convention Center Annex Ground Lease**

**IN THE EVENT THAT THE ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT HAS BEEN BIFOCATED INTO TWO AGREEMENTS, ONE FOR THE HOTEL PROJECT AND ONE FOR THE ENTERTAINMENT PROJECT COMPLEX IN ORDER TO REFLECT SUCH BIFUCATION, DEVELOPER SHALL HAVE THE RIGHT TO MODIFY THIS FORM TO REFLECT THE EXISTANCE OF TWO ECONOMIC DEVELOPMENT INCENTIVE AGREEMENTS**

**GROUND LEASE AGREEMENT  
FOR CONVENTION CENTER ANEX**

**Between**

**CITY OF ARLINGTON, TEXAS**

**as Lessor**

**and**

**ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC**

**as Lessee**

\_\_\_\_\_, 20\_\_

**GROUND LEASE AGREEMENT FOR THE CONVENTION CENTER ANNEX**

THIS GROUND LEASE AGREEMENT FOR THE CONVENTION CENTER ANNEX is made and entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between CITY OF ARLINGTON, TEXAS, a home-rule city and municipal corporation of Tarrant County, Texas (“Lessor”), and ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC, a Delaware limited liability company (“Lessee”).

**RECITALS**

A. Lessor owns the Leased Premises (as that term is defined herein). Lessor, Lessee, the Arlington Convention Center Development Corporation (“ACCDC”) and Arlington Ballpark District Entertainment Block, Inc., a Maryland corporation and a part owner of Lessee (“ABDEB”), have entered into the Economic Development Incentive Agreement (as that term is defined herein) concerning the development, construction leasing and operation of the Project (as that term is defined herein).

B. Pursuant to Section 6 (j) of the Economic Development Incentive Agreement, Lessee is obligated to lease the Leased Premises from Lessor as a condition precedent to the payment of Hotel Grants, as the term is defined in the Economic Development Incentive Agreement.

C. Lessor, by Resolution \_\_\_\_\_ adopted on December 15, 2015, among other things, authorized the City Manager of Lessor to negotiate and enter into various agreements in connection with the Economic Development Incentive Agreement including a lease with Lessee for the Leased Premises.

NOW, THEREFORE, in consideration of the payment of Ten and 00/100 Dollars (\$10.00) and the mutual covenants, conditions and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

**1. Definitions.**

Unless the context or use clearly indicates another or different meaning or intent, for purposes of this Lease, and in addition to terms defined elsewhere in this Lease, the following definitions shall generally apply to the following capitalized words or terms:

“Affiliate” means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, controlled by, or is under common control with the specified Person. For the purpose of this definition, “control” means the ability to directly or indirectly, by voting securities, partnership or member interests, contract or otherwise, direct or cause the direction of the policies or management of the specified Person. Two persons may be Affiliates even if such Persons have different minority equity owners that each have the right to approve certain actions of such Person, such as the sale, financing or leasing of an asset of such Person.

**“Alternative Hotel Developer”** means a Person (and/or a direct or indirect affiliate of such Person) that: (i) owns a major league baseball or football team; (ii) is an affiliate of one of the direct or indirect owners of Lessee; or (iii) has demonstrated experience in owning and/or operating on a full-service basis comparable hotel properties and has a net worth in excess of Fifty Million Dollars (\$50,000,000).

**“Applicable Law”** means, subject to the provisions of Section 15.21 hereof, any law, ordinance, regulation, properly adopted requirement or order of any federal, state, or local agency (including, but not limited to, Lessor), court, or other governmental body, applicable from time to time to the acquisition, leasing, design, construction, equipping, financing, ownership, or operation of the Leased Premises and/or the Improvements or the performance of any obligations under any agreement entered into in connection with this Lease.

**“Arbitration”** is defined in Section 12.6 of this Lease.

**“Arbitration Notice”** is defined in Section 12.6 of this Lease.

**“Arbitration Procedures”** is defined in Section 12.6 of this Lease.

**“Arbitrator”** is defined in Section B.1 of the Arbitration Procedures.

**“Business Day”** means any day except Saturday, Sunday, or any other day on which banking institutions are legally authorized to close in the City of New York or Tarrant County, Texas.

**“City Manager”** means the City Manager of the Lessor.

**“Commencement Date”** means the date of this Lease.

**“Disposition”** means a transaction through which all or a part of Lessee’s interest in the Project is transferred to another Person by means of the sale, lease, sublease, assignment, conveyance or other hypothecation of this Lease; such term shall not include space and subground leases with Subtenants for sites occupied by Subtenants or operating agreements with occupants concerning the Project made in accordance with this Lease and shall not include the granting of a Mortgage or collateral assignment of Lessee’s interest in this Lease.

**“Economic Development Incentive Agreement”** means that certain Economic Development Incentive Agreement, dated December 15, 2015, by and among Lessor, Lessee and ABDEB, as amended, modified, supplemented or restated from time to time.

**“Encumbrances”** mean those matters of record which do not render title of the land unmarketable or uninsurable at ordinary rates by a title insurance company licensed in the State of Texas, as selected by Lessee, and which do not materially interfere with or materially increase the cost of the development of and/or operation of the Project as contemplated by the this Lease and the Economic Development Incentive Agreement.

**“Event of Default by Lessee”** means any of those events, occurrences and circumstances so designated in Section 12.1 hereof.

**“Event of Default by Lessor”** means any of those events, occurrences and circumstances so designated in Section 12.2 hereof.

**“Expire,” “Expired” or “Expiration”** means the expiration of the Term of this Lease by reason of lapse of time, and not by reason of any Event of Default.

**“Impositions”** means, collectively, all real estate taxes and assessments imposed by the State or any subdivision thereof, including the Lessor or any other tax imposed upon or levied against real estate or upon owners of real estate as such rather than persons generally, including taxes imposed on leasehold improvements which are assessed against Lessee under this Lease, payable with respect to or allocable to the Project, including the Leased Premises, the Improvements, and all other buildings and improvements situated thereon.

**“Improvements”** means any of the buildings and other improvements constructed on the Leased Premises by Lessee. “Improvements” shall not refer to any Subtenant Improvements, including any improvements and/or modifications made by Subtenant to such Subtenant’s leased or licensed premises at the Project.

**“Land Records”** means the records of the County Clerk of Tarrant County, Texas.

**“Lease”** means this Ground Lease Agreement for the Convention Center Annex, together with any amendments, modifications, supplements, restatements or replacements thereof.

**“Leased Premises”** shall mean that certain parcel of land located in the City of Arlington, Texas and described as Block \_\_\_\_ owned by Lessor on the plat attached hereto and made part hereof as **Exhibit “A”**. **[DEVELOPER SHALL HAVE THE RIGHT TO MODIFY THIS DEFINITION IN THE EVENT THAT THE LEASED PREMISES CONSISTS OF ONE OR TWO CONDOMINIUM UNITS.]**

**“Leasehold Mortgage”** means, with respect to the Leased Premises and the Improvements, a mortgage or any other instrument securing the payment of a debt that encumbers Lessee’s interest, if any, in the Ground Lease for the Leased Premises and/or the Economic Development Incentive Agreement. **“Leasehold Mortgage”** shall not include a mortgage or any other instrument securing payment of a debt of a Subtenant and/or any or all of its Affiliates that encumbers the interests of such Subtenant in any Sublease of a part of the Leased Premises and/or Improvements.

**“Leasehold Mortgagee”** means the Person to which all or any part of the interest of the Lessee in the Economic Development Incentive Agreement and/or the Ground Lease for the Leased Premises and/or the Improvements is transferred as security under a Leasehold Mortgage.

**“Lessee”** means Arlington Ballpark District Entertainment Block, LLC, a Delaware limited liability company, as the lessee under this Lease, and the successors in title and assigns thereof permitted under the terms of this Lease.

**“Lessor”** means City of Arlington, Texas, a home-rule city and municipal corporation of Tarrant County, Texas, as amended and supplemented from time to time, as the lessor under this Lease, and the successors, successors-in-title and assigns thereof.

**“Notice”** means a written advice or notification required or permitted by this Lease, as more particularly provided in Section 15.4.

**“Parties”** means Lessor and Lessee.

**“Party”** means Lessor or Lessee.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, unincorporated organization or other entity or any government or any agency or political subdivision thereof.

**“Project”** means the Leased Premises and the Improvements.

**“Rent”** shall have the meaning set forth in Section 3.

**“State”** means the State of Texas.

**“Sublease”** means a lease, license or other occupancy agreement between Lessee and a Subtenant for a portion of the Project.

**“Subleases”** means two or more Subleases.

**“Subtenant”** means any Person that is or may hereafter be the sublessee or subtenant under any Sublease, and the occupant of a portion of the Improvements.

**“Subtenant Improvements”** means the construction, renovation, rehabilitation, and installation of a Subtenant’s equipment, fixtures, furniture, and improvements to the part of the Project leased or licensed by such Subtenant, regardless of who undertakes and completes such Subtenant Improvements.

**“Term”** means the term of this Lease described in Section 2.2.

**“Terminate,” “Terminated” and “Termination”** means the termination of the Term of this Lease by reason of an Event of Default, and not by reason of lapse of time.

## **2. Lease of Leased Premises; Term of Lease; Grant of Easements; Quiet Enjoyment; Right of First Refusal; and Recordation.**

### **2.1 Lease.**

Lessor, in consideration of the rents, covenants, agreements and conditions herein set forth, which Lessee hereby agrees shall be paid, kept and performed by Lessee, does hereby

lease, let, demise and rent to Lessee, and Lessee does hereby rent and lease from Lessor, all right, title and interest of Lessor in and to the Leased Premises. The interest in the Leased Premises created hereby shall be deemed to be an estate for years under the Applicable Laws of the State.

**TO HAVE AND TO HOLD** the Leased Premises and all rights, privileges and appurtenances thereunto appertaining unto Lessee, for and during the Term, unless sooner terminated in accordance with any of the provisions of this Lease, subject to the Encumbrances and Impositions neither delinquent nor in default.

For all purposes of this Lease, the Leased Premises shall include, when constructed, the Convention Center Annex, as that term is defined in the Economic Development Incentive Agreement. Lessee shall cause the Convention Center Annex to be constructed in accordance with the terms of the Economic Development Incentive Agreement and once construction is substantially complete the Lessee shall be deemed to have donated the Convention Center Annex to the Lessor. Lessor shall be deemed the owner of the Convention Center Annex once the Convention Center Annex is substantially complete. The Convention Center Annex shall be deemed part of the Improvements for all purposes of this Lease, including Section 5.1., and shall be leased by Lessor to Lessee pursuant to this Lease.

## **2.2 Term.**

The term of this Lease (the “**Term**”) shall be for a period of sixty-five (65) years that commences on the Commencement Date and Expires at midnight on the date immediately preceding the sixty-fifth (65th) anniversary of the Commencement Date.

## **2.3 Option to Purchase.**

During the Term, Lessee shall have the right, any time after the tenth (10th) anniversary of the Initial Occupancy (as that term is defined in the Economic Development Incentive Agreement), but prior to the fifteenth (15th) anniversary of the Initial Occupancy Agreement to purchase Lessor’s interest in the Leased Premises for one hundred dollars (\$100) (as same is encumbered by this Lease) by providing Lessor with a notice of the exercise of such right to purchase. Closing on such sale shall occur in the City within sixty (60) days of the date of such notice (but no earlier than thirty (30) days of the date of such notice) on a Business Day, time and place selected by Lessee. Lessee shall prepare the closing documents, at their expense, including the deed and the assignment of this Lease, which all shall be in a commercially reasonable form. The City Manager is hereby authorized by Lessor to execute and deliver such closing documents, in recordable form. Lessee shall pay the cost of recording the deed.

## **2.4 Easements and Condominium Documents.**

Throughout the Term, within thirty (30) Business Days after receipt of written request from Lessee, time being of the essence, Lessor shall execute and join in any grants, licenses, franchises or easements within the Leased Premises for electric, telephone, gas, water, sewer, and other public utilities and similar facilities necessary to the construction, alteration, operation, or maintenance of all or any part of the Project, as reasonably determined by Lessee, any other

grants, licenses, franchises or easements, such as reciprocal easement and operating agreements or rights of way, that Lessee reasonably deems necessary for the leasing, construction and/or operation of the Project, any amendments and/or terminations of any such grants, licenses, franchises or easements that Lessee reasonably deems necessary for the leasing, construction and/or operation of the Project and amendments and modifications to any of the documents, plats or agreements that govern or concern the condominium regime that the Leased Premises is a part of, all of which shall be commercially reasonable. Lessee shall have the exclusive right and power to exercise all rights and powers, including making all decisions and elections or giving or withhold all consents or approvals that the "owner" of the condominium unit that comprises the Leased Premises has the right and power to exercise under the agreements that create and govern such condominium unit and Lessor shall not exercise any such right or power without first obtaining the prior written consent of Lessee, which consent may be withheld in the sole discretion of Lessee.

## **2.5 Quiet Enjoyment.**

Lessor covenants and agrees that Lessee, while paying the Rent and other sums payable under this Lease and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the full Term without hindrance or molestation from Lessor or any other Person claiming by, through or under Lessor, subject to the terms, conditions and provisions of this Lease, and to the Encumbrances. Lessor shall not, without the prior approval of Lessee, which approval Lessee may withhold in its sole and subjective discretion, encumber the Leased Premises with any easements, mortgages, liens or other encumbrances.

## **2.6 Recordation.**

Lessee shall have the right to record this Lease, and/or a memorandum of same prepared by Lessee (which Lessor covenants to execute and deliver in recordable form within ten (10) days of Lessee's request therefore) among the Land Records.

## **2.7 Licenses and Permits.**

Whenever requested by Lessee, Lessor, at no cost to Lessor, shall execute and deliver to Lessee, in its capacity as fee owner of the Leased Premises, and not in its capacity as the City of Arlington, within ten (10) Business Days of Lessee's request therefore, subdivision plats, permit applications, building permit applications, liquor license applications, zoning and use related applications and any other type of application, for or concerning the Leased Premises and/or the development, construction, reconstruction and/or operation of the Project.

## **2.8 Bonds.**

If applicable the Lessee shall require the general contractor awarded the contract for the construction of the Convention Center Annex to be in compliance with the Texas Government Code Section 2253 with regard to such contract.

### 3. Rent.

Commencing on the Commencement Date and continuing thereafter throughout the remainder of the Term, Lessee shall pay to Lessor annually the sum of ten and 00/100 Dollars (the "Rent") payable on or before the ninetieth (90th) day following the each anniversary of the Commencement Date.

### 4. Impositions.

#### 4.1 Impositions.

From and after the Commencement Date, Lessee shall pay all Impositions that accrue and are payable for any part of the period that commences on the Commencement Date and ends on the Expiration or earlier Termination of this Lease before same are past due. Lessee shall provide Lessor with reasonable evidence of each such payment. Lessor shall promptly provide Lessee with a copy of all bills for Impositions that it receives. Lessee may collect from a Subtenant any of the Impositions as part of the rent under a Sublease or may have any Subtenant pay directly any of the Impositions; provided, however, Lessee remains primarily liable for the timely payment of the Impositions.

#### 4.2 Contests.

Lessee may, at its expense, contest any of the Imposition. **Lessee shall hold Lessor harmless from all costs, expenses, claims, losses or damages by reason of, in connection with, on account of, arising or growing out of or resulting from any such contest. Such hold harmless agreement shall expressly survive the Expiration or earlier Termination of the Lease.** Upon request by Lessee, Lessor shall execute in its capacity as fee owner and promptly deliver to Lessee any documents or pleadings associated with such contest that Lessee may reasonably request.

#### 4.3 Assessed Valuation.

Lessee shall have the right, at any time, and from time to time, to attempt to obtain a lowering of the assessed valuation of the Leased Premises and the Improvements, or either of them, for any year for the purpose of reducing Impositions thereon. In such event, Lessor, upon request of any Lessee, Lessor shall execute in its capacity as fee owner, and not in its capacity as the City of Arlington, and promptly deliver to Lessee any documents or pleadings associated with Lessee's attempt to the extent Lessee reasonably determines such participation by Lessor is necessary in order to pursue a lowering of the assessed valuation. Lessee shall be authorized to collect any Impositions from any period prior to the Commencement Date payable as a result of any proceeding Lessee may institute for that purpose and any such refund shall be deemed revenue of Lessee in the year in which it is received.

## **5. Improvements.**

### **5.1 Improvements.**

Lessee shall cause the initial Improvements to be constructed and maintained in accordance with the terms of the Economic Development Incentive Agreement. Subject to the next sentence, thereafter Lessee shall have the right, from time to time and at any time, to construct, renovate, alter, modify, expand, reduce and demolish Improvements and to permit Subtenants to also construct, renovate, alter, modify, expand, reduce and demolish Subtenant Improvements. During the first thirty (30) years of the Term any construction, alteration, modification, expansion, reduction or demolition of the Improvements by Lessee will not result in a material reduction of the value of the Improvements as same existed prior to such construction, alteration, modification, expansion, reduction or demolition. Notwithstanding the above, a Leasehold Mortgagee and any person or entity that acquires title to Lessee's interest in the Leased Premises as a result of a foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of the immediately preceding sentence.

### **5.2 Tax Benefits.**

Lessor acknowledges that Lessee may claim any income tax benefit and burden that may be available to it under the Internal Revenue Code of 1986, as amended, as a result of its participation in the Project, including all depreciation for all Improvements located on the Leased Premises.

### **5.3 Termination or Expiration of Lease.**

Upon the Termination or Expiration of this Lease, whether by lapse of time or otherwise, Lessee shall vacate and surrender the Leased Premises together with any permanently affixed improvements then existing on the Leased Premises.

### **5.4 No Lessor's Lien.**

Lessor hereby waives any statutory landlord's lien Lessor has or ever may have.

## **6. Acceptance and Use.**

### **6.1 Acceptance.**

Lessee has leased the Leased Premises from Lessor in an "as-is" condition.

### **6.2 Use.**

Lessee shall have the right to use the Leased Premises for any lawful use. Lessee shall have the exclusive right to operate the Convention Center Annex. It is the intent of Lessee to book and market the Convention Center Annex in coordination with the Arlington Convention and Visitors Bureau and to cooperate with the City in booking civic events at the Convention

Center Annex consistent with Lessee's business plan (as same may evolve) for a period of thirty (30) years, commencing on the date of Initial Occupancy (as that term is defined in the Economic Development Incentive Agreement).

## **7. Damage or Destruction.**

### **7.1 Obligation to Reconstruct.**

In the event of damage or destruction to the Improvements during the thirty (30) year period that commences on the date the Improvements initially opens for business to the public, Lessee shall cause the full repair or restoration of the Improvements (exclusive of Third Party Tenant Improvements (as that term is defined in the Economic Development Incentive Agreement), as same existed at the time of such damage or destruction (as same may be modified by Lessee or the Project Tenant (as that term is defined in the Economic Development Incentive Agreement) at the time of such repair or restoration, provided that such modification is of equal or greater value), whether done by application of insurance proceeds or other financial means. On or after the expiration of such thirty (30) year period, in the event the Improvements are damaged by fire or other casualty, Lessee shall have the right to determine whether, and to what extent the Improvements should be restored or replaced. Notwithstanding the above, a Mortgagee and any person or entity that acquires title to the Improvements as a result of a foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 7.1.

## **8. Condemnation**

### **8.1 General.**

If, at any time during the Term, the Leased Premises, the Improvements (including the Convention Center Annex), or any part thereof shall be condemned and taken by the United States of America, the State or any other authority or Person having the power of eminent domain, then the provisions of this Section 8 shall apply to such condemnation proceedings and the distribution of any awards pertaining thereto.

### **8.2 Entire Leased Premises Taken by Eminent Domain/Partial Taking Resulting in Termination.**

If the fee simple title in, or permanent possession of, all of the Leased Premises is taken by a governmental or other authority under the power of eminent domain, then this Lease shall terminate (or be suspended for the duration of the temporary taking) as of the taking date, and any Rent shall be prorated and paid by Lessee to the date of such taking. In the event that less than all of the Leased Premises is taken by a governmental or the authority under the power of eminent domain and if reconstruction is not feasible, or if the Improvements remaining after such taking is no longer economically viable, in each case as determined by Lessee in its sole and absolute discretion within one year after the date of the taking, then this Lease, at the election of Lessee, shall terminate as to the Leased Premises not so taken as of the date of such taking. The condemnation award shall be promptly paid as follows, in the following order of priorities:

(a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by Lessor and Lessee in such condemnation suit or conveyance (except that nothing contained in this Section shall require payment to Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages; and

(c) The balance, if any, shall be applied and distributed to pay each Subtenant any amount of which such Subtenant is entitled for its leasehold improvements, and the value of such Subtenant's leasehold interests, but only to the extent required in such Subtenant's lease; and

(d) The balance, if any, shall be applied and distributed to Lessee up to the amount of the value of the Improvements, as reasonably determined by Lessee; and

(e) The balance, if any, shall be divided and paid fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is Lessor, the entire balance shall be paid to Lessee.

### **8.3 Partial Taking of Leased Premises by Condemnation.**

In the event that less than all of the Leased Premises (or only an interest therein) is taken for any public use or purpose by the exercise of the power of eminent domain, or shall be conveyed by the Parties acting jointly to avoid proceedings of such taking, then (i) this Lease and all the covenants, conditions, and provisions hereunder shall be and remain in full force and effect as to all of the Leased Premises not so taken or conveyed, and (ii) Lessee shall remodel, repair, and restore the Improvements to such condition as Lessee determines in its sole and absolute discretion to be appropriate, taking into consideration the fact of the condemnation.

The condemnation award shall be promptly paid as follows, in the following order of priorities:

(a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by each Party in such condemnation suit or conveyance (except that nothing contained in this Section shall require payment of Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages to the extent that the Mortgages require such payments; and

(c) The balance, if any, remaining shall be applied and distributed to pay each Subtenant whose space is taken any amount to which such Subtenant is entitled for its leasehold improvements and the value of such Subtenant is entitled for its leasehold improvements and the value of such Subtenant's leasehold interest, but only to the extent required in such Subtenant's lease; and

(d) There shall be paid to Lessee out of the balance, if any, remaining, the amount required to enable lessee to remodel, repair, and restore any Improvements so that they will be comparable to the improvements prior to condemnation, taking into consideration the fact of the condemnation; and

(e) The balance, if any, shall be applied and distributed to Lessee up to the amount of the value of the Improvements taken, as reasonably determined by Lessee; and

(f) The balance, if any, shall be divided and paid over fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is owner, the entire balance shall be paid to Lessor.

#### **8.4 Temporary Taking.**

If the whole or any part of the Leased Premises or the Improvements or of Lessee's interest in this Lease shall be taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full the Rent without reduction or abatement in the manner and at the times herein specified. Except only to the extent that Lessee is prevented from so doing pursuant to the terms of any order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred.

#### **8.5 Condemnation Proceedings.**

Lessee, Lessor and Leasehold Mortgagee shall each have the right, as its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials and appeals therein.

#### **8.6 Notice Condemnation.**

In the event Lessor or Lessee shall receive notification of any proposed or pending condemnation proceeding affecting the Leased Premises or the Improvements, the Party receiving such notification shall promptly notify, by Notice, the other Party.

### **9. Assignments.**

#### **9.1 Restriction Against Disposition Prior to Initial Occupancy of the Project.**

Lessee represents and agrees for itself and any successor in interest that except for Dispositions to an Alternative Hotel Developer (which does not require the consent of Lessor), Lessee will not, prior to the third (3rd) anniversary of the Initial Occupancy (as that term is defined in the Economic Development Incentive Agreement), make or create, or suffer to be made or created, any Disposition, without the prior written approval of the Lessor, acting by and through the City Representative (as that term is defined in the Economic Development Incentive

Agreement), which approval shall not be unreasonably withheld. In the event that pursuant to the provisions of Section 9.1 of this Lease the approval of Lessor is required for a Disposition and a request for Lessor approval of a Disposition is made, Lessor, acting by and through the City Representative, shall, by notice to Lessee, approve or deny such request for approval within thirty (30) Business Days of Lessor's receipt of such request, time being of the essence. In the event of a Disposition to an Alternative Hotel Developer, promptly after such Disposition, Lessee shall provide Lessor with notice thereof and the transferee thereof shall deliver to Lessor a written instrument, benefiting Lessor and executed by the transferee, assuming Lessee's obligations under this Lease.

## **9.2 Disposition On or After Third Anniversary of Initial Occupancy.**

On or any time after the third (3rd) anniversary of the Initial Occupancy (as that term is defined in the Economic Development Incentive Agreement), Lessee may, without the need to request or obtain the consent of Lessor, make or create, or suffer to be made or created, any Disposition, provided that the counterparty to such Disposition (and/or a direct or indirect affiliate): (a) owns a major league baseball or football team; (b) is an affiliate of one of the direct or indirect owners of Developer; or (c) has demonstrable experience in owning and/or operating on a full-service basis comparable hotel properties and has a net worth in excess of Fifty Million Dollars (\$50,000,000). In the event such counterparty (and/or a direct or indirect affiliate) does not satisfy any of the above, such Disposition shall require the prior written approval of the Lessor, acting by and through the City Representative, which approval shall not be unreasonably withheld and which approval shall be granted or withheld within thirty (30) Business Days of the Lessor's receipt of such request, time being of the essence. Notwithstanding the above, on or any time after the first day of the fifteenth (15th) anniversary of the date Substantial Completion of the Hotel Project (as that term is defined in the Economic Development Incentive Agreement) is achieved Lessee may, without the need to request or obtain the consent of the Lessor, make or create, or suffer to be made or created, a Disposition. On or after the completion of any Disposition pursuant to this Section 9.2, the transferee shall deliver to Lessor a written instrument, benefiting Lessor and executed by Lessee and the transferee, whereby Lessee's rights and obligations under this Lease are assigned to and assumed by such transferee.

## **9.3 Permitted Disposition to Subtenants.**

Notwithstanding anything in Sections 9.1, 9.2 or other sections of this Lease to the contrary, Lessee may enter into Subleases or other contractual agreements with Subtenants for all or any part of the Project, at any time and from time to time from and after the Commencement Date and during the Term, with such Subtenants and upon such terms and conditions as Lessee shall, in its sole discretion, deem fit and proper consistent with the other provisions of this Lease.

## **9.4 Liability.**

In the event of a Disposition of all of the interest of Lessee concerning the Project pursuant to and in compliance with the provisions of Section 9.1 and 9.2 hereof, Lessee shall be relieved of all further liability arising hereunder with respect to the Project except for defaults of Lessee under this Lease that arose before such Disposition which remain uncured.

## **9.5 Obligations of Subtenants of Lessor.**

Subtenants or other permitted occupants are not successors or assignees of Lessee's obligations to Lessor merely by being a Subtenant or an occupant of the Leased Premises.

## **10. Subleases.**

### **10.1 Right to enter into Subleases.**

Throughout the Term Lessee shall have the right, without the need to request or obtain the consent of Lessor, to sublet or sub-group lease portions of the Leased Premises and/or the Improvements at any time and from time to time. Each Sublease shall be subject and subordinate to this Lease.

### **10.2 Non-disturbance and Attornment.**

(a) Lessor covenants and agrees with Lessee for the benefit of each and every Subtenant from time to time occupying any part of the Leased Premises and the Improvements or having rights granted to it by Lessee with regard to the Leased Premises, which Subtenants shall be third party beneficiaries of this Section 10.2 as it may apply to each of them respectively, that in the event of a termination of this Lease, each such Subtenant may continue to occupy its premises under its pre-existing Sublease and enjoy the rights granted to such Subtenant in such Sublease; provided such Subtenant shall then attorn to Lessor (to the extent that such Subtenant occupies any part of the Leased Premises and the Improvements) and, if such Subtenant's Sublease does not provide for such attornment (and such Subtenant occupies any part of the Leased Premises and the Improvements), such Subtenant, promptly after the termination of this Lease, provides Lessor with a written statement of such Subtenant whereby such Subtenant attorns to Lessor.

(b) In addition to the provisions of Section 10.2 (a) hereof, Lessor covenants and agrees with Lessee that Lessor will, at the request of Lessee made from time to time enter into a non-disturbance and attornment agreement with any Subtenant identified by Lessee, which non-disturbance and attornment agreement shall provide for all terms set forth in Section 10.2 (a) hereof and be in commercially reasonable form. Lessor shall execute and deliver to Lessee such a non-disturbance and attornment agreement or specify in writing its objections thereto within ten (10) Business Days after receipt of the form thereof from Lessee, time being of the essence.

Notwithstanding anything to the contrary contained in this Lease in the event that this Lease is terminated as a result of all or part of the Leased Premises being condemned, Lessor shall not be obligated to restore or rebuild the Improvements.

## **11. Leasehold Mortgage Financing.**

### **11.1 Rights to Leasehold Mortgage.**

(a) Notwithstanding any other provision of this Lease, Lessee shall at all times have the right to enter into or grant one or more Leasehold Mortgages. Lessee may encumber, pledge, grant, or convey its rights, title and interest under this Lease by way of a Leasehold Mortgage (or assignment) to secure payment of any loan or loans obtained by Lessee. Such Leasehold Mortgage may also encumber Lessee's right to purchase the Leased Premises and Lessee's interests in the Convention Center Annex.

(b) Lessee, and any Subtenant (to the extent permitted by Lessee), may grant security interests in or place liens upon any equipment or personal property (so long as such equipment or property is not a fixture integrated into the real property, which equipment or property could not be removed without permanent damage to the Leased Premises), without such interest or liens constituting a Disposition. Such equipment and personal property shall not be deemed to be "Improvements" under this Lease. During the Term, at the request of Lessee, Lessor will, within thirty (30) days of such a request, execute and deliver a landlord's waivers of liens (including customary terms such as restoration of the premises) to facilitate such security interests and liens upon such equipment and personal property, which landlord's waivers of liens shall be in a form and substance reasonably satisfactory to Lessee.

(c) Each Subtenant (to the extent permitted by Lessee), shall have the right at any time to encumber its sub-leasehold estate by a mortgage or other encumbrance or lien without the necessity of obtaining the consent of Lessor (so long as the deed of trust, mortgage or other primary security instrument creating such Subtenant's mortgage refers to this Section 11 by reference). At the request of Lessee (given by notice), Lessor shall treat a mortgagee of a Subtenant's sub-leasehold estate in the same manner that it treats a Leasehold Mortgagee as to notice rights and shall enter into a non-disturbance agreement with such Subtenant's mortgagee, which agreement shall be in a form and substance that is reasonably acceptable to such Subtenant's mortgagee.

### **11.2 Rights of Leasehold Mortgagee.**

#### **11.2.1 Lessee's Acceptance.**

Lessor agrees to accept performance and compliance by any Leasehold Mortgagee of and with any term, covenant, agreement, provision, or limitation on Lessee's part to be kept, observed, or performed by Lessee hereunder.

#### **11.2.2 Cure of Default.**

Following an Event of Default by Lessee, Lessor will take no action to terminate this Lease and/or the Term of this Lease, nor to re-enter and take possession of the Leased Premises or the Improvements thereon (which Lessor, pursuant to the provisions of Section 12 does not have the right or power to seek), unless it shall first give Leasehold Mortgagee notice after the occurrence of any such Event of Default and stating the intention of Lessor either to, on a date

specified in such notice, to re-enter and take possession of the Leased Premises and the Improvements thereon. Notwithstanding such notice, this Lease and the Term shall not be terminated nor shall Lessor re-enter and take possession of the Leased Premises or the Improvements, if:

(a) such Event of Default can be cured by the payment of a fixed monetary amount and Leasehold Mortgagee shall make such payment within ninety (90) days after the date such notice was given: or

(b) such Event of Default can be cured with the exercise of reasonable diligence by Leasehold Mortgagee after obtaining possession of the Leased Premises and the Improvements, and Leasehold Mortgagee or Leasehold Mortgagee's designee, within one hundred eighty (180) days after the date of such notice, obtains the interest of Lessee in this Lease or Leasehold Mortgagee commences such proceedings (including, but not limited to, the filing of a petition for the appointment of a receiver) as it may deem necessary to obtain such possession (except that if Leasehold Mortgagee is precluded, notwithstanding the filing of a petition to the bankruptcy court for a waiver, from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period during which leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure) and thereafter diligently prosecutes such action and promptly upon obtaining such possession (or promptly upon its designee obtaining such possession) thereupon promptly commences (or its designee commence); and thereafter diligently pursues, the curing of such Event of Default; or

(c) such Event of Default is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises and the improvements were obtained by Leasehold Mortgagee or its designee, and Leasehold Mortgagee, within one hundred eighty (180) days after the date such notice is given, either obtains title to all of Lessee's right, title and interest in and to this Lease (or Leasehold Mortgagee's designee obtains such interest) or publishes any required notice of foreclosure or institutes foreclosure proceedings, as the case maybe be, and thereafter proceeds with diligence to acquire (or have its designee acquire) the interest of Lessee in the Lease (except that if Leasehold Mortgagee is precluded from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period during which Leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure), and such Event of Default, to the extent that the same shall have occurred prior to such acquisition of the interest of Lessee in this Lease by Leasehold Mortgagee or its designee, shall thereupon be deemed to have been waived.

### **11.2.3 Lease Termination; New Lease:**

(a) Lessor does not have the right to terminate this Lease in the event of an Event of Default by Lessee. However, if, for some reason, this Lease is terminated by Lessor prior to its stated expiration date, Lessor shall give Leasehold Mortgagee notice of such termination and shall enter into a new lease for the Leased Premises that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage or, at the request of Leasehold Mortgagee,

with an assignee, designee, or nominee of Leasehold Mortgagee for the remainder of the Term of this Lease effective as of the date of such termination, at the rate and upon the same covenants, Leases, terms, provisions and limitations as are herein contained, provided that:

(i) Leasehold Mortgagee makes written request upon Lessor for such new lease within one hundred eight (180) days after the giving of such notice of termination and such written request is accompanied by payment to Lessor of all amounts then due to Lessor in connection with the Leased Premises and the Improvements that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage of which Lessor shall have given Leasehold Mortgagee notice; and

(ii) Leasehold Mortgagee pays or causes to be paid to Lessor at the time of the execution and delivery of such new lease any and all additional sums which would at the time of the execution and delivery thereof due under this Lease but for such termination and pays or causes to be paid any and all expenses, including reasonable attorneys' fees, court costs, and disbursements, incurred by Lessor concerning the Leased Premises and Improvements in connection with any such termination or in connection with the execution and delivery of such new lease and any conveyance of title to the Improvements; and

(iii) Leasehold Mortgagee agrees to cure, within sixty (60) days after the execution and delivery of such new lease, all uncured Events of Default of which Lessor shall have given Leasehold Mortgagee notice (except any Event of Default which is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises, or the Improvements were obtained, to the extent that same shall have occurred prior to the execution and delivery of such new lease, shall be deemed to have been waived), or if any such Event of Default cannot be cured within such period, Leasehold Mortgagee agrees to commence, within such period, to cure such Event of Default and thereafter pursues the same with due diligence.

(b) Any new lease made pursuant to this subsection 11.2.3 shall (i) have the same relative priority in time and in right as this Lease, and (ii) have the benefit of all of the right, title, powers and privileges of Lessee hereunder in and to the Leased Premises and the Improvements. At Lessee's request, Lessor will enter into an agreement with Leasehold Mortgagee granting to Leasehold Mortgagee the rights set forth in this Section 11.2.

#### **11.2.4 Notice to Lessor and Leasehold Mortgagee.**

If Lessee shall furnish Lessor with a written notice setting forth the name and address of a Leasehold Mortgagee, Lessor shall thereafter send to such Leasehold Mortgagee a copy of any notice given to Lessee under this Lease, and no such notice shall be deemed to have been properly given unless and until a copy thereof shall have been sent to Leasehold Mortgagee at the address specified in such notice.

### **11.2.5 Performance by Leasehold Mortgagee.**

No Leasehold Mortgagee shall have any liability for the performance of any of the covenants, conditions or obligations of Lessee under this Lease unless and until such time as Leasehold Mortgagee acquires title to the leasehold estate created by this Lease.

### **11.3 Non-subordination.**

Nothing contained in this Section 11, or in any other Section of this Lease shall be deemed to allow a subordination of Lessor's reversionary estate in any part or portion of the Leased Premises leased to Lessee. In no event will such subordination be made. Lessee and each Subtenant may mortgage only its leased or sub-leasehold interest in the Leased Premises.

### **11.4 Leasehold Mortgagee's Rights Agreements.**

Lessor covenants and agrees with Lessee that Lessor, acting by and through the City Manager, will, at the request of Lessee made from time to time and at any time, enter into a lender's rights agreement with any Leasehold Mortgagee (or potential Leasehold Mortgagee) identified by Lessee, which lenders' rights agreement shall be consistent with the terms and provisions contained in this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages. Within twenty (20) Business Days of Lessee's request for a Leasehold Mortgagee's rights agreement pursuant to the provisions of this Section 11.4, Lessor shall execute and deliver to Lessee such a lender's rights agreement benefiting the identified Leasehold Mortgagee (or potential Leasehold Mortgagee) and such Leasehold Mortgagee's Leasehold Mortgage (or potential Leasehold Mortgagee's potential Leasehold Mortgage), which executed Leasehold Mortgagee's rights agreement shall be commercially reasonable and in a form and substance that are reasonably acceptable to such Leasehold Mortgagee (or potential Leasehold Mortgagee) and that is consistent with, and at the option of such Leasehold Mortgagee (or potential Leasehold Mortgagee) incorporates, the terms and provisions of this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages (such as the Leasehold Mortgagee notice provisions and the Leasehold Mortgagee cure rights provisions of this Section 11).

## **12. Defaults/Arbitration.**

### **12.1 Events of Default by Lessee.**

Each of the following shall constitute an Event of Default by Lessee:

(a) The filing by Lessee of a voluntary proceeding or the consent by Lessee to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessee or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessee in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessee to perform or to observe any material covenant, obligation or requirement of Lessee arising under this Lease not specifically named as an Event of Default in this Section 12.1, and the continuation of such failure for thirty (30) days after receipt of written notice from Lessor specifying the nature and extent of such failure, or if such failure cannot reasonably be cured within such thirty (30) day period, the failure of Lessee to commence to cure such failure within such thirty (30) day period and to diligently pursue same to completion.

## **12.2 Events of Default by Lessor.**

Each of the following shall constitute an Event of Default by Lessor:

(a) The filing by Lessor of a voluntary proceeding or the consent by Lessor to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessor or appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessor in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessor to perform or to observe any material nonmonetary covenant, obligation or requirement of this Lease not specifically named as an Event of Default by Lessor in this Section 12.2, and the continuation of such failure for thirty (30) days after receipt of written notice from Lessee specifying the nature and extent of any such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of Lessor to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such effort to cure to completion.

(d) The failure of Lessor to execute and deliver any document, agreement or instrument (such as a non-disturbance, attornment and subordination agreement with a Subtenant, any estoppel certificate, any permit application, any subdivision plan, any agreement with any Leasehold Mortgagee or Subtenant, any deed, ground lease or ground lease amendment) requested by Lessee and required to be given by Lessor in accordance with the provisions of this Lease and the continuation of such failure for twenty (20) days after written notice from Lessee specifying the nature and extent of such failure.

## **12.3 Remedies.**

Should an Event of Default by Lessee occur hereunder, Lessor may, by written notice to Lessee, initiate the procedures contained in Section 12.6. Should an Event of Default by Lessor occur hereunder, Lessee may, by written notice to Lessor, initiate the procedures contained in Section 12.6. This Lease may not be terminated by Lessee or Lessor as a result of the occurrence of an Event of Default by the other Party hereunder. Lessor shall not have the right to terminate this Lease and/or the Term of this Lease, nor to re-enter and take possession of the Leased Premises or the Improvements as a result of an Event of Default by Lessee. All remedies under this Lease shall be cumulative and not restrictive of other remedies (but not the right of

termination), including without limitation, specific performance. The initiation of any remedy by Lessor or Lessee shall not constitute or be deemed an election of remedies by it and such Party may invoke two or more remedies hereunder concurrently or consecutively. No Party may seek or obtain an award of consequential or punitive damages against the other Party.

#### **12.4 Waiver.**

Failure of Lessor or Lessee to exercise any right or remedy hereunder shall not impair any of its rights nor be deemed a waiver thereof and no waiver of any of its rights shall be deemed to apply to any other such rights, nor shall it be effective unless in writing and signed by the waiving Party.

#### **12.5 Attorneys' Fees.**

If either Lessor or Lessee brings suit or other legal proceedings or arbitration proceeding to enforce the provisions of this Lease against the other, then each Party in such suit or proceeding shall bear its own attorneys' fees and litigation and/or arbitration costs and expenses incurred by it in connection with such suit or proceeding.

#### **12.6 Arbitration.**

In the event any dispute, controversy or claim between or among the Parties hereto arises under this Lease (a "**Dispute or Controversy**"), including a claim that an Event of Default has occurred, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement. In the event a Dispute or Controversy arises, any Party hereto shall have the right to notify the other Party hereto that the notifying Party has elected to implement the procedures set forth in this Section 12.6. Within fifteen (15) days after delivery of any such notice by one Party to the other Party regarding a Dispute or Controversy, a representative of each of the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained within fifteen (15) days after the meeting of the Parties representatives for such purpose, or such longer period as the Parties may agree upon, then either Party may by notice to the other Party (the "**Arbitration Notice**") submit the Dispute or Controversy to arbitration in accordance with the provisions of this Section 12.6 and **Exhibit "B"** attached hereto (the "**Arbitration Procedures**"). The Arbitration Notice must comply with the Arbitration Procedures. Upon receipt of the Arbitration Notice, all Parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section 12.6 and **Exhibit "B"** without regard to the justifiable character or executor nature of such Dispute or Controversy. Each Party hereto agrees that any Dispute or Controversy which is not resolved pursuant to this Section shall be submitted to binding arbitration hereunder and shall be resolved exclusively and finally through such binding arbitration in accordance with the Arbitration Procedures (the "**Arbitration**"). This Section 12.6 and **Exhibit "B"** hereto are and hereby constitute a written agreement by the Parties hereto to submit to arbitration any such Dispute or Controversy arising after the Commencement Date within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code. Notwithstanding any provision of this Lease to the contrary, any Party hereto may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Tarrant County, Texas. In the event that a Dispute or

Controversy requires emergency relief before the matter may be resolved under the Arbitration Procedures, notwithstanding that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the Parties hereto expressly agree that the Arbitration Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

### **13. Representations.**

#### **13.1 Representations by Lessee.**

Lessee represents and warrants to Lessor that Lessee (i) is validly existing limited liability company under the laws of the State of Delaware and is in good standing in the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

#### **13.2 Representations by Lessor.**

Lessor represents and warrants to Lessee that Lessor (a) is a constitutionally chartered city validly existing under the laws of the State of Texas; (b) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; and (c) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

### **14. Insurance.**

#### **14.1 Insurance.**

During the Term, Lessee, at no cost or expense to Lessor, will keep and maintain, or cause the Subtenants to keep and maintain, the insurance set forth below. Lessee shall not commence work on the Improvements until Lessee has obtained or caused to be obtained all the insurance required under this Lease, nor shall Lessee allow any work on the Improvements to commence until all similar insurance of the contractor or subcontractor performing work on the Improvements has been obtained. All insurance policies provided under this Lease will be written on an "occurrence" basis. The insurance requirements shall remain in effect throughout the Term. The insurance required by this Lease consists of the following:

(a) Worker's Compensation Insurance, statutory policy as required by law; Employers Liability Insurance of not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease-each employee, \$1,000,000.00 disease-policy limit.

(b) Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, covering but not limited to the indemnification provisions of this Lease, fully insuring Lessor's liability for injury to or death of employees of Lessee and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

(c) Commercial Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.

(d) Umbrella Insurance: Lessee shall obtain and maintain at all times during the construction of the Improvements umbrella insurance. Limits of liability shall be \$2,000,000.00.

#### **14.2 Conditions.**

Each insurance policy to be furnished by Lessee shall include the following conditions by endorsement to the policy:

(a) Name Lessor as an additional insured as to all applicable coverage, except worker's compensation. For General Liability purposes, this requirement extends to premises/operations as well as products/completed operations.

(b) Each policy will require that thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to Lessor by certified mail to:

City of Arlington Human Resources  
Post Office Box 90231 MS# 63-0790  
Arlington, Texas 76004-3231

However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to Lessor is required. Lessee shall also notify Lessor within twenty-four (24) hours after receipt of any notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s).

#### **14.3 Miscellaneous Insurance Provisions.**

(a) For purposes of this Section 14, the term "Lessor" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of Lessor and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of Lessor.

(b) The policy phrase "Other Insurance" shall not apply to Lessor where Lessor is an additional insured on the policy.

(c) All provisions of this Lease concerning liability, duty and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

(d) All insurance prescribed by this Section 14 shall (i) be procured from financially sound and reputable insurers licensed to do business in the State of Texas and

have an A.M. Best rating of not less than A VII or, if not rated with A.M. Best, the equivalent of A.M. Best's surplus size of A VII or better, (ii) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved, and (iii) be evidenced by a certificate of insurance naming Lessor as an additional insured, as its interest may appear.

(e) The General and Automobile liability policies required herein shall be written with an "occurrence" basis coverage trigger.

(f) The Convention Center Annex shall be deemed part of the Improvements for all purposes of this Section 14.

#### **14.4 Waiver of Subrogation.**

Lessee agrees to the following:

(a) Lessee hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against Lessor, it being the intention that the insurance policies shall protect all parties to this lease and be primary coverage for all losses covered by the policies; and

(b) Companies issuing the insurance policies and Lessee shall have no recourse against Lessor for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of Lessee; and

(c) Approval, disapproval or failure to act by Lessor regarding any insurance supplied by Lessee (or any subcontractors) shall not relieve Lessee of full responsibility or liability for damages and accidents as set forth in the lease documents. Neither shall the insolvency or denial of liability by the insurance company exonerate Lessee from liability.

#### **15. Miscellaneous Provisions.**

##### **15.1 Force Majeure.**

For the purpose of any of the provisions of this Lease, neither Lessor, nor Lessee, as the case may be, nor any successor in interest, shall be considered in breach of or default in any of its obligations, in the event of enforced delay in the performance if such obligations to due Force Majeure. For purposes of this Lease, Force Majeure shall mean acts of God (including storms, floods or other casualty), war, invasion, insurrection, taking by eminent domain laws, the lack of labor or supplies due to an act of God, strike or labor disputes or delays beyond the control of the affected Party, or order of government authorities. In the event of the occurrence of any such enforced delays, the time or times for the performance of the covenants, provisions, and agreements of this Lease shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay). The affected Party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements and provided further, that the settlement of strikes,



With a copy to:       Ballpark Parking Partners, LLC  
                          c/o General Counsel  
                          1000 Ballpark Way, Suite 400  
                          Arlington, Texas 76011

Lessor:                City of Arlington, TX  
                          City Manager's Office  
                          c/o City Manager  
                          101 W. Abram Street  
                          Arlington, Texas 76004-3231

Such addresses may be changed by giving the other Party ten (10) days' notice in writing. Lessee, by notice to the Lessor, may add additional notice addressees.

**15.5 No Broker Fees.**

Lessor and Lessee each represent and warrant for itself that it has not dealt with any broker or agent in connection with this Lease and each covenants and agrees, to the extent allowed by law, to indemnify and hold the other harmless from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this representation and warranty.

**15.6 No Waiver.**

No failure on the part of Lessor or Lessee to enforce any covenant or provision contained in this Lease nor any waiver of any right under this Lease shall discharge or invalidate such covenant or provision or affect the right of the other Party to enforce the same in the event of any subsequent default.

**15.7 Severability.**

If any provision of this Lease or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to any other Person or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law. In the event any provision of this Lease is illegal, invalid or unenforceable under present or future laws, each Party reserves the right to pursue any and all remedies available to them at law or equity (including arbitration proceedings). The provisions of this Section 15.7 shall survive the termination of this Lease.

**15.8 Amendment.**

Neither the Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge, or termination is sought.

### **15.9 Terminology.**

All personal pronouns used in this Lease, whether used in the masculine, feminine or neutral gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Unless otherwise expressly state, titles of Sections, Subsections and Paragraphs of this Lease are for convenience only, and neither limit nor amplify the provisions of this Lease, and all references in the Lease of Sections, Subsections or Paragraphs shall refer to the corresponding Section, Subsection or Paragraph of this Lease unless specific reference is made to the articles, sections or subdivisions of another document or instrument.

### **15.10 Counterparts.**

This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

### **15.11 Binding Agreement.**

Subject to the restrictions on Dispositions set forth herein, this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors and assigns. Whenever in this Lease a reference to Lessor, Lessee or any Person is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Lessor, Lessee or such Person.

### **15.12 Interpretation.**

No provision of this Lease shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

### **15.13 Governing Law/Venue.**

This Lease and the obligations of Lessor and Lessee hereunder shall be interpreted, construed and enforced in accordance with the Applicable Laws of the State, including conflicts of laws. Subject to the provisions of Section 12.6, venue shall lie in Tarrant County, Texas.

### **15.14 Relationship of Parties.**

No express or implied term, provision or condition of this Lease shall or shall be deemed to constitute Lessor and Lessee as partners or joint venturers.

### **15.15 Indemnity.**

**Lessee is and shall be in exclusive control of the Project, and Lessor shall not in any way whatsoever be liable for any injury or damage to any person or property happening on, about or in connection with the Leased Premises or any part thereof. Lessee shall indemnify and hold harmless Lessor and all entities claiming by, through or under Lessor from all claims, suits, actions and proceedings whatsoever which may be brought or**

**instituted on account of, growing out of, occurring from, incident to or resulting from, directly or indirectly, any and all injuries or damages (including, without limitation, death) to persons or property arising out of the use of occupation of the Leased Premises, and all losses, costs, damages and expenses (including, without limitation, reasonable attorney's fees and other costs of defending against such claims, suits, actions and proceedings), whether or not such injuries or damages (including, without limitation, death) result from, or are claimed to have resulted from, in whole or in part, the negligence of Lessor or any Person claiming by, through or under Lessor. Lessee shall assume on behalf of Lessor and all entities claiming by, through or under Lessor, and conduct with due diligence and in good faith, the defense of all such claims, suits, actions and proceedings against Lessor or any Person claiming by, through or under Lessor, whether or not Lessee is jointed therein, even if such claims, suits, actions or proceedings be groundless, false or fraudulent, and Lessee shall bear the costs of all judgments and settlements in connection therewith. The above provisions of this Section 15.15 shall not apply to injury or damage caused by the gross negligence or wrongful willful acts or omissions of Lessor and its agents, employees and contractors.**

#### **15.16 Representatives Not Individually Liable.**

No member, official, representative, or employee of Lessor shall be personally liable to Lessee or any successor in interest in the event of any default or breach by Lessor for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease. No partner, member, representative, or employee of Lessee or any of its members shall be personally liable to Lessor in the event any default or breach by Lessee for any amount which may become due to Lessor or on any obligations under the terms of this Lease.

#### **15.17 Entire Agreement.**

This Lease and the Economic Development Incentive Agreement (and all agreements executed pursuant to the terms of the Economic Development Incentive Agreement by Lessee and Lessor, including the Entertainment Complex Project Ground Lease (as that term is defined in the Economic Development Incentive Agreement, provided the Lessee hereunder is also the "lessee" under such ground lease) and the Hotel Ground Lease (as that term is defined in the Economic Development Incentive Agreement, provided the Lessee hereunder is also the "lessee" under such ground lease) incorporate all prior negotiations and discussions between the Parties regarding the subject matter and represent the entire agreement of Lessor and Lessee for the Project.

#### **15.18 Third Party Beneficiary.**

Except as otherwise provided in Subsection 10.2 and Section 11, nothing contained in this Lease shall be construed to confer upon any other party the rights of a third party beneficiary.

**15.19 Payment or Performance on Saturday, Sunday or Holiday.**

Whenever the provisions of this Lease call for any payment or the performance of any act on or by a date that is not a Business Day, including the expiration date of any cure periods herein, then such payment or such performance shall be required on or by the immediately succeeding Business Day.

**15.20 Incorporate into Agreement.**

All exhibits, schedules, and recitals form a part of this Lease.

**15.21 Applicable Laws.**

Nothing in this Lease shall be construed to (a) limit or prevent Lessee from challenging at law or in equity the applicability of any Applicable Law and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (b) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Lease, no provision of this Lease shall be construed to require Lessee to comply with any Applicable Law during the period that Lessee may be pursuing a bona fide challenge of this applicability, lawfulness, and/or enforceability of such Applicable Law (unless such law requires compliance during any such challenge). If Lessee's challenge is successful, Lessee shall not be required by the provisions of this Lease to comply with such Applicable Law.

**15.22 Consents and Approvals.**

Lessor and Lessee commit to work harmoniously with each other, and except in instances (if any) where a consent or approval is specified to be within the sole discretion of either Party, any consent or approval contemplated under this Lease shall not be unreasonably withheld, conditioned or delayed. Unless a shorter or longer time period is specified in this Lease, Lessor shall give or withhold (provided such withholding is reasonable under the circumstances, unless a sole discretion standard expressly applies) such approvals, certifications, or consents within twenty (20) Business Days.

**15.23 Good Faith and Fair Dealing.**

The Parties covenant and agree each to the other that its conduct under this Lease and the interpretation and enforcement of the provisions hereof, shall be characterized by good faith and fair dealings so that the objectives of each Party as set forth in this Lease may be achieved.

**15.24 Further Assurances.**

In connection with the execution and delivery of this Lease and the execution, delivery and recordation of any other instrument or agreement, provided for or contemplated by this Lease, Lessor or Lessee, at the written request of the other Party hereto, shall, within twenty (20) Business Days of such written request, execute and deliver to the requesting Party such other documents, certifications or agreements that are reasonably necessary to effectuate the intent of

STATE OF TEXAS           §  
  §       **CITY OF ARLINGTON, TEXAS**  
COUNTY OF TARRANT   §

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, in the County and State aforesaid, before me, the subscriber, a Notary Public authorized to take acknowledgments and proofs in said County and State, personally appeared \_\_\_\_\_, the City Manager of the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, who I am satisfied, is the person who, as such officer of said public body, signed, sealed and dated the within instrument made by said public body, and he did acknowledge that he, as such officer, signed and delivered the same on behalf of said public body for the uses and purposes therein set forth, and that said instrument is the voluntary act and deed of said public body duly authorized by a proper resolution of its Members.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:

STATE OF MARYLAND           §  
  §       **ARLINGTON BALLPARK DISTRICT**  
  §       **ENTERTAINMENT BLOCK, LLC**  
CITY/COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ as the Authorized Person of **ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC**, a limited company, organized under the laws of Delaware.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:

**Exhibit "G-2"**  
**Form of the Entertainment Complex Project Ground Lease**

each have the right to approve certain actions of such Person, such as the sale, financing or leasing of an asset of such Person.

**“Applicable Law”** means, subject to the provisions of Section 15.21 hereof, any law, ordinance, regulation, properly adopted requirement or order of any federal, state, or local agency (including, but not limited to, Lessor), court, or other governmental body, applicable from time to time to the acquisition, leasing, design, construction, equipping, financing, ownership, or operation of the Leased Premises and/or the Improvements or the performance of any obligations under any agreement entered into in connection with this Lease.

**“Arbitration”** is defined in Section 12.6 of this Lease.

**“Arbitration Notice”** is defined in Section 12.6 of this Lease.

**“Arbitration Procedures”** is defined in Section 12.6 of this Lease.

**“Arbitrator”** is defined in Section B.1 of the Arbitration Procedures.

**“Business Day”** means any day except Saturday, Sunday, or any other day on which banking institutions are legally authorized to close in the City of New York or Tarrant County, Texas.

**“Commencement Date”** means the date of this Lease.

**“Disposition”** means a transaction through which all or a part of Lessee’s interest in the Project is transferred to another Person by means of the sale, lease, sublease, assignment, conveyance or other hypothecation of this Lease; such term shall not include space and subground leases with Subtenants for sites occupied by Subtenants or operating agreements with occupants concerning the Project made in accordance with this Lease and shall not include the granting of a Mortgage or collateral assignment of Lessee’s interest in this Lease.

**“Economic Development Incentive Agreement”** means that certain Economic Development Incentive Agreement, dated December 15, 2015, by and among Lessor, Lessee and ABDEB, as amended, modified, supplemented or restated from time to time.

**“Encumbrances”** mean those matters of record which do not render title of the land unmarketable or uninsurable at ordinary rates by a title insurance company licensed in the State of Texas, as selected by Lessee, and which do not materially interfere with or materially increase the cost of the development of and/or operation of the Project as contemplated by the this Lease and the Economic Development Incentive Agreement.

**“Event of Default by Lessee”** means any of those events, occurrences and circumstances so designated in Section 12.1 hereof.

**“Event of Default by Lessor”** means any of those events, occurrences and circumstances so designated in Section 12.2 hereof.

**“Expire,” “Expired” or “Expiration”** means the expiration of the Term of this Lease by reason of lapse of time, and not by reason of any Event of Default.

**“Impositions”** means, collectively, all real estate taxes and assessments imposed by the State or any subdivision thereof, including the Lessor or any other tax imposed upon or levied against real estate or upon owners of real estate as such rather than persons generally, including taxes imposed on leasehold improvements which are assessed against Lessee under this Lease, payable with respect to or allocable to the Project, including the Leased Premises, the Improvements, and all other buildings and improvements situated thereon.

**“Improvements”** means any of the buildings and other improvements constructed on the Leased Premises by Lessee. “Improvements” shall not refer to any Subtenant Improvements, including any improvements and/or modifications made by Subtenant to such Subtenant’s leased or licensed premises at the Project.

**“Land Records”** means the records of the County Clerk of Tarrant County, Texas.

**“Lease”** means this Ground Lease Agreement for Entertainment Complex Project, together with any amendments, modifications, supplements, restatements or replacements thereof.

**“Leased Premises”** shall mean that certain parcel of land located in the City of Arlington, Texas and described as Block \_\_\_\_ owned by Lessor on the plat attached hereto and made part hereof as **Exhibit “A”**. **[DEVELOPER SHALL HAVE THE RIGHT TO MODIFY THIS DEFINITION IN THE EVENT THAT THE LEASED PREMISES CONSISTS OF A CONDOMINIUM UNIT.]**

**“Leasehold Mortgage”** means, with respect to the Leased Premises and the Improvements, a mortgage or any other instrument securing the payment of a debt that encumbers Lessee’s interest, if any, in the Ground Lease for the Leased Premises and/or the Economic Development Incentive Agreement. **“Leasehold Mortgage”** shall not include a mortgage or any other instrument securing payment of a debt of a Subtenant and/or any or all of its Affiliates that encumbers the interests of such Subtenant in any Sublease of a part of the Leased Premises and/or Improvements.

**“Leasehold Mortgagee”** means the Person to which all or any part of the interest of the Lessee in the Economic Development Incentive Agreement and/or the Ground Lease for the Leased Premises and/or the Improvements is transferred as security under a Leasehold Mortgage.

**“Lessee”** means Arlington Ballpark District Entertainment Block, LLC, a Delaware limited liability company, as the lessee under this Lease, and the successors in title and assigns thereof permitted under the terms of this Lease.

**“Lessor”** means Arlington Convention Center Development Corporation, a non-profit local government corporation acting on behalf of the City of Arlington, Texas, , as amended and supplemented from time to time, as the lessor under this Lease, and the successors, successors-in-title and assigns thereof.

**“Notice”** means a written advice or notification required or permitted by this Lease, as more particularly provided in Section 15.4.

**“Parties”** means Lessor and Lessee.

**“Party”** means Lessor or Lessee.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, unincorporated organization or other entity or any government or any agency or political subdivision thereof.

**“Project”** means the Leased Premises and the Improvements.

**“Rent”** shall have the meaning set forth in Section 3.

**“State”** means the State of Texas.

**“Sublease”** means a lease, license or other occupancy agreement between Lessee and a Subtenant for a portion of the Project.

**“Subleases”** means two or more Subleases.

**“Subtenant”** means any Person that is or may hereafter be the sublessee or subtenant under any Sublease, and the occupant of a portion of the Improvements.

**“Subtenant Improvements”** means the construction, renovation, rehabilitation, and installation of a Subtenant’s equipment, fixtures, furniture, and improvements to the part of the Project leased or licensed by such Subtenant, regardless of who undertakes and completes such Subtenant Improvements.

**“Term”** means the term of this Lease described in Section 2.2.

**“Terminate,” “Terminated” and “Termination”** means the termination of the Term of this Lease by reason of an Event of Default, and not by reason of lapse of time.

## **2. Lease of Leased Premises; Term of Lease; Grant of Easements; Quiet Enjoyment; Right of First Refusal; and Recordation.**

### **2.1 Lease.**

Lessor, in consideration of the rents, covenants, agreements and conditions herein set forth, which Lessee hereby agrees shall be paid, kept and performed by Lessee, does hereby lease, let, demise and rent to Lessee, and Lessee does hereby rent and lease from Lessor, all right, title and interest of Lessor in and to the Leased Premises. The interest in the Leased Premises created hereby shall be deemed to be an estate for years under the Applicable Laws of the State.

**TO HAVE AND TO HOLD** the Leased Premises and all rights, privileges and appurtenances thereunto appertaining unto Lessee, for and during the Term, unless sooner

## **8.2 Entire Leased Premises Taken by Eminent Domain/Partial Taking Resulting in Termination.**

If the fee simple title in, or permanent possession of, all of the Leased Premises is taken by a governmental or other authority under the power of eminent domain, then this Lease shall terminate (or be suspended for the duration of the temporary taking) as of the taking date, and any Rent shall be prorated and paid by Lessee to the date of such taking. In the event that less than all of the Leased Premises is taken by a governmental or the authority under the power of eminent domain and if reconstruction is not feasible, or if the Improvements remaining after such taking is no longer economically viable, in each case as determined by Lessee in its sole and absolute discretion within one year after the date of the taking, then this Lease, at the election of Lessee, shall terminate as to the Leased Premises not so taken as of the date of such taking. The condemnation award shall be promptly paid as follows, in the following order of priorities:

(a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by Lessor and Lessee in such condemnation suit or conveyance (except that nothing contained in this Section shall require payment to Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages; and

(c) The balance, if any, shall be applied and distributed to pay each Subtenant any amount of which such Subtenant is entitled for its leasehold improvements, and the value of such Subtenant's leasehold interests, but only to the extent required in such Subtenant's lease; and

(d) The balance, if any, shall be applied and distributed to Lessee up to the amount of the value of the Improvements, as reasonably determined by Lessee; and

(e) The balance, if any, shall be divided and paid fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is Lessor, the entire balance shall be paid to Lessee.

## **8.3 Partial Taking of Leased Premises by Condemnation.**

In the event that less than all of the Leased Premises (or only an interest therein) is taken for any public use or purpose by the exercise of the power of eminent domain, or shall be conveyed by the Parties acting jointly to avoid proceedings of such taking, then (i) this Lease and all the covenants, conditions, and provisions hereunder shall be and remain in full force and effect as to all of the Leased Premises not so taken or conveyed, and (ii) Lessee shall remodel, repair, and restore the Improvements to such condition as Lessee determines in its sole and absolute discretion to be appropriate, taking into consideration the fact of the condemnation.

The condemnation award shall be promptly paid as follows, in the following order of priorities:

(a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by each Party in such condemnation suit or conveyance (except that nothing contained in this Section shall require payment of Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages to the extent that the Mortgages require such payments; and

(c) The balance, if any, remaining shall be applied and distributed to pay each Subtenant whose space is taken any amount to which such Subtenant is entitled for its leasehold improvements and the value of such Subtenant is entitled for its leasehold improvements and the value of such Subtenant's leasehold interest, but only to the extent required in such Subtenant's lease; and

(d) There shall be paid to Lessee out of the balance, if any, remaining, the amount required to enable lessee to remodel, repair, and restore any Improvements so that they will be comparable to the improvements prior to condemnation, taking into consideration the fact of the condemnation; and

(e) The balance, if any, shall be applied and distributed to Lessee up to the amount of the value of the Improvements taken, as reasonably determined by Lessee; and

(f) The balance, if any, shall be divided and paid over fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is owner, the entire balance shall be paid to Lessor.

#### **8.4 Temporary Taking.**

If the whole or any part of the Leased Premises or the Improvements or of Lessee's interest in this Lease shall be taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full the Rent without reduction or abatement in the manner and at the times herein specified. Except only to the extent that Lessee is prevented from so doing pursuant to the terms of any order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred.

#### **8.5 Condemnation Proceedings.**

Lessee, Lessor and Leasehold Mortgagee shall each have the right, as its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials and appeals therein.

## **8.6 Notice Condemnation.**

In the event Lessor or Lessee shall receive notification of any proposed or pending condemnation proceeding affecting the Leased Premises or the Improvements, the Party receiving such notification shall promptly notify, by Notice, the other Party.

## **9. Assignments.**

### **9.1 Restriction Against Disposition Prior to Substantial Completion of the Project.**

Lessee represents and agrees for itself and any successor in interest that except for Dispositions to Affiliates of Developer (which does not require the consent of Lessor), Lessee will not, prior to the third (3rd) anniversary of the Substantial Completion (as that term is defined in the Economic Development Incentive Agreement) of the Project, make or create, or suffer to be made or created, any Disposition, without the prior written approval of the Lessor, acting by and through the City Representative (as that term is defined in the Economic Development Incentive Agreement), which approval shall not be unreasonably withheld. In the event that pursuant to the provisions of Section 9.1 of this Lease the approval of Lessor is required for a Disposition and a request for Lessor approval of a Disposition is made, Lessor, acting by and through the City Representative, shall, by notice to Lessee, approve or deny such request for approval within thirty (30) Business Days of Lessor's receipt of such request, time being of the essence. In the event of a Disposition to an Affiliate of Lessee, promptly after such Disposition, Lessee shall provide Lessor with notice thereof and the transferee thereof shall deliver to Lessor a written instrument, benefiting Lessor and executed by the transferee, assuming Lessee's obligations under this Lease.

### **9.2 Disposition After Third Anniversary of Substantial Completion.**

On or any time after the third (3rd) anniversary of the Substantial Completion (as that term is defined in the Economic Development Incentive Agreement) of the Project, Lessee may, without the need to request or obtain the consent of Lessor, make or create, or suffer to be made or created, any Disposition, provided that the counterparty to such Disposition (and/or a direct or indirect affiliate): (a) owns a major league baseball or football team; (b) is an affiliate of one of the direct or indirect owners of Developer; or (c) has demonstrable experience in owning and/or operating entertainment complexes, food and beverage projects and/or retail/entertainment projects and has a net worth in excess of Fifty Million Dollars (\$50,000,000). In the event such counterparty (and/or a direct or indirect affiliate) does not satisfy any of the above, such Disposition shall require the prior written approval of the Lessor, acting by and through the City Representative, which approval shall not be unreasonably withheld and which approval shall be granted or withheld within thirty (30) Business Days of the Lessor's receipt of such request, time being of the essence. Notwithstanding the above, on or any time after the first day of the fifteenth (15th) anniversary of the date Substantial Completion is achieved Lessee may, without the need to request or obtain the consent of the Lessor, make or create, or suffer to be made or created, a Disposition. On or after the completion of any Disposition pursuant to this Section 9.2, the transferee shall deliver to Lessor a written instrument, benefiting Lessor and executed by

Lessee and the transferee, whereby Lessee's rights and obligations under this Lease are assigned to and assumed by such transferee.

### **9.3 Permitted Disposition to Subtenants.**

Notwithstanding anything in Sections 9.1, 9.2 or other sections of this Lease to the contrary, Lessee may enter into Subleases or other contractual agreements with Subtenants for all or any part of the Project, at any time and from time to time from and after the Commencement Date and during the Term, with such Subtenants and upon such terms and conditions as Lessee shall, in its sole discretion, deem fit and proper consistent with the other provisions of this Lease.

### **9.4 Liability.**

In the event of a Disposition of all of the interest of Lessee concerning the Project pursuant to and in compliance with the provisions of Section 9.1 and 9.2 hereof, Lessee shall be relieved of all further liability arising hereunder with respect to the Project except for defaults of Lessee under this Lease that arose before such Disposition which remain uncured.

### **9.5 Obligations of Subtenants of Lessor.**

Subtenants or other permitted occupants are not successors or assignees of Lessee's obligations to Lessor merely by being a Subtenant or an occupant of the Leased Premises.

## **10. Subleases.**

### **10.1 Right to enter into Subleases.**

Throughout the Term Lessee shall have the right, without the need to request or obtain the consent of Lessor, to sublet or sub-group lease portions of the Leased Premises and/or the Improvements at any time and from time to time. Each Sublease shall be subject and subordinate to this Lease.

### **10.2 Non-disturbance and Attornment**

(a) Lessor covenants and agrees with Lessee for the benefit of each and every Subtenant from time to time occupying any part of the Leased Premises and the Improvements or having rights granted to it by Lessee with regard to the Leased Premises, which Subtenants shall be third party beneficiaries of this Section 10.2 as it may apply to each of them respectively, that in the event of a termination of this Lease, each such Subtenant may continue to occupy its premises under its pre-existing Sublease and enjoy the rights granted to such Subtenant in such Sublease; provided such Subtenant shall then attorn to Lessor (to the extent that such Subtenant occupies any part of the Leased Premises and the Improvements) and, if such Subtenant's Sublease does not provide for such attornment (and such Subtenant occupies any part of the Leased Premises and the Improvements), such Subtenant, promptly after the termination of this Lease, provides Lessor with a written statement of such Subtenant whereby such Subtenant attorns to Lessor.

(b) In addition to the provisions of Section 10.2 (a) hereof, Lessor covenants and agrees with Lessee that Lessor will, at the request of Lessee made from time to time enter into a non-disturbance and attornment agreement with any Subtenant identified by Lessee, which non-disturbance and attornment agreement shall provide for all terms set forth in Section 10.2 (a) hereof and be in commercially reasonable form. Lessor shall execute and deliver to Lessee such a non-disturbance and attornment agreement or specify in writing its objections thereto within ten (10) Business Days after receipt of the form thereof from Lessee, time being of the essence.

(c) Notwithstanding anything to the contrary contained in this Lease in the event that this Lease is terminated as a result of all or part of the Leased Premises being condemned, Lessor shall not be obligated to restore or rebuild the Improvements.

## **11. Leasehold Mortgage Financing.**

### **11.1 Rights to Leasehold Mortgage.**

(a) Notwithstanding any other provision of this Lease, Lessee shall at all times have the right to enter into or grant one or more Leasehold Mortgages. Lessee may encumber, pledge, grant, or convey its rights, title and interest under this Lease by way of a Leasehold Mortgage (or assignment) to secure payment of any loan or loans obtained by Lessee. Such Leasehold Mortgage may also encumber Lessee's right to purchase the Leased Premises.

(b) Lessee, and any Subtenant (to the extent permitted by Lessee), may grant security interests in or place liens upon any equipment or personal property (so long as such equipment or property is not a fixture integrated into the real property, which equipment or property could not be removed without permanent damage to the Leased Premises), without such interest or liens constituting a Disposition. Such equipment and personal property shall not be deemed to be "**Improvements**" under this Lease. During the Term, at the request of Lessee, Lessor will, within thirty (30) days of such a request, execute and deliver a landlord's waivers of liens (including customary terms such as restoration of the premises) to facilitate such security interests and liens upon such equipment and personal property, which landlord's waivers of liens shall be in a form and substance reasonably satisfactory to Lessee.

(c) Each Subtenant (to the extent permitted by Lessee), shall have the right at any time to encumber its sub-leasehold estate by a mortgage or other encumbrance or lien without the necessity of obtaining the consent of Lessor (so long as the deed of trust, mortgage or other primary security instrument creating such Subtenant's mortgage refers to this Section 11 by reference). At the request of Lessee (given by notice), Lessor shall treat a mortgagee of a Subtenant's sub-leasehold estate in the same manner that it treats a Leasehold Mortgagee as to notice rights and shall enter into a non-disturbance agreement with such Subtenant's mortgagee, which agreement shall be in a form and substance that is reasonably acceptable to such Subtenant's mortgagee.

## **11.2 Rights of Leasehold Mortgagee.**

### **11.2.1 Lessee's Acceptance.**

Lessor agrees to accept performance and compliance by any Leasehold Mortgagee of and with any term, covenant, agreement, provision, or limitation on Lessee's part to be kept, observed, or performed by Lessee hereunder.

### **11.2.2 Cure of Default.**

Following an Event of Default by Lessee, Lessor will take no action to terminate this Lease and/or the Term of this Lease, nor to re-enter and take possession of the Leased Premises or the Improvements thereon (which Lessor, pursuant to the provisions of Section 12 does not have the right or power to seek), unless it shall first give Leasehold Mortgagee notice after the occurrence of any such Event of Default and stating the intention of Lessor either to, on a date specified in such notice, to re-enter and take possession of the Leased Premises and the Improvements thereon. Notwithstanding such notice, this Lease and the Term shall not be terminated nor shall Lessor re-enter and take possession of the Leased Premises or the Improvements, if:

(a) such Event of Default can be cured by the payment of a fixed monetary amount and Leasehold Mortgagee shall make such payment within ninety (90) days after the date such notice was given: or

(b) such Event of Default can be cured with the exercise of reasonable diligence by Leasehold Mortgagee after obtaining possession of the Leased Premises and the Improvements, and Leasehold Mortgagee or Leasehold Mortgagee's designee, within one hundred eighty (180) days after the date of such notice, obtains the interest of Lessee in this Lease or Leasehold Mortgagee commences such proceedings (including, but not limited to, the filing of a petition for the appointment of a receiver) as it may deem necessary to obtain such possession (except that if Leasehold Mortgagee is precluded, notwithstanding the filing of a petition to the bankruptcy court for a waiver, from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period during which leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure) and thereafter diligently prosecutes such action and promptly upon obtaining such possession (or promptly upon its designee obtaining such possession) thereupon promptly commences (or its designee commence); and thereafter diligently pursues, the curing of such Event of Default; or

(c) such Event of Default is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises and the improvements were obtained by Leasehold Mortgagee or its designee, and Leasehold Mortgagee, within one hundred eighty (180) days after the date such notice is given, either obtains title to all of Lessee's right, title and interest in and to this Lease (or Leasehold Mortgagee's designee obtains such interest) or publishes any required notice of foreclosure or institutes foreclosure proceedings, as the case maybe be, and thereafter proceeds with diligence to acquire (or have its designee acquire) the

interest of Lessee in the Lease (except that if Leasehold Mortgagee is precluded from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period during which Leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure), and such Event of Default, to the extent that the same shall have occurred prior to such acquisition of the interest of Lessee in this Lease by Leasehold Mortgagee or its designee, shall thereupon be deemed to have been waived.

### **11.2.3 Lease Termination; New Lease:**

(a) Lessor does not have the right to terminate this Lease in the event of an Event of Default by Lessee. However, if, for some reason, this Lease is terminated by Lessor prior to its stated expiration date, Lessor shall give Leasehold Mortgagee notice of such termination and shall enter into a new lease for the Leased Premises that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage or, at the request of Leasehold Mortgagee, with an assignee, designee, or nominee of Leasehold Mortgagee for the remainder of the Term of this Lease effective as of the date of such termination, at the rate and upon the same covenants, Leases, terms, provisions and limitations as are herein contained, provided that:

(i) Leasehold Mortgagee makes written request upon Lessor for such new lease within one hundred eight (180) days after the giving of such notice of termination and such written request is accompanied by payment to Lessor of all amounts then due to Lessor in connection with the Leased Premises and the Improvements that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage of which Lessor shall have given Leasehold Mortgagee notice; and

(ii) Leasehold Mortgagee pays or causes to be paid to Lessor at the time of the execution and delivery of such new lease any and all additional sums which would at the time of the execution and delivery thereof due under this Lease but for such termination and pays or causes to be paid any and all expenses, including reasonable attorneys' fees, court costs, and disbursements, incurred by Lessor concerning the Leased Premises and Improvements in connection with any such termination or in connection with the execution and delivery of such new lease and any conveyance of title to the Improvements; and

(iii) Leasehold Mortgagee agrees to cure, within sixty (60) days after the execution and delivery of such new lease, all uncured Events of Default of which Lessor shall have given Leasehold Mortgagee notice (except any Event of Default which is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises, or the Improvements were obtained, to the extent that same shall have occurred prior to the execution and delivery of such new lease, shall be deemed to have been waived), or if any such Event of Default cannot be cured within such period, Leasehold Mortgagee agrees to commence, within such period, to cure such Event of Default and thereafter pursues the same with due diligence.

(b) Any new lease made pursuant to this subsection 11.2.3 shall (i) have the same relative priority in time and in right as this Lease, and (ii) have the benefit of all of the right, title, powers and privileges of Lessee hereunder in and to the Leased Premises

and the Improvements. At Lessee's request, Lessor will enter into an agreement with Leasehold Mortgagee granting to Leasehold Mortgagee the rights set forth in this Section 11.2.

#### **11.2.4 Notice to Lessor and Leasehold Mortgagee.**

If Lessee shall furnish Lessor with a written notice setting forth the name and address of a Leasehold Mortgagee, Lessor shall thereafter send to such Leasehold Mortgagee a copy of any notice given to Lessee under this Lease, and no such notice shall be deemed to have been properly given unless and until a copy thereof shall have been sent to Leasehold Mortgagee at the address specified in such notice.

#### **11.2.5 Performance by Leasehold Mortgagee.**

No Leasehold Mortgagee shall have any liability for the performance of any of the covenants, conditions or obligations of Lessee under this Lease unless and until such time as Leasehold Mortgagee acquires title to the leasehold estate created by this Lease.

### **11.3 Non-subordination.**

Nothing contained in this Section 11, or in any other Section of this Lease shall be deemed to allow a subordination of Lessor's reversionary estate in any part or portion of the Leased Premises leased to Lessee. In no event will such subordination be made. Lessee and each Subtenant may mortgage only its leased or sub-leasehold interest in the Leased Premises.

### **11.4 Leasehold Mortgagee's Rights Agreements.**

Lessor covenants and agrees with Lessee that Lessor will, at the request of Lessee made from time to time and at any time, enter into a lender's rights agreement with any Leasehold Mortgagee (or potential Leasehold Mortgagee) identified by Lessee, which lenders' rights agreement shall be consistent with the terms and provisions contained in this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages. Within twenty (20) Business Days of Lessee's request for a Leasehold Mortgagee's rights agreement pursuant to the provisions of this Section 11.4, Lessor shall execute and deliver to Lessee such a lender's rights agreement benefiting the identified Leasehold Mortgagee (or potential Leasehold Mortgagee) and such Leasehold Mortgagee's Leasehold Mortgage (or potential Leasehold Mortgagee's potential Leasehold Mortgage), which executed Leasehold Mortgagee's rights agreement shall be commercially reasonable and in a form and substance that are reasonably acceptable to such Leasehold Mortgagee (or potential Leasehold Mortgagee) and that is consistent with, and at the option of such Leasehold Mortgagee (or potential Leasehold Mortgagee) incorporates, the terms and provisions of this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages (such as the Leasehold Mortgagee notice provisions and the Leasehold Mortgagee cure rights provisions of this Section 11).

## **12. Defaults/Arbitration.**

### **12.1 Events of Default by Lessee.**

Each of the following shall constitute an Event of Default by Lessee:

(a) The filing by Lessee of a voluntary proceeding or the consent by Lessee to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessee or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessee in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessee to perform or to observe any material covenant, obligation or requirement of Lessee arising under this Lease not specifically named as an Event of Default in this Section 12.1, and the continuation of such failure for thirty (30) days after receipt of written notice from Lessor specifying the nature and extent of such failure, or if such failure cannot reasonably be cured within such thirty (30) day period, the failure of Lessee to commence to cure such failure within such thirty (30) day period and to diligently pursue same to completion.

## **12.2 Events of Default by Lessor.**

Each of the following shall constitute an Event of Default by Lessor:

(a) The filing by Lessor of a voluntary proceeding or the consent by Lessor to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessor or appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessor in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessor to perform or to observe any material nonmonetary covenant, obligation or requirement of this Lease not specifically named as an Event of Default by Lessor in this Section 12.2, and the continuation of such failure for thirty (30) days after receipt of written notice from Lessee specifying the nature and extent of any such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of Lessor to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such effort to cure to completion.

(d) The failure of Lessor to execute and deliver any document, agreement or instrument (such as a non-disturbance, attornment and subordination agreement with a Subtenant, any estoppel certificate, any permit application, any subdivision plan, any agreement with any Leasehold Mortgagee or Subtenant, any deed, ground lease or ground lease amendment) requested by Lessee and required to be given by Lessor in accordance with the provisions of this Lease and the continuation of such failure for twenty (20) days after written notice from Lessee specifying the nature and extent of such failure.

### **12.3 Remedies.**

Should an Event of Default by Lessee occur hereunder, Lessor may, by written notice to Lessee, initiate the procedures contained in Section 12.6. Should an Event of Default by Lessor occur hereunder, Lessee may, by written notice to Lessor, initiate the procedures contained in Section 12.6. This Lease may not be terminated by Lessee or Lessor as a result of the occurrence of an Event of Default by the other Party hereunder. Lessor shall not have the right to terminate this Lease and/or the Term of this Lease, nor to re-enter and take possession of the Leased Premises or the Improvements as a result of an Event of Default by Lessee. All remedies under this Lease shall be cumulative and not restrictive of other remedies (but not the right of termination), including without limitation, specific performance. The initiation of any remedy by Lessor or Lessee shall not constitute or be deemed an election of remedies by it and such Party may invoke two or more remedies hereunder concurrently or consecutively. No Party may seek or obtain an award of consequential or punitive damages against the other Party.

### **12.4 Waiver.**

Failure of Lessor or Lessee to exercise any right or remedy hereunder shall not impair any of its rights nor be deemed a waiver thereof and no waiver of any of its rights shall be deemed to apply to any other such rights, nor shall it be effective unless in writing and signed by the waiving Party.

### **12.5 Attorneys' Fees.**

If either Lessor or Lessee brings suit or other legal proceedings or arbitration proceeding to enforce the provisions of this Lease against the other, then each Party in such suit or proceeding shall bear its own attorneys' fees and litigation and/or arbitration costs and expenses incurred by it in connection with such suit or proceeding.

### **12.6 Arbitration.**

In the event any dispute, controversy or claim between or among the Parties hereto arises under this Lease (a "**Dispute or Controversy**"), including a claim that an Event of Default has occurred, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement. In the event a Dispute or Controversy arises, any Party hereto shall have the right to notify the other Party hereto that the notifying Party has elected to implement the procedures set forth in this Section 12.6. Within fifteen (15) days after delivery of any such notice by one Party to the other Party regarding a Dispute or Controversy, a representative of each of the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained within fifteen (15) days after the meeting of the Parties representatives for such purpose, or such longer period as the Parties may agree upon, then either Party may by notice to the other Party (the "**Arbitration Notice**") submit the Dispute or Controversy to arbitration in accordance with the provisions of this Section 12.6 and **Exhibit "B"** attached hereto (the "**Arbitration Procedures**"). The Arbitration Notice must comply with the Arbitration Procedures. Upon receipt of the Arbitration Notice, all Parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section 12.6 and

**Exhibit “B”** without regard to the justifiable character or executor nature of such Dispute or Controversy. Each Party hereto agrees that any Dispute or Controversy which is not resolved pursuant to this Section shall be submitted to binding arbitration hereunder and shall be resolved exclusively and finally through such binding arbitration in accordance with the Arbitration Procedures (the “**Arbitration**”). This Section 12.6 and **Exhibit “B”** hereto are and hereby constitute a written agreement by the Parties hereto to submit to arbitration any such Dispute or Controversy arising after the Commencement Date within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code. Notwithstanding any provision of this Lease to the contrary, any Party hereto may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Tarrant County, Texas. In the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the Arbitration Procedures, notwithstanding that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the Parties hereto expressly agree that the Arbitration Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

### **13. Representations.**

#### **13.1 Representations by Lessee.**

Lessee represents and warrants to Lessor that Lessee (i) is validly existing limited liability company under the laws of the State of Delaware and is in good standing in the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

#### **13.2 Representations by Lessor.**

Lessor represents and warrants to Lessee that Lessor (a) is a constitutionally chartered city validly existing under the laws of the State of Texas; (b) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; and (c) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

### **14. Insurance.**

#### **14.1 Insurance.**

During the Term, Lessee, at no cost or expense to Lessor, will keep and maintain, or cause the Subtenants to keep and maintain, the insurance set forth below. Lessee shall not commence work on the Improvements until Lessee has obtained or caused to be obtained all the insurance required under this Lease, nor shall Lessee allow any work on the Improvements to commence until all similar insurance of the contractor or subcontractor performing work on the Improvements has been obtained. All insurance policies provided under this Lease will be written on an “occurrence” basis. The insurance requirements shall remain in effect throughout the Term. The insurance required by this Lease consists of the following:

(a) Worker's Compensation Insurance, statutory policy as required by law; Employers Liability Insurance of not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease-each employee, \$1,000,000.00 disease-policy limit.

(b) Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, covering but not limited to the indemnification provisions of this Lease, fully insuring Lessor's liability for injury to or death of employees of Lessee and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

(c) Commercial Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.

(d) Umbrella Insurance: Lessee shall obtain and maintain at all times during the construction of the Improvements umbrella insurance. Limits of liability shall be \$2,000,000.00.

#### **14.2 Conditions.**

Each insurance policy to be furnished by Lessee shall include the following conditions by endorsement to the policy:

(a) Name Lessor, and the City, as additional insured as to all applicable coverage, except worker's compensation. For General Liability purposes, this requirement extends to premises/operations as well as products/completed operations.

(b) Each policy will require that thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to Lessor by certified mail to:

City of Arlington Human Resources  
Post Office Box 90231 MS# 63-0790  
Arlington, Texas 76004-3231

However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to Lessor is required. Lessee shall also notify Lessor within twenty-four (24) hours after receipt of any notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s).

#### **14.3 Miscellaneous Insurance Provisions.**

(a) For purposes of this Section 14, the term "Lessor" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of Lessor and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of Lessor.

(b) The policy phrase “Other Insurance” shall not apply to Lessor where Lessor is an additional insured on the policy.

(c) All provisions of this Lease concerning liability, duty and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

(d) All insurance prescribed by this Section 14 shall (i) be procured from financially sound and reputable insurers licensed to do business in the State of Texas and have an A.M. Best rating of not less than A VII or, if not rated with A.M. Best, the equivalent of A.M. Best’s surplus size of A VII or better, (ii) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved, and (iii) be evidenced by a certificate of insurance naming Lessor as an additional insured, as its interest may appear.

(e) The General and Automobile liability policies required herein shall be written with an “occurrence” basis coverage trigger.

#### **14.4 Waiver of Subrogation.**

Lessee agrees to the following:

(a) Lessee hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against Lessor, it being the intention that the insurance policies shall protect all parties to this lease and be primary coverage for all losses covered by the policies; and

(b) Companies issuing the insurance policies and Lessee shall have no recourse against Lessor for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of Lessee; and

(c) Approval, disapproval or failure to act by Lessor regarding any insurance supplied by Lessee (or any subcontractors) shall not relieve Lessee of full responsibility or liability for damages and accidents as set forth in the lease documents. Neither shall the insolvency or denial of liability by the insurance company exonerate Lessee from liability.

### **15. Miscellaneous Provisions.**

#### **15.1 Force Majeure.**

For the purpose of any of the provisions of this Lease, neither Lessor, nor Lessee, as the case may be, nor any successor in interest, shall be considered in breach of or default in any of its obligations, in the event of enforced delay in the performance if such obligations to due Force Majeure. For purposes of this Lease, Force Majeure shall mean acts of God (including storms, floods or other casualty), war, invasion, insurrection, taking by eminent domain laws, the lack of labor or supplies due to an act of God, strike or labor disputes or delays beyond the control of the affected Party, or order of government authorities. In the event of the occurrence of any such

enforced delays, the time or times for the performance of the covenants, provisions, and agreements of this Lease shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay). The affected Party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements and provided further, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected Party, and the affect Party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing Party or Parties when such course is, in the judgment of the affect Party, unfavorable to the affected Party. Notwithstanding the above (a) Lessee may not rely on its own acts or omissions as grounds for delay in its performance and (b) the absence of immediately available funds shall not be grounds for delay.

### **15.2 Estoppel Certificates.**

Lessor and Lessee, at any time and from time to time, upon not less than twenty (20) Business Days prior written notice from a Party hereto, or to a person designated by such Party, such as a tenant or a mortgagee or lender of Lessee, shall execute, acknowledge, and deliver to the Party requesting such statement, a statement in reasonably acceptance form to the requesting Party certifying, among other matters, (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating whether or not, to the best of knowledge of the signer of such certificate, Lessor and Lessee is the breach and/or default in performance of any covenant, agreement, or condition contained in this Lease and, if so, other factual matters reasonably requested in such estoppel certificate concerning this Lease, the Leased Premises, the Improvements and/or the Economic Development Incentive Agreement, it being intended that any such statement delivered hereunder may be relied upon by the Party requesting such statement and/or any person not a Party to this Lease (if such other person is identified at the time such certificate was requested).

### **15.3 Lessor's Rights of Access.**

Lessee agrees that Lessor and Lessor's duly authorized agents shall have the right to all reasonable times during normal business hours and following reasonable prior notice to enter upon the Leased Premises and the Improvements and to examine and inspect the same, provided, however, Lessor and Lessor's duly authorized agents shall not have the right to enter or inspect portions of the Leased Premises and the Improvements deemed off limits by Lessee, unless accompanied by a representative of Lessee.

### **15.4 Notices.**

All notices or statements given pursuant to or concerning this Lease shall be in writing and sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any notice sent by (a) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (b) personal messenger shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the Business Day following the date the notice is deposited with the overnight delivery service addressed as specified below:

Lessee: Ballpark Parking Partners, LLC  
c/o Secretary  
1000 Ballpark Way, Suite 400  
Arlington, Texas 76011

With a copy to: Ballpark Parking Partners, LLC  
c/o General Counsel  
1000 Ballpark Way, Suite 400  
Arlington, Texas 76011

Lessor: Arlington Convention Center Development Corporation  
City Manager's Office  
c/o City Manager  
101 W. Abram Street  
Arlington, Texas 76004-3231

Such addresses may be changed by giving the other Party ten (10) days' notice in writing. Lessee, by notice to the Lessor, may add additional notice addressees.

**15.5 No Broker Fees.**

Lessor and Lessee each represent and warrant for itself that it has not dealt with any broker or agent in connection with this Lease and each covenants and agrees, to the extent allowed by law, to indemnify and hold the other harmless from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this representation and warranty.

**15.6 No Waiver.**

No failure on the part of Lessor or Lessee to enforce any covenant or provision contained in this Lease nor any waiver of any right under this Lease shall discharge or invalidate such covenant or provision or affect the right of the other Party to enforce the same in the event of any subsequent default.

**15.7 Severability.**

If any provision of this Lease or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to any other Person or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law. In the event any provision of this Lease is illegal, invalid or unenforceable under present or future laws, each Party reserves the right to pursue any and all remedies available to them at law or equity (including arbitration proceedings). The provisions of this Section 15.7 shall survive the termination of this Lease.

**15.8 Amendment.**

Neither the Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge, or termination is sought.

**15.9 Terminology.**

All personal pronouns used in this Lease, whether used in the masculine, feminine or neutral gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Unless otherwise expressly state, titles of Sections, Subsections and Paragraphs of this Lease are for convenience only, and neither limit nor amplify the provisions of this Lease, and all references in the Lease of Sections, Subsections or Paragraphs shall refer to the corresponding Section, Subsection or Paragraph of this Lease unless specific reference is made to the articles, sections or subdivisions of another document or instrument.

**15.10 Counterparts.**

This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

**15.11 Binding Agreement.**

Subject to the restrictions on Dispositions set forth herein, this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors and assigns. Whenever in this Lease a reference to Lessor, Lessee or any Person is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Lessor, Lessee or such Person.

**15.12 Interpretation.**

No provision of this Lease shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

**15.13 Governing Law/Venue.**

This Lease and the obligations of Lessor and Lessee hereunder shall be interpreted, construed and enforced in accordance with the Applicable Laws of the State, including conflicts of laws. Subject to the provisions of Section 12.6, venue shall lie in Tarrant County, Texas.

**15.14 Relationship of Parties.**

No express or implied term, provision or condition of this Lease shall or shall be deemed to constitute Lessor and Lessee as partners or joint venturers.

### **15.15 Indemnity.**

**Lessee is and shall be in exclusive control of the Project, and Lessor shall not in any way whatsoever be liable for any injury or damage to any person or property happening on, about or in connection with the Leased Premises or any part thereof. Lessee shall indemnify and hold harmless Lessor, and City, and all entities claiming by, through or under Lessor from all claims, suits, actions and proceedings whatsoever which may be brought or instituted on account of, growing out of, occurring from, incident to or resulting from, directly or indirectly, any and all injuries or damages (including, without limitation, death) to persons or property arising out of the use of occupation of the Leased Premises, and all losses, costs, damages and expenses (including, without limitation, reasonable attorney's fees and other costs of defending against such claims, suits, actions and proceedings), whether or not such injuries or damages (including, without limitation, death) result from, or are claimed to have resulted from, in whole or in part, the negligence of Lessor, City, or any Person claiming by, through or under Lessor. Lessee shall assume on behalf of Lessor, and City, and all entities claiming by, through or under Lessor, and conduct with due diligence and in good faith, the defense of all such claims, suits, actions and proceedings against Lessor, and City, or any Person claiming by, through or under Lessor, whether or not Lessee is jointed therein, even if such claims, suits, actions or proceedings be groundless, false or fraudulent, and Lessee shall bear the costs of all judgments and settlements in connection therewith. The above provisions of this Section 15.15 shall not apply to injury or damage caused by the gross negligence or wrongful willful acts or omissions of Lessor, City and their agents, employees and contractors.**

### **15.16 Representatives Not Individually Liable.**

No member, official, representative, or employee of Lessor shall be personally liable to Lessee or any successor in interest in the event of any default or breach by Lessor for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease. No partner, member, representative, or employee of Lessee or any of its members shall be personally liable to Lessor in the event any default or breach by Lessee for any amount which may become due to Lessor or on any obligations under the terms of this Lease.

### **15.17 Entire Agreement.**

This Lease and the Economic Development Incentive Agreement (and all agreements executed pursuant to the terms of the Economic Development Incentive Agreement by Lessee and Lessor, including the Hotel Ground Lease (provided the Lessee hereunder is also the "lessee" under such ground lease) and the Convention Center Annex Ground Lease (provided the Lessee hereunder is also the "lessee" under such ground lease) incorporate all prior negotiations and discussions between the Parties regarding the subject matter and represent the entire agreement of Lessor and Lessee for the Project.

#### **15.18 Third Party Beneficiary.**

Except as otherwise provided in Subsection 10.2 and Section 11, nothing contained in this Lease shall be construed to confer upon any other party the rights of a third party beneficiary.

#### **15.19 Payment or Performance on Saturday, Sunday or Holiday.**

Whenever the provisions of this Lease call for any payment or the performance of any act on or by a date that is not a Business Day, including the expiration date of any cure periods herein, then such payment or such performance shall be required on or by the immediately succeeding Business Day.

#### **15.20 Incorporate into Agreement.**

All exhibits, schedules, and recitals form a part of this Lease.

#### **15.21 Applicable Laws.**

Nothing in this Lease shall be construed to (a) limit or prevent Lessee from challenging at law or in equity the applicability of any Applicable Law and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (b) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Lease, no provision of this Lease shall be construed to require Lessee to comply with any Applicable Law during the period that Lessee may be pursuing a bona fide challenge of this applicability, lawfulness, and/or enforceability of such Applicable Law (unless such law requires compliance during any such challenge). If Lessee's challenge is successful, Lessee shall not be required by the provisions of this Lease to comply with such Applicable Law.

#### **15.22 Consents and Approvals.**

Lessor and Lessee commit to work harmoniously with each other, and except in instances (if any) where a consent or approval is specified to be within the sole discretion of either Party, any consent or approval contemplated under this Lease shall not be unreasonably withheld, conditioned or delayed. Unless a shorter or longer time period is specified in this Lease, Lessor shall give or withhold (provided such withholding is reasonable under the circumstances, unless a sole discretion standard expressly applies) such approvals, certifications, or consents within twenty (20) Business Days.

#### **15.23 Good Faith and Fair Dealing.**

The Parties covenant and agree each to the other that its conduct under this Lease and the interpretation and enforcement of the provisions hereof, shall be characterized by good faith and fair dealings so that the objectives of each Party as set forth in this Lease may be achieved.

**15.24 Further Assurances.**

In connection with the execution and delivery of this Lease and the execution, delivery and recordation of any other instrument or agreement, provided for or contemplated by this Lease, Lessor or Lessee, at the written request of the other Party hereto, shall, within twenty (20) Business Days of such written request, execute and deliver to the requesting Party such other documents, certifications or agreements that are reasonably necessary to effectuate the intent of this Lease, such as bills of sale, assignments of leases, or certifications required by Applicable Law in connection with the recordation of instrument or agreements among the Land Records.

**15.25 Waiver of Immunity.**

Lessor hereby waives its governmental immunity from suit and immunity from liability as to any arbitration proceeding and/or legal action brought by Lessee resulting from an uncured default by Lessee. To effectuate such waiver, the Parties hereby agree, for purposes of this Lease only, that this Lease is a contract subject to Subchapter I, Chapter 271, Texas Local Government Code, as amended.

**15.26 Assignment by Lessor.**

This Lease may not be transferred or assigned by Lessor unless and until Lessee and its Mortgagees are provided with assurances that all Hotel Grants (as that term is defined in the Economic Development Incentive Agreement) will be timely paid and that the City is not being released from its obligations under Section 6 of the Economic Development Incentive Agreement to cause such Hotel Grants to be timely paid.

**SIGNATURES ON NEXT PAGE**

**IN WITNESS WHEREOF**, Lessor and Lessee executed this Lease under seal, the day and year first about written.

WITNESS:

LESSOR:

ARLINGTON CONVENTION CENTER  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_  
President of the Board of Directors

WITNESS:

LESSEE:

ARLINGTON BALLPARK DISTRICT  
ENTERTAINMENT BLOCK, LLC, a  
Delaware limited liability company,

By: Arlington Ballpark District Entertainment  
Block Investors, LLC, its Managing Member

By: \_\_\_\_\_

By: \_\_\_\_\_(SEAL)  
Its: \_\_\_\_\_

STATE OF TEXAS §  
  §  
  §  
COUNTY OF TARRANT §

**ARLINGTON CONVENTION CENTER  
DEVELOPMENT CORPORATION**

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, in the County and State aforesaid, before me, the subscriber, a Notary Public authorized to take acknowledgments and proofs in said County and State, personally appeared \_\_\_\_\_, the President of the Board of Directors of the **ARLINGTON CONVENTION CENTER DEVELOPMENT CORPORATION**, a non-profit local government corporation, , who I am satisfied, is the person who, as such officer of said public body, signed, sealed and dated the within instrument made by said public body, and he did acknowledge that he, as such officer, signed and delivered the same on behalf of said public body for the uses and purposes therein set forth, and that said instrument is the voluntary act and deed of said public body duly authorized by a proper resolution of its Members.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:

STATE OF MARYLAND §  
  §  
  §  
CITY/COUNTY OF \_\_\_\_\_ §

**ARLINGTON BALLPARK DISTRICT  
ENTERTAINMENT BLOCK, LLC**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ as the Authorized Person of **ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC**, a limited company, organized under the laws of Delaware.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:

**Exhibit "A"**

**Plat Depicting the  
Leased Premises**

## Exhibit "B"

### Arbitration Procedures

- B.1 In the event a Party, pursuant to the provisions of Section 12.6, has elected to provide the other Party with an Arbitration Notice, such Arbitration Notice shall include such Party's determinations of the applicable issues of the Dispute and Controversy subject to such Arbitration. In the event that the Arbitration Notice has been sent in accordance with the provisions hereof and the Lease, the Parties shall mutually agree, within fifteen (15) Business Days of the deemed delivery date of the Arbitration Notice to the appointment of a single arbitrator (the "**Arbitrator**") to handle the Arbitration. If the Parties are unable to mutually agree upon the Arbitrator within the fifteen (15) Business Days described above, any Party may request the American Arbitration Association to independently select, within thirty (30) Business Days after such Arbitration Notice, an Arbitrator who has the qualifications to serve as the single Arbitrator to resolve this Arbitration. The Arbitration must take place in Tarrant County and be conducted by an Arbitrator that has no conflict of interest.
- B.2 Within fifteen (15) Business Days after the appointment of the Arbitrator, each Party shall supply the Arbitrator with such documents, materials or other evidence or written arguments as it or the Arbitrator desires, including such Party's proposed determinations of the applicable issues subject to such Arbitration. Each Party shall thereafter have an additional period of ten (10) Business Days to supply any rebuttal or other information it desires. The Arbitrator, in his/her sole discretion, may also request in writing, specific information and/or a hearing and shall alone otherwise determine the conduct of the Arbitration. Any information delivered or communicated during Arbitration by a Party shall be simultaneously delivered or communicated to (i) the other Party and (ii) the Arbitrator. The Arbitration shall be confidential, and the Parties shall maintain the confidential nature of the arbitration proceeding, arbitration hearing and award, except to the extent disclosure is required to regulators, to insurers, pursuant to an enforcement proceeding, or as otherwise required by applicable law.
- B.3 The Arbitrator shall determine all matters necessary to resolve the dispute, including matters beyond the expertise of the Arbitrator. The Arbitrator shall be permitted to employ other professional advisors or experts as the Arbitrator deems reasonably necessary, at the expense of the Parties.
- B.4 All costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in connection with an Arbitration shall be borne equally by the Parties, subject to reimbursement as set forth herein. Within forty-five (45) Business Days after the selection of an Arbitrator, the Arbitrator shall select one of the proposed determinations submitted by one of the Parties (and the Arbitrator shall not have the power to add to, modify, or change any of proposed determinations of the Parties). For purposes of this provision, the Party whose position is adopted by the Arbitrator will be deemed the prevailing Party. While each Party shall advance  $\frac{1}{2}$  of the costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in

connection with the Arbitration, the prevailing Party will be reimbursed by the non-prevailing party the ½ of the costs and expenses referenced herein within 30 days of the Arbitrator's final decision. All other costs and expenses incurred by the Parties shall be borne by the Party incurring same.

- B.5 The Parties agree to act in good faith with respect to any communication with the Arbitrator and the Arbitration process.
- B.6 Time shall be of the essence with respect to these Arbitration Procedures, and the Parties shall take all reasonable actions necessary to cause any necessary Arbitration hearing to occur promptly, and the Arbitrator shall be directed to arbitrate the dispute and issue its decision as soon as reasonably practicable, but in no event later than forty-five (45) Business Days after the appointment of the Arbitrator.
- B.7 The Arbitration shall not relieve any Party from any of its respective obligations under this Lease during the term of any such Arbitration (other than in respect of the subject matter of the dispute that is being arbitrated).
- B.8 In the event of a dispute between one or more of the Parties concerning this Lease and the Economic Development Incentive Agreement, and one or more of the Parties have elected to resolve such dispute pursuant to the Arbitration Procedures contained herein or in the Economic Development Incentive Agreement, there shall only be one Arbitration proceeding concerning such dispute (and not separate proceedings under this Lease and the Economic Development Incentive Agreement or under any of the other ground leases executed pursuant to the terms of the Economic Development Incentive Agreement). If more than one Arbitration proceeding has been initiated, such proceedings shall be consolidated.

**Exhibit "G-3"**  
**Form of the Hotel Ground Lease**

**IN THE EVENT THAT THE ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT HAS BEEN BIFOCATED INTO TWO AGREEMENTS, ONE FOR THE HOTEL PROJECT AND ONE FOR THE ENTERTAINMENT PROJECT COMPLEX IN ORDER TO REFLECT SUCH BIFUCATION, DEVELOPER SHALL HAVE THE RIGHT TO MODIFY THIS FORM TO REFLECT THE EXISTANCE OF TWO ECONOMIC DEVELOPMENT INCENTIVE AGREEMENTS**

**GROUND LEASE AGREEMENT  
FOR HOTEL**

**Between**

**ARLINGTON CONVENTION CENTER DEVELOPMENT CORPORATION**

**as Lessor**

**and**

**ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC**

**as Lessee**

\_\_\_\_\_, 20\_\_\_\_

## GROUND LEASE AGREEMENT FOR HOTEL

THIS GROUND LEASE AGREEMENT FOR HOTEL is made and entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **ARLINGTON CONVENTION CENTER DEVELOPMENT CORPORATION**, a Texas non-profit local government corporation acting on behalf of the City of Arlington, Texas (“**Lessor**”) and **ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC**, a Delaware limited liability company (“**Lessee**”).

### RECITALS

A. Lessor owns the Leased Premises (as that term is defined herein). Lessor, Lessee the City of Arlington, a home-rule city and municipal corporation of Tarrant County, Texas (“**City**”) and Arlington Ballpark District Entertainment Block, Inc., a Maryland corporation and a part owner of Lessee (“**ABDEB**”), have entered into the Economic Development Incentive Agreement (as that term is defined herein) concerning the development, construction leasing and operation of the Project (as that term is defined herein).

B. Pursuant to Section 6 (j) of the Economic Development Incentive Agreement, Lessee is obligated to lease the Leased Premises from Lessor as a condition precedent to the payment of Hotel Grants, as the term is defined in the Economic Development Incentive Agreement.

C. Lessor, by Resolution \_\_\_\_\_ adopted on December 15, 2015, among other things, authorized the President of the Board of Directors of Lessor to negotiate and enter into various agreements in connection with the Economic Development Incentive Agreement including a lease with Lessee for the Leased Premises.

**NOW, THEREFORE**, in consideration of the payment of Ten and 00/100 Dollars (\$10.00) and the mutual covenants, conditions and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

#### **1. Definitions.**

Unless the context or use clearly indicates another or different meaning or intent, for purposes of this Lease, and in addition to terms defined elsewhere in this Lease, the following definitions shall generally apply to the following capitalized words or terms:

“**Affiliate**” means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, controlled by, or is under common control with the specified Person. For the purpose of this definition, “**control**” means the ability to directly or indirectly, by voting securities, partnership or member interests, contract or otherwise, direct or cause the direction of the policies or management of the specified Person. Two persons may be Affiliates even if such Persons have different minority equity owners that each have the right to approve certain actions of such Person, such as the sale, financing or leasing of an asset of such Person.

**“Alternative Hotel Developer”** means a Person (and/or a direct or indirect affiliate of such Person) that: (i) owns a major league baseball or football team; (ii) is an affiliate of one of the direct or indirect owners of Lessee; or (iii) has demonstrated experience in owning and/or operating on a full-service basis comparable hotel properties and has a net worth in excess of Fifty Million Dollars (\$50,000,000).

**“Applicable Law”** means, subject to the provisions of Section 15.21 hereof, any law, ordinance, regulation, properly adopted requirement or order of any federal, state, or local agency (including, but not limited to, Lessor), court, or other governmental body, applicable from time to time to the acquisition, leasing, design, construction, equipping, financing, ownership, or operation of the Leased Premises and/or the Improvements or the performance of any obligations under any agreement entered into in connection with this Lease.

**“Arbitration”** is defined in Section 12.6 of this Lease.

**“Arbitration Notice”** is defined in Section 12.6 of this Lease.

**“Arbitration Procedures”** is defined in Section 12.6 of this Lease.

**“Arbitrator”** is defined in Section B.1 of the Arbitration Procedures.

**“Business Day”** means any day except Saturday, Sunday, or any other day on which banking institutions are legally authorized to close in the City of New York or Tarrant County, Texas.

**“Commencement Date”** means the date of this Lease.

**“Disposition”** means a transaction through which all or a part of Lessee’s interest in the Project is transferred to another Person by means of the sale, lease, sublease, assignment, conveyance or other hypothecation of this Lease; such term shall not include space and subground leases with Subtenants for sites occupied by Subtenants or operating agreements with occupants concerning the Project made in accordance with this Lease and shall not include the granting of a Mortgage or collateral assignment of Lessee’s interest in this Lease.

**“Economic Development Incentive Agreement”** means that certain Economic Development Incentive Agreement, dated December 15, 2015, by and among Lessor, Lessee and ABDEB, as amended, modified, supplemented or restated from time to time.

**“Encumbrances”** mean those matters of record which do not render title of the land unmarketable or uninsurable at ordinary rates by a title insurance company licensed in the State of Texas, as selected by Lessee, and which do not materially interfere with or materially increase the cost of the development of and/or operation of the Project as contemplated by the this Lease and the Economic Development Incentive Agreement.

**“Event of Default by Lessee”** means any of those events, occurrences and circumstances so designated in Section 12.1 hereof.

**“Event of Default by Lessor”** means any of those events, occurrences and circumstances so designated in Section 12.2 hereof.

**“Expire,” “Expired” or “Expiration”** means the expiration of the Term of this Lease by reason of lapse of time, and not by reason of any Event of Default.

**“Impositions”** means, collectively, all real estate taxes and assessments imposed by the State or any subdivision thereof, including the Lessor or any other tax imposed upon or levied against real estate or upon owners of real estate as such rather than persons generally, including taxes imposed on leasehold improvements which are assessed against Lessee under this Lease, payable with respect to or allocable to the Project, including the Leased Premises, the Improvements, and all other buildings and improvements situated thereon.

**“Improvements”** means any of the buildings and other improvements constructed on the Leased Premises by Lessee. “Improvements” shall not refer to any Subtenant Improvements, including any improvements and/or modifications made by Subtenant to such Subtenant’s leased or licensed premises at the Project.

**“Land Records”** means the records of the County Clerk of Tarrant County, Texas.

**“Lease”** means this Ground Lease Agreement for Hotel, together with any amendments, modifications, supplements, restatements or replacements thereof.

**“Leased Premises”** shall mean that certain parcel of land located in the City of Arlington, Texas and described as Block \_\_\_\_ owned by Lessor on the plat attached hereto and made part hereof as **Exhibit “A”**. **[DEVELOPER SHALL HAVE THE RIGHT TO MODIFY THIS DEFINITION IN THE EVENT THAT THE LEASED PREMISES CONSISTS OF ONE OR TWO CONDOMINIUM UNITS.]**

**“Leasehold Mortgage”** means, with respect to the Leased Premises and the Improvements, a mortgage or any other instrument securing the payment of a debt that encumbers Lessee’s interest, if any, in the Ground Lease for the Leased Premises and/or the Economic Development Incentive Agreement. **“Leasehold Mortgage”** shall not include a mortgage or any other instrument securing payment of a debt of a Subtenant and/or any or all of its Affiliates that encumbers the interests of such Subtenant in any Sublease of a part of the Leased Premises and/or Improvements.

**“Leasehold Mortgagee”** means the Person to which all or any part of the interest of the Lessee in the Economic Development Incentive Agreement and/or the Ground Lease for the Leased Premises and/or the Improvements is transferred as security under a Leasehold Mortgage.

**“Lessee”** means Arlington Ballpark District Entertainment Block, LLC, a Delaware limited liability company, as the lessee under this Lease, and the successors in title and assigns thereof permitted under the terms of this Lease.

**“Lessor”** means Arlington Convention Center Development Corporation, a non-profit local government corporation acting on behalf of the City of Arlington, Texas, as amended and

supplemented from time to time, as the lessor under this Lease, and the successors, successors-in-title and assigns thereof.

“**Notice**” means a written advice or notification required or permitted by this Lease, as more particularly provided in Section 15.4.

“**Parties**” means Lessor and Lessee.

“**Party**” means Lessor or Lessee.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, unincorporated organization or other entity or any government or any agency or political subdivision thereof.

“**Project**” means the Leased Premises and the Improvements.

“**Rent**” shall have the meaning set forth in Section 3.

“**State**” means the State of Texas.

“**Sublease**” means a lease, license or other occupancy agreement between Lessee and a Subtenant for a portion of the Project.

“**Subleases**” means two or more Subleases.

“**Subtenant**” means any Person that is or may hereafter be the sublessee or subtenant under any Sublease, and the occupant of a portion of the Improvements.

“**Subtenant Improvements**” means the construction, renovation, rehabilitation, and installation of a Subtenant’s equipment, fixtures, furniture, and improvements to the part of the Project leased or licensed by such Subtenant, regardless of who undertakes and completes such Subtenant Improvements.

“**Term**” means the term of this Lease described in Section 2.2.

“**Terminate,**” “**Terminated**” and “**Termination**” means the termination of the Term of this Lease by reason of an Event of Default, and not by reason of lapse of time.

## **2. Lease of Leased Premises; Term of Lease; Grant of Easements; Quiet Enjoyment; Right of First Refusal; and Recordation.**

### **2.1 Lease.**

Lessor, in consideration of the rents, covenants, agreements and conditions herein set forth, which Lessee hereby agrees shall be paid, kept and performed by Lessee, does hereby lease, let, demise and rent to Lessee, and Lessee does hereby rent and lease from Lessor, all right, title and interest of Lessor in and to the Leased Premises. The interest in the Leased Premises created hereby shall be deemed to be an estate for years under the Applicable Laws of the State.

**TO HAVE AND TO HOLD** the Leased Premises and all rights, privileges and appurtenances thereunto appertaining unto Lessee, for and during the Term, unless sooner terminated in accordance with any of the provisions of this Lease, subject to the Encumbrances and Impositions neither delinquent nor in default.

## **2.2 Term.**

The term of this Lease (the “**Term**”) shall be for a period of sixty-five (65) years that commences on the Commencement Date and Expires at midnight on the date immediately preceding the sixty-fifth (65th) anniversary of the Commencement Date.

## **2.3 Option to Purchase.**

During the Term, Lessee shall have the right, any time after the thirtieth (30th) anniversary of the Initial Occupancy (as that term is defined in the Economic Development Incentive Agreement) to purchase Lessor’s interest in the Leased Premises for one hundred dollars (\$100) (as same is encumbered by this Lease) by providing Lessor with a notice of the exercise of such right to purchase. Closing on such sale shall occur in the City within sixty (60) days of the date of such notice (but no earlier than thirty (30) days of the date of such notice) on a Business Day, time and place selected by Lessee. Lessee shall prepare the closing documents, at their expense, including the deed and the assignment of this Lease, which all shall be in a commercially reasonable form. The President of the Arlington Convention Center Development Corporation Board of Directors is hereby authorized by Lessor to execute and deliver such closing documents, in recordable form. Lessee shall pay the cost of recording the deed.

## **2.4 Easements and Condominium Documents.**

Throughout the Term, within thirty (30) Business Days after receipt of written request from Lessee, time being of the essence, Lessor shall execute and join in any grants, licenses, franchises or easements within the Leased Premises for electric, telephone, gas, water, sewer, and other public utilities and similar facilities necessary to the construction, alteration, operation, or maintenance of all or any part of the Project, as reasonably determined by Lessee, any other grants, licenses, franchises or easements, such as reciprocal easement and operating agreements or rights of way, that Lessee reasonably deems necessary for the leasing, construction and/or operation of the Project, any amendments and/or terminations of any such grants, licenses, franchises or easements that Lessee reasonably deems necessary for the leasing, construction and/or operation of the Project and amendments and modifications to any of the documents, plats or agreements that govern or concern the condominium regime that the Leased Premises is a part of, all of which shall be commercially reasonable. Lessee shall have the exclusive right and power to exercise all rights and powers, including making all decisions and elections or giving or withhold all consents or approvals that the “owner” of the condominium unit that comprises the Leased Premises has the right and power to exercise under the agreements that create and govern such condominium unit and Lessor shall not exercise any such right or power without first obtaining the prior written consent of Lessee, which consent may be withheld in the sole discretion of Lessee.

## **2.5 Quiet Enjoyment.**

Lessor covenants and agrees that Lessee, while paying the Rent and other sums payable under this Lease and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the full Term without hindrance or molestation from Lessor or any other Person claiming by, through or under Lessor, subject to the terms, conditions and provisions of this Lease, and to the Encumbrances. Lessor shall not, without the prior approval of Lessee, which approval Lessee may withhold in its sole and subjective discretion, encumber the Leased Premises with any easements, mortgages, liens or other encumbrances.

## **2.6 Recordation.**

Lessee shall have the right to record this Lease, and/or a memorandum of same prepared by Lessee (which Lessor covenants to execute and deliver in recordable form within ten (10) days of Lessee's request therefore) among the Land Records.

## **2.7 Licenses and Permits.**

Whenever requested by Lessee, Lessor, at no cost to Lessor, shall execute and deliver to Lessee, in its capacity as fee owner of the Leased Premises, within ten (10) Business Days of Lessee's request therefore, subdivision plats, permit applications, building permit applications, liquor license applications, zoning and use related applications and any other type of application, for or concerning the Leased Premises and/or the development, construction, reconstruction and/or operation of the Project.

## **3. Rent.**

Commencing on the Commencement Date and continuing thereafter throughout the remainder of the Term, Lessee shall pay to Lessor annually the sum of ten and 00/100 Dollars (the "Rent") payable on or before the ninetieth (90th) day following the each anniversary of the Commencement Date.

## **4. Impositions.**

### **4.1 Impositions.**

From and after the Commencement Date, Lessee shall pay all Impositions that accrue and are payable for any part of the period that commences on the Commencement Date and ends on the Expiration or earlier Termination of this Lease before same are past due. Lessee shall provide Lessor with reasonable evidence of each such payment. Lessor shall promptly provide Lessee with a copy of all bills for Impositions that it receives. Lessee may collect from a Subtenant any of the Impositions as part of the rent under a Sublease or may have any Subtenant pay directly any of the Impositions; provided, however, Lessee remains primarily liable for the timely payment of the Impositions.

## **4.2 Contests.**

Lessee may, at its expense, contest any of the Imposition. **Lessee shall hold Lessor harmless from all costs, expenses, claims, losses or damages by reason of, in connection with, on account of, arising or growing out of or resulting from any such contest. Such hold harmless agreement shall expressly survive the Expiration or earlier Termination of the Lease.** Upon request by Lessee, Lessor shall execute in its capacity as fee owner and promptly deliver to Lessee any documents or pleadings associated with such contest that Lessee may reasonably request.

## **4.3 Assessed Valuation.**

Lessee shall have the right, at any time, and from time to time, to attempt to obtain a lowering of the assessed valuation of the Leased Premises and the Improvements, or either of them, for any year for the purpose of reducing Impositions thereon. In such event, Lessor, upon request of any Lessee, Lessor shall execute in its capacity as fee owner and promptly deliver to Lessee any documents or pleadings associated with Lessee's attempt to the extent Lessee reasonably determines such participation by Lessor is necessary in order to pursue a lowering of the assessed valuation. Lessee shall be authorized to collect any Impositions from any period prior to the Commencement Date payable as a result of any proceeding Lessee may institute for that purpose and any such refund shall be deemed revenue of Lessee in the year in which it is received.

## **5. Improvements.**

### **5.1 Improvements.**

Lessee shall cause the initial Improvements to be constructed and maintained in accordance with the terms of the Economic Development Incentive Agreement. Subject to the next sentence, thereafter Lessee shall have the right, from time to time and at any time, to construct, renovate, alter, modify, expand, reduce and demolish Improvements and to permit Subtenants to also construct, renovate, alter, modify, expand, reduce and demolish Subtenant Improvements. During the first thirty (30) years of the Term any construction, alteration, modification, expansion, reduction or demolition of the Improvements by Lessee will not result in a material reduction of the value of the Improvements as same existed prior to such construction, alteration, modification, expansion, reduction or demolition. Notwithstanding the above, a Leasehold Mortgagee and any person or entity that acquires title to Lessee's interest in the Leased Premises as a result of a foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of the immediately preceding sentence.

### **5.2 Tax Benefits.**

Lessor acknowledges that Lessee may claim any income tax benefit and burden that may be available to it under the Internal Revenue Code of 1986, as amended, as a result of its participation in the Project, including all depreciation for all Improvements located on the Leased Premises.

### **5.3 Termination or Expiration of Lease.**

Upon the Termination or Expiration of this Lease, whether by lapse of time or otherwise, Lessee shall vacate and surrender the Leased Premises together with any permanently affixed improvements then existing on the Leased Premises.

### **5.4 No Lessor's Lien.**

Lessor hereby waives any statutory landlord's lien Lessor has or ever may have.

## **6. Acceptance and Use.**

### **6.1 Acceptance.**

Lessee has leased the Leased Premises from Lessor in an "as-is" condition.

### **6.2 Use.**

Lessee shall have the right to use the Leased Premises for any lawful use. It is the intent of Lessee to operate and maintain the Leased Premises as a full service hotel, comparable to the manner that at least one hotel is operated and maintained under one of the hotel trade names listed on the "Upper Upscale" category of the then current STR Chain Scales published by STR, Inc. for a period of thirty (30) years, commencing on the date of Initial Occupancy (as that term is defined in the Economic Development Incentive Agreement). If STR, Inc. ceases to publish a "Upper Upscale" category list or ceases to publish the STR Chain Scales, the last such published STR Chain Scales that contains an "Upper Upscale" category list shall be deemed the "then current STR Chain Scales".

## **7. Damage or Destruction.**

### **7.1 Obligation to Reconstruct.**

In the event of damage or destruction to the Improvements during the thirty (30) year period that commences on the date the Improvements initially opens for business to the public, Lessee shall cause the full repair or restoration of the Improvements (exclusive of Third Party Tenant Improvements (as that term is defined in the Economic Development Incentive Agreement), as same existed at the time of such damage or destruction (as same may be modified by Lessee or the Project Tenant (as that term is defined in the Economic Development Incentive Agreement) at the time of such repair or restoration, provided that such modification is of equal or greater value), whether done by application of insurance proceeds or other financial means. On or after the expiration of such thirty (30) year period, in the event the Improvements are damaged by fire or other casualty, Lessee shall have the right to determine whether, and to what extent the Improvements should be restored or replaced. Notwithstanding the above, a Mortgagee and any person or entity that acquires title to the Improvements as a result of a foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 7.1.

## **8. Condemnation.**

### **8.1 General.**

If, at any time during the Term, the Leased Premises, the Improvements, or any part thereof shall be condemned and taken by the United States of America, the State or any other authority or Person having the power of eminent domain, then the provisions of this Section 8 shall apply to such condemnation proceedings and the distribution of any awards pertaining thereto.

### **8.2 Entire Leased Premises Taken by Eminent Domain/Partial Taking Resulting in Termination.**

If the fee simple title in, or permanent possession of, all of the Leased Premises is taken by a governmental or other authority under the power of eminent domain, then this Lease shall terminate (or be suspended for the duration of the temporary taking) as of the taking date, and any Rent shall be prorated and paid by Lessee to the date of such taking. In the event that less than all of the Leased Premises is taken by a governmental or the authority under the power of eminent domain and if reconstruction is not feasible, or if the Improvements remaining after such taking is no longer economically viable, in each case as determined by Lessee in its sole and absolute discretion within one year after the date of the taking, then this Lease, at the election of Lessee, shall terminate as to the Leased Premises not so taken as of the date of such taking. The condemnation award shall be promptly paid as follows, in the following order of priorities:

(a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by Lessor and Lessee in such condemnation suit or conveyance (except that nothing contained in this Section shall require payment to Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages; and

(c) The balance, if any, shall be applied and distributed to pay each Subtenant any amount of which such Subtenant is entitled for its leasehold improvements, and the value of such Subtenant's leasehold interests, but only to the extent required in such Subtenant's lease; and

(d) The balance, if any, shall be applied and distributed to Lessee up to the amount of the value of the Improvements, as reasonably determined by Lessee; and

(e) The balance, if any, shall be divided and paid fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is Lessor, the entire balance shall be paid to Lessee.

### **8.3 Partial Taking of Leased Premises by Condemnation.**

In the event that less than all of the Leased Premises (or only an interest therein) is taken for any public use or purpose by the exercise of the power of eminent domain, or shall be

conveyed by the Parties acting jointly to avoid proceedings of such taking, then (i) this Lease and all the covenants, conditions, and provisions hereunder shall be and remain in full force and effect as to all of the Leased Premises not so taken or conveyed, and (ii) Lessee shall remodel, repair, and restore the Improvements to such condition as Lessee determines in its sole and absolute discretion to be appropriate, taking into consideration the fact of the condemnation.

The condemnation award shall be promptly paid as follows, in the following order of priorities:

(a) There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by each Party in such condemnation suit or conveyance (except that nothing contained in this Section shall require payment of Lessor of costs and expenses it may incur in the event that Lessor is the condemning authority); and

(b) The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages to the extent that the Mortgages require such payments; and

(c) The balance, if any, remaining shall be applied and distributed to pay each Subtenant whose space is taken any amount to which such Subtenant is entitled for its leasehold improvements and the value of such Subtenant is entitled for its leasehold improvements and the value of such Subtenant's leasehold interest, but only to the extent required in such Subtenant's lease; and

(d) There shall be paid to Lessee out of the balance, if any, remaining, the amount required to enable lessee to remodel, repair, and restore any Improvements so that they will be comparable to the improvements prior to condemnation, taking into consideration the fact of the condemnation; and

(e) The balance, if any, shall be applied and distributed to Lessee up to the amount of the value of the Improvements taken, as reasonably determined by Lessee; and

(f) The balance, if any, shall be divided and paid over fifty percent (50%) to Lessee and fifty percent (50%) to Lessor, provided, however, if the condemning authority is owner, the entire balance shall be paid to Lessor.

#### **8.4 Temporary Taking.**

If the whole or any part of the Leased Premises or the Improvements or of Lessee's interest in this Lease shall be taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full the Rent without reduction or abatement in the manner and at the times herein specified. Except only to the extent that Lessee is prevented from so doing pursuant to the terms of any order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred.

## **8.5 Condemnation Proceedings.**

Lessee, Lessor and Leasehold Mortgagee shall each have the right, as its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials and appeals therein.

## **8.6 Notice Condemnation.**

In the event Lessor or Lessee shall receive notification of any proposed or pending condemnation proceeding affecting the Leased Premises or the Improvements, the Party receiving such notification shall promptly notify, by Notice, the other Party.

## **9. Assignments.**

### **9.1 Restriction Against Disposition Prior to Initial Occupancy of the Project.**

Lessee represents and agrees for itself and any successor in interest that except for Dispositions to an Alternative Hotel Developer (which does not require the consent of Lessor), Lessee will not, prior to the third (3rd) anniversary of the Initial Occupancy (as that term is defined in the Economic Development Incentive Agreement), make or create, or suffer to be made or created, any Disposition, without the prior written approval of the Lessor, acting by and through the City Representative (as that term is defined in the Economic Development Incentive Agreement), which approval shall not be unreasonably withheld. In the event that pursuant to the provisions of Section 9.1 of this Lease the approval of Lessor is required for a Disposition and a request for Lessor approval of a Disposition is made, Lessor, acting by and through the City Representative, shall, by notice to Lessee, approve or deny such request for approval within thirty (30) Business Days of Lessor's receipt of such request, time being of the essence. In the event of a Disposition to an Alternative Hotel Developer, promptly after such Disposition, Lessee shall provide Lessor with notice thereof and the transferee thereof shall deliver to Lessor a written instrument, benefiting Lessor and executed by the transferee, assuming Lessee's obligations under this Lease.

### **9.2 Disposition On or After Third Anniversary of Initial Occupancy.**

On or any time after the third (3rd) anniversary of the Initial Occupancy (as that term is defined in the Economic Development Incentive Agreement), Lessee may, without the need to request or obtain the consent of Lessor, make or create, or suffer to be made or created, any Disposition, provided that the counterparty to such Disposition (and/or a direct or indirect affiliate): (a) owns a major league baseball or football team; (b) is an affiliate of one of the direct or indirect owners of Developer; or (c) has demonstrable experience in owning and/or operating on a full-service basis comparable hotel properties and has a net worth in excess of Fifty Million Dollars (\$50,000,000). In the event such counterparty (and/or a direct or indirect affiliate) does not satisfy any of the above, such Disposition shall require the prior written approval of the Lessor, acting by and through the City Representative, which approval shall not be unreasonably withheld and which approval shall be granted or withheld within thirty (30) Business Days of the Lessor's receipt of such request, time being of the essence. Notwithstanding the above, on or any time after the first day of the fifteenth (15th) anniversary

of the date Substantial Completion of the Hotel Project (as that term is defined in the Economic Development Incentive Agreement) is achieved Lessee may, without the need to request or obtain the consent of the Lessor, make or create, or suffer to be made or created, a Disposition. On or after the completion of any Disposition pursuant to this Section 9.2, the transferee shall deliver to Lessor a written instrument, benefiting Lessor and executed by Lessee and the transferee, whereby Lessee's rights and obligations under this Lease are assigned to and assumed by such transferee.

### **9.3 Permitted Disposition to Subtenants.**

Notwithstanding anything in Sections 9.1, 9.2 or other sections of this Lease to the contrary, Lessee may enter into Subleases or other contractual agreements with Subtenants for all or any part of the Project, at any time and from time to time from and after the Commencement Date and during the Term, with such Subtenants and upon such terms and conditions as Lessee shall, in its sole discretion, deem fit and proper consistent with the other provisions of this Lease.

### **9.4 Liability.**

In the event of a Disposition of all of the interest of Lessee concerning the Project pursuant to and in compliance with the provisions of Section 9.1 and 9.2 hereof, Lessee shall be relieved of all further liability arising hereunder with respect to the Project except for defaults of Lessee under this Lease that arose before such Disposition which remain uncured.

### **9.5 Obligations of Subtenants of Lessor.**

Subtenants or other permitted occupants are not successors or assignees of Lessee's obligations to Lessor merely by being a Subtenant or an occupant of the Leased Premises.

## **10. Subleases.**

### **10.1 Right to enter into Subleases.**

Throughout the Term Lessee shall have the right, without the need to request or obtain the consent of Lessor, to sublet or sub-group lease portions of the Leased Premises and/or the Improvements at any time and from time to time. Each Sublease shall be subject and subordinate to this Lease.

### **10.2 Non-disturbance and Attornment.**

(a) Lessor covenants and agrees with Lessee for the benefit of each and every Subtenant from time to time occupying any part of the Leased Premises and the Improvements or having rights granted to it by Lessee with regard to the Leased Premises, which Subtenants shall be third party beneficiaries of this Section 10.2 as it may apply to each of them respectively, that in the event of a termination of this Lease, each such Subtenant may continue to occupy its premises under its pre-existing Sublease and enjoy the rights granted to such Subtenant in such Sublease; provided such Subtenant shall then attorn to Lessor (to the extent that such Subtenant occupies any part of the Leased Premises and the Improvements) and, if such Subtenant's Sublease does not provide for such attornment (and such Subtenant occupies any

part of the Leased Premises and the Improvements), such Subtenant, promptly after the termination of this Lease, provides Lessor with a written statement of such Subtenant whereby such Subtenant attorns to Lessor.

(b) In addition to the provisions of Section 10.2 (a) hereof, Lessor covenants and agrees with Lessee that Lessor will, at the request of Lessee made from time to time enter into a non-disturbance and attornment agreement with any Subtenant identified by Lessee, which non-disturbance and attornment agreement shall provide for all terms set forth in Section 10.2 (a) hereof and be in commercially reasonable form. Lessor shall execute and deliver to Lessee such a non-disturbance and attornment agreement or specify in writing its objections thereto within ten (10) Business Days after receipt of the form thereof from Lessee, time being of the essence.

(c) Notwithstanding anything to the contrary contained in this Lease in the event that this Lease is terminated as a result of all or part of the Leased Premises being condemned, Lessor shall not be obligated to restore or rebuild the Improvements.

## **11. Leasehold Mortgage Financing.**

### **11.1 Rights to Leasehold Mortgage.**

(a) Notwithstanding any other provision of this Lease, Lessee shall at all times have the right to enter into or grant one or more Leasehold Mortgages. Lessee may encumber, pledge, grant, or convey its rights, title and interest under this Lease by way of a Leasehold Mortgage (or assignment) to secure payment of any loan or loans obtained by Lessee. Such Leasehold Mortgage may also encumber Lessee's right to purchase the Leased Premises.

(b) Lessee, and any Subtenant (to the extent permitted by Lessee), may grant security interests in or place liens upon any equipment or personal property (so long as such equipment or property is not a fixture integrated into the real property, which equipment or property could not be removed without permanent damage to the Leased Premises), without such interest or liens constituting a Disposition. Such equipment and personal property shall not be deemed to be "Improvements" under this Lease. During the Term, at the request of Lessee, Lessor will, within thirty (30) days of such a request, execute and deliver a landlord's waivers of liens (including customary terms such as restoration of the premises) to facilitate such security interests and liens upon such equipment and personal property, which landlord's waivers of liens shall be in a form and substance reasonably satisfactory to Lessee.

(c) Each Subtenant (to the extent permitted by Lessee), shall have the right at any time to encumber its sub-leasehold estate by a mortgage or other encumbrance or lien without the necessity of obtaining the consent of Lessor (so long as the deed of trust, mortgage or other primary security instrument creating such Subtenant's mortgage refers to this Section 11 by reference). At the request of Lessee (given by notice), Lessor shall treat a mortgagee of a Subtenant's sub-leasehold estate in the same manner that it treats a Leasehold Mortgagee as to notice rights and shall enter into a non-disturbance agreement with such Subtenant's mortgagee, which agreement shall be in a form and substance that is reasonably acceptable to such Subtenant's mortgagee.

## **11.2 Rights of Leasehold Mortgagee**

### **11.2.1 Lessee's Acceptance.**

Lessor agrees to accept performance and compliance by any Leasehold Mortgagee of and with any term, covenant, agreement, provision, or limitation on Lessee's part to be kept, observed, or performed by Lessee hereunder.

### **11.2.2 Cure of Default.**

Following an Event of Default by Lessee, Lessor will take no action to terminate this Lease and/or the Term of this Lease, nor to re-enter and take possession of the Leased Premises or the Improvements thereon (which Lessor, pursuant to the provisions of Section 12 does not have the right or power to seek), unless it shall first give Leasehold Mortgagee notice after the occurrence of any such Event of Default and stating the intention of Lessor either to, on a date specified in such notice, to re-enter and take possession of the Leased Premises and the Improvements thereon. Notwithstanding such notice, this Lease and the Term shall not be terminated nor shall Lessor re-enter and take possession of the Leased Premises or the Improvements, if:

(a) such Event of Default can be cured by the payment of a fixed monetary amount and Leasehold Mortgagee shall make such payment within ninety (90) days after the date such notice was given: or

(b) such Event of Default can be cured with the exercise of reasonable diligence by Leasehold Mortgagee after obtaining possession of the Leased Premises and the Improvements, and Leasehold Mortgagee or Leasehold Mortgagee's designee, within one hundred eighty (180) days after the date of such notice, obtains the interest of Lessee in this Lease or Leasehold Mortgagee commences such proceedings (including, but not limited to, the filing of a petition for the appointment of a receiver) as it may deem necessary to obtain such possession (except that if Leasehold Mortgagee is precluded, notwithstanding the filing of a petition to the bankruptcy court for a waiver, from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period during which leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure) and thereafter diligently prosecutes such action and promptly upon obtaining such possession (or promptly upon its designee obtaining such possession) thereupon promptly commences (or its designee commence); and thereafter diligently pursues, the curing of such Event of Default; or

(c) such Event of Default is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises and the improvements were obtained by Leasehold Mortgagee or its designee, and Leasehold Mortgagee, within one hundred eighty (180) days after the date such notice is given, either obtains title to all of Lessee's right, title and interest in and to this Lease (or Leasehold Mortgagee's designee obtains such interest) or publishes any required notice of foreclosure or institutes foreclosure proceedings, as the case maybe be, and thereafter proceeds with diligence to acquire (or have its designee acquire) the

interest of Lessee in the Lease (except that if Leasehold Mortgagee is precluded from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said one hundred eighty (180) day period shall be extended by a period of time equal to the period during which Leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure), and such Event of Default, to the extent that the same shall have occurred prior to such acquisition of the interest of Lessee in this Lease by Leasehold Mortgagee or its designee, shall thereupon be deemed to have been waived.

### **11.2.3 Lease Termination; New Lease:**

(a) Lessor does not have the right to terminate this Lease in the event of an Event of Default by Lessee. However, if, for some reason, this Lease is terminated by Lessor prior to its stated expiration date, Lessor shall give Leasehold Mortgagee notice of such termination and shall enter into a new lease for the Leased Premises that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage or, at the request of Leasehold Mortgagee, with an assignee, designee, or nominee of Leasehold Mortgagee for the remainder of the Term of this Lease effective as of the date of such termination, at the rate and upon the same covenants, Leases, terms, provisions and limitations as are herein contained, provided that:

(i) Leasehold Mortgagee makes written request upon Lessor for such new lease within one hundred eight (180) days after the giving of such notice of termination and such written request is accompanied by payment to Lessor of all amounts then due to Lessor in connection with the Leased Premises and the Improvements that is encumbered by such Leasehold Mortgagee's Leasehold Mortgage of which Lessor shall have given Leasehold Mortgagee notice; and

(ii) Leasehold Mortgagee pays or causes to be paid to Lessor at the time of the execution and delivery of such new lease any and all additional sums which would at the time of the execution and delivery thereof due under this Lease but for such termination and pays or causes to be paid any and all expenses, including reasonable attorneys' fees, court costs, and disbursements, incurred by Lessor concerning the Leased Premises and Improvements in connection with any such termination or in connection with the execution and delivery of such new lease and any conveyance of title to the Improvements; and

(iii) Leasehold Mortgagee agrees to cure, within sixty (60) days after the execution and delivery of such new lease, all uncured Events of Default of which Lessor shall have given Leasehold Mortgagee notice (except any Event of Default which is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises, or the Improvements were obtained, to the extent that same shall have occurred prior to the execution and delivery of such new lease, shall be deemed to have been waived), or if any such Event of Default cannot be cured within such period, Leasehold Mortgagee agrees to commence, within such period, to cure such Event of Default and thereafter pursues the same with due diligence.

(b) Any new lease made pursuant to this subsection 11.2.3 shall (i) have the same relative priority in time and in right as this Lease, and (ii) have the benefit of all of the right, title, powers and privileges of Lessee hereunder in and to the Leased Premises

and the Improvements. At Lessee's request, Lessor will enter into an agreement with Leasehold Mortgagee granting to Leasehold Mortgagee the rights set forth in this Section 11.2.

#### **11.2.4 Notice to Lessor and Leasehold Mortgagee.**

If Lessee shall furnish Lessor with a written notice setting forth the name and address of a Leasehold Mortgagee, Lessor shall thereafter send to such Leasehold Mortgagee a copy of any notice given to Lessee under this Lease, and no such notice shall be deemed to have been properly given unless and until a copy thereof shall have been sent to Leasehold Mortgagee at the address specified in such notice.

#### **11.2.5 Performance by Leasehold Mortgagee.**

No Leasehold Mortgagee shall have any liability for the performance of any of the covenants, conditions or obligations of Lessee under this Lease unless and until such time as Leasehold Mortgagee acquires title to the leasehold estate created by this Lease.

### **11.3 Non-subordination.**

Nothing contained in this Section 11, or in any other Section of this Lease shall be deemed to allow a subordination of Lessor's reversionary estate in any part or portion of the Leased Premises leased to Lessee. In no event will such subordination be made. Lessee and each Subtenant may mortgage only its leased or sub-leasehold interest in the Leased Premises.

### **11.4 Leasehold Mortgagee's Rights Agreements.**

Lessor covenants and agrees with Lessee that Lessor will, at the request of Lessee made from time to time and at any time, enter into a lender's rights agreement with any Leasehold Mortgagee (or potential Leasehold Mortgagee) identified by Lessee, which lenders' rights agreement shall be consistent with the terms and provisions contained in this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages. Within twenty (20) Business Days of Lessee's request for a Leasehold Mortgagee's rights agreement pursuant to the provisions of this Section 11.4, Lessor shall execute and deliver to Lessee such a lender's rights agreement benefiting the identified Leasehold Mortgagee (or potential Leasehold Mortgagee) and such Leasehold Mortgagee's Leasehold Mortgage (or potential Leasehold Mortgagee's potential Leasehold Mortgage), which executed Leasehold Mortgagee's rights agreement shall be commercially reasonable and in a form and substance that are reasonably acceptable to such Leasehold Mortgagee (or potential Leasehold Mortgagee) and that is consistent with, and at the option of such Leasehold Mortgagee (or potential Leasehold Mortgagee) incorporates, the terms and provisions of this Section 11 that apply to Leasehold Mortgagees and Leasehold Mortgages (such as the Leasehold Mortgagee notice provisions and the Leasehold Mortgagee cure rights provisions of this Section 11).

## **12. Defaults/Arbitration.**

### **12.1 Events of Default by Lessee.**

Each of the following shall constitute an Event of Default by Lessee:

(a) The filing by Lessee of a voluntary proceeding or the consent by Lessee to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessee or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessee in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessee to perform or to observe any material covenant, obligation or requirement of Lessee arising under this Lease not specifically named as an Event of Default in this Section 12.1, and the continuation of such failure for thirty (30) days after receipt of written notice from Lessor specifying the nature and extent of such failure, or if such failure cannot reasonably be cured within such thirty (30) day period, the failure of Lessee to commence to cure such failure within such thirty (30) day period and to diligently pursue same to completion.

## **12.2 Events of Default by Lessor.**

Each of the following shall constitute an Event of Default by Lessor:

(a) The filing by Lessor of a voluntary proceeding or the consent by Lessor to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(b) The entering of an order for relief against Lessor or appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lessor in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days.

(c) The failure of Lessor to perform or to observe any material nonmonetary covenant, obligation or requirement of this Lease not specifically named as an Event of Default by Lessor in this Section 12.2, and the continuation of such failure for thirty (30) days after receipt of written notice from Lessee specifying the nature and extent of any such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of Lessor to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such effort to cure to completion.

(d) The failure of Lessor to execute and deliver any document, agreement or instrument (such as a non-disturbance, attornment and subordination agreement with a Subtenant, any estoppel certificate, any permit application, any subdivision plan, any agreement with any Leasehold Mortgagee or Subtenant, any deed, ground lease or ground lease amendment) requested by Lessee and required to be given by Lessor in accordance with the provisions of this Lease and the continuation of such failure for twenty (20) days after written notice from Lessee specifying the nature and extent of such failure.

### 12.3 Remedies.

Should an Event of Default by Lessee occur hereunder, Lessor may, by written notice to Lessee, initiate the procedures contained in Section 12.6. Should an Event of Default by Lessor occur hereunder, Lessee may, by written notice to Lessor, initiate the procedures contained in Section 12.6. This Lease may not be terminated by Lessee or Lessor as a result of the occurrence of an Event of Default by the other Party hereunder. Lessor shall not have the right to terminate this Lease and/or the Term of this Lease, nor to re-enter and take possession of the Leased Premises or the Improvements as a result of an Event of Default by Lessee. All remedies under this Lease shall be cumulative and not restrictive of other remedies (but not the right of termination), including without limitation, specific performance. The initiation of any remedy by Lessor or Lessee shall not constitute or be deemed an election of remedies by it and such Party may invoke two or more remedies hereunder concurrently or consecutively. No Party may seek or obtain an award of consequential or punitive damages against the other Party.

### 12.4 Waiver.

Failure of Lessor or Lessee to exercise any right or remedy hereunder shall not impair any of its rights nor be deemed a waiver thereof and no waiver of any of its rights shall be deemed to apply to any other such rights, nor shall it be effective unless in writing and signed by the waiving Party.

### 12.5 Attorneys' Fees.

If either Lessor or Lessee brings suit or other legal proceedings or arbitration proceeding to enforce the provisions of this Lease against the other, then each Party in such suit or proceeding shall bear its own attorneys' fees and litigation and/or arbitration costs and expenses incurred by it in connection with such suit or proceeding.

### 12.6 Arbitration.

In the event any dispute, controversy or claim between or among the Parties hereto arises under this Lease (a "**Dispute or Controversy**"), including a claim that an Event of Default has occurred, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement. In the event a Dispute or Controversy arises, any Party hereto shall have the right to notify the other Party hereto that the notifying Party has elected to implement the procedures set forth in this Section 12.6. Within fifteen (15) days after delivery of any such notice by one Party to the other Party regarding a Dispute or Controversy, a representative of each of the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained within fifteen (15) days after the meeting of the Parties representatives for such purpose, or such longer period as the Parties may agree upon, then either Party may by notice to the other Party (the "**Arbitration Notice**") submit the Dispute or Controversy to arbitration in accordance with the provisions of this Section 12.6 and **Exhibit "B"** attached hereto (the "**Arbitration Procedures**"). The Arbitration Notice must comply with the Arbitration Procedures. Upon receipt of the Arbitration Notice, all Parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section 12.6 and

**Exhibit “B”** without regard to the justifiable character or executor nature of such Dispute or Controversy. Each Party hereto agrees that any Dispute or Controversy which is not resolved pursuant to this Section shall be submitted to binding arbitration hereunder and shall be resolved exclusively and finally through such binding arbitration in accordance with the Arbitration Procedures (the “**Arbitration**”). This Section 12.6 and **Exhibit “B”** hereto are and hereby constitute a written agreement by the Parties hereto to submit to arbitration any such Dispute or Controversy arising after the Commencement Date within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code. Notwithstanding any provision of this Lease to the contrary, any Party hereto may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Tarrant County, Texas. In the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the Arbitration Procedures, notwithstanding that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the Parties hereto expressly agree that the Arbitration Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

### **13. Representations.**

#### **13.1 Representations by Lessee.**

Lessee represents and warrants to Lessor that Lessee (i) is validly existing limited liability company under the laws of the State of Delaware and is in good standing in the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

#### **13.2 Representations by Lessor.**

Lessor represents and warrants to Lessee that Lessor (a) is a constitutionally chartered city validly existing under the laws of the State of Texas; (b) has lawful power and authority to enter into, execute and deliver this Lease and to carry out its obligations hereunder; and (c) by all necessary action has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

### **14. Insurance.**

#### **14.1 Insurance.**

During the Term, Lessee, at no cost or expense to Lessor, will keep and maintain, or cause the Subtenants to keep and maintain, the insurance set forth below. Lessee shall not commence work on the Improvements until Lessee has obtained or caused to be obtained all the insurance required under this Lease, nor shall Lessee allow any work on the Improvements to commence until all similar insurance of the contractor or subcontractor performing work on the Improvements has been obtained. All insurance policies provided under this Lease will be written on an “occurrence” basis. The insurance requirements shall remain in effect throughout the Term. The insurance required by this Lease consists of the following:

(a) Worker's Compensation Insurance, statutory policy as required by law; Employers Liability Insurance of not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease-each employee, \$1,000,000.00 disease-policy limit.

(b) Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, covering but not limited to the indemnification provisions of this Lease, fully insuring Lessor's liability for injury to or death of employees of Lessee and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

(c) Commercial Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.

(d) Umbrella Insurance: Lessee shall obtain and maintain at all times during the construction of the Improvements umbrella insurance. Limits of liability shall be \$2,000,000.00.

#### **14.2 Conditions.**

Each insurance policy to be furnished by Lessee shall include the following conditions by endorsement to the policy:

(a) Name Lessor, and the City, as an additional insured as to all applicable coverage, except worker's compensation. For General Liability purposes, this requirement extends to premises/operations as well as products/completed operations.

(b) Each policy will require that thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to Lessor by certified mail to:

City of Arlington Human Resources  
Post Office Box 90231 MS# 63-0790  
Arlington, Texas 76004-3231

However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to Lessor is required. Lessee shall also notify Lessor within twenty-four (24) hours after receipt of any notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s).

#### **14.3 Miscellaneous Insurance Provisions.**

(a) For purposes of this Section 14, the term "Lessor" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of Lessor and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of Lessor.

(b) The policy phrase "Other Insurance" shall not apply to Lessor where Lessor is an additional insured on the policy.

(c) All provisions of this Lease concerning liability, duty and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

(d) All insurance prescribed by this Section 14 shall (i) be procured from financially sound and reputable insurers licensed to do business in the State of Texas and have an A.M. Best rating of not less than A VII or, if not rated with A.M. Best, the equivalent of A.M. Best's surplus size of A VII or better, (ii) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved, and (iii) be evidenced by a certificate of insurance naming Lessor as an additional insured, as its interest may appear.

(e) The General and Automobile liability policies required herein shall be written with an "occurrence" basis coverage trigger.

#### **14.4 Waiver of Subrogation.**

Lessee agrees to the following:

(a) Lessee hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against Lessor, it being the intention that the insurance policies shall protect all parties to this lease and be primary coverage for all losses covered by the policies; and

(b) Companies issuing the insurance policies and Lessee shall have no recourse against Lessor for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of Lessee; and

(c) Approval, disapproval or failure to act by Lessor regarding any insurance supplied by Lessee (or any subcontractors) shall not relieve Lessee of full responsibility or liability for damages and accidents as set forth in the lease documents. Neither shall the insolvency or denial of liability by the insurance company exonerate Lessee from liability.

### **15. Miscellaneous Provisions.**

#### **15.1 Force Majeure.**

For the purpose of any of the provisions of this Lease, neither Lessor, nor Lessee, as the case may be, nor any successor in interest, shall be considered in breach of or default in any of its obligations, in the event of enforced delay in the performance if such obligations to due Force Majeure. For purposes of this Lease, Force Majeure shall mean acts of God (including storms, floods or other casualty), war, invasion, insurrection, taking by eminent domain laws, the lack of labor or supplies due to an act of God, strike or labor disputes or delays beyond the control of the affected Party, or order of government authorities. In the event of the occurrence of any such

enforced delays, the time or times for the performance of the covenants, provisions, and agreements of this Lease shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay). The affected Party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements and provided further, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected Party, and the affect Party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing Party or Parties when such course is, in the judgment of the affect Party, unfavorable to the affected Party. Notwithstanding the above (a) Lessee may not rely on its own acts or omissions as grounds for delay in its performance and (b) the absence of immediately available funds shall not be grounds for delay.

### **15.2 Estoppel Certificates.**

Lessor and Lessee, at any time and from time to time, upon not less than twenty (20) Business Days prior written notice from a Party hereto, or to a person designated by such Party, such as a tenant or a mortgagee or lender of Lessee, shall execute, acknowledge, and deliver to the Party requesting such statement, a statement in reasonably acceptance form to the requesting Party certifying, among other matters, (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating whether or not, to the best of knowledge of the signer of such certificate, Lessor and Lessee is the breach and/or default in performance of any covenant, agreement, or condition contained in this Lease and, if so, other factual matters reasonably requested in such estoppel certificate concerning this Lease, the Leased Premises, the Improvements and/or the Economic Development Incentive Agreement, it being intended that any such statement delivered hereunder may be relied upon by the Party requesting such statement and/or any person not a Party to this Lease (if such other person is identified at the time such certificate was requested).

### **15.3 Lessor's Rights of Access.**

Lessee agrees that Lessor and Lessor's duly authorized agents shall have the right to all reasonable times during normal business hours and following reasonable prior notice to enter upon the Leased Premises and the Improvements and to examine and inspect the same, provided, however, Lessor and Lessor's duly authorized agents shall not have the right to enter or inspect portions of the Leased Premises and the Improvements deemed off limits by Lessee, unless accompanied by a representative of Lessee.

### **15.4 Notices.**

All notices or statements given pursuant to or concerning this Lease shall be in writing and sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any notice sent by (a) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (b) personal messenger shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the Business Day following the date the notice is deposited with the overnight delivery service addressed as specified below:

Lessee: Ballpark Parking Partners, LLC  
c/o Secretary  
1000 Ballpark Way, Suite 400  
Arlington, Texas 76011

With a copy to: Ballpark Parking Partners, LLC  
c/o General Counsel  
1000 Ballpark Way, Suite 400  
Arlington, Texas 76011

Lessor: Arlington Convention Center Development Corporation  
City Manager's Office  
c/o City Manager  
101 W. Abram Street  
Arlington, Texas 76004-3231

Such addresses may be changed by giving the other Party ten (10) days' notice in writing. Lessee, by notice to the Lessor, may add additional notice addressees.

**15.5 No Broker Fees.**

Lessor and Lessee each represent and warrant for itself that it has not dealt with any broker or agent in connection with this Lease and each covenants and agrees, to the extent allowed by law, to indemnify and hold the other harmless from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this representation and warranty.

**15.6 No Waiver.**

No failure on the part of Lessor or Lessee to enforce any covenant or provision contained in this Lease nor any waiver of any right under this Lease shall discharge or invalidate such covenant or provision or affect the right of the other Party to enforce the same in the event of any subsequent default.

**15.7 Severability.**

If any provision of this Lease or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to any other Person or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law. In the event any provision of this Lease is illegal, invalid or unenforceable under present or future laws, each Party reserves the right to pursue any and all remedies available to them at law or equity (including arbitration proceedings). The provisions of this Section 15.7 shall survive the termination of this Lease.

**15.8 Amendment.**

Neither the Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge, or termination is sought.

**15.9 Terminology.**

All personal pronouns used in this Lease, whether used in the masculine, feminine or neutral gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Unless otherwise expressly state, titles of Sections, Subsections and Paragraphs of this Lease are for convenience only, and neither limit nor amplify the provisions of this Lease, and all references in the Lease of Sections, Subsections or Paragraphs shall refer to the corresponding Section, Subsection or Paragraph of this Lease unless specific reference is made to the articles, sections or subdivisions of another document or instrument.

**15.10 Counterparts.**

This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

**15.11 Binding Agreement.**

Subject to the restrictions on Dispositions set forth herein, this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors and assigns. Whenever in this Lease a reference to Lessor, Lessee or any Person is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Lessor, Lessee or such Person.

**15.12 Interpretation.**

No provision of this Lease shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

**15.13 Governing Law/Venue.**

This Lease and the obligations of Lessor and Lessee hereunder shall be interpreted, construed and enforced in accordance with the Applicable Laws of the State, including conflicts of laws. Subject to the provisions of Section 12.6, venue shall lie in Tarrant County, Texas.

**15.14 Relationship of Parties.**

No express or implied term, provision or condition of this Lease shall or shall be deemed to constitute Lessor and Lessee as partners or joint venturers.

### **15.15 Indemnity.**

**Lessee is and shall be in exclusive control of the Project, and Lessor shall not in any way whatsoever be liable for any injury or damage to any person or property happening on, about or in connection with the Leased Premises or any part thereof. Lessee shall indemnify and hold harmless Lessor, and City, and all entities claiming by, through or under Lessor from all claims, suits, actions and proceedings whatsoever which may be brought or instituted on account of, growing out of, occurring from, incident to or resulting from, directly or indirectly, any and all injuries or damages (including, without limitation, death) to persons or property arising out of the use of occupation of the Leased Premises, and all losses, costs, damages and expenses (including, without limitation, reasonable attorney's fees and other costs of defending against such claims, suits, actions and proceedings), whether or not such injuries or damages (including, without limitation, death) result from, or are claimed to have resulted from, in whole or in part, the negligence of Lessor, City or any Person claiming by, through or under Lessor. Lessee shall assume on behalf of Lessor, City, and all entities claiming by, through or under Lessor, and conduct with due diligence and in good faith, the defense of all such claims, suits, actions and proceedings against Lessor, City, or any Person claiming by, through or under Lessor, whether or not Lessee is jointed therein, even if such claims, suits, actions or proceedings be groundless, false or fraudulent, and Lessee shall bear the costs of all judgments and settlements in connection therewith. The above provisions of this Section 15.15 shall not apply to injury or damage caused by the gross negligence or wrongful willful acts or omissions of Lessor, City and their agents, employees and contractors.**

### **15.16 Representatives Not Individually Liable.**

No member, official, representative, or employee of Lessor shall be personally liable to Lessee or any successor in interest in the event of any default or breach by Lessor for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease. No partner, member, representative, or employee of Lessee or any of its members shall be personally liable to Lessor in the event any default or breach by Lessee for any amount which may become due to Lessor or on any obligations under the terms of this Lease.

### **15.17 Entire Agreement.**

This Lease and the Economic Development Incentive Agreement (and all agreements executed pursuant to the terms of the Economic Development Incentive Agreement by Lessee and Lessor, including the Convention Center Annex Ground Lease (as that term is defined in the Economic Development Incentive Agreement, provided the Lessee hereunder is also the "lessee" under such ground lease) and the Entertainment Complex Ground Lease (as that term is defined in the Economic Development Incentive Agreement, provided the Lessee hereunder is also the "lessee" under such ground lease) incorporate all prior negotiations and discussions between the Parties regarding the subject matter and represent the entire agreement of Lessor and Lessee for the Project.

#### **15.18 Third Party Beneficiary.**

Except as otherwise provided in Subsection 10.2 and Section 11, nothing contained in this Lease shall be construed to confer upon any other party the rights of a third party beneficiary.

#### **15.19 Payment or Performance on Saturday, Sunday or Holiday.**

Whenever the provisions of this Lease call for any payment or the performance of any act on or by a date that is not a Business Day, including the expiration date of any cure periods herein, then such payment or such performance shall be required on or by the immediately succeeding Business Day.

#### **15.20 Incorporate into Agreement.**

All exhibits, schedules, and recitals form a part of this Lease.

#### **15.21 Applicable Laws.**

Nothing in this Lease shall be construed to (a) limit or prevent Lessee from challenging at law or in equity the applicability of any Applicable Law and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (b) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Lease, no provision of this Lease shall be construed to require Lessee to comply with any Applicable Law during the period that Lessee may be pursuing a bona fide challenge of this applicability, lawfulness, and/or enforceability of such Applicable Law (unless such law requires compliance during any such challenge). If Lessee's challenge is successful, Lessee shall not be required by the provisions of this Lease to comply with such Applicable Law.

#### **15.22 Consents and Approvals.**

Lessor and Lessee commit to work harmoniously with each other, and except in instances (if any) where a consent or approval is specified to be within the sole discretion of either Party, any consent or approval contemplated under this Lease shall not be unreasonably withheld, conditioned or delayed. Unless a shorter or longer time period is specified in this Lease, Lessor shall give or withhold (provided such withholding is reasonable under the circumstances, unless a sole discretion standard expressly applies) such approvals, certifications, or consents within twenty (20) Business Days.

#### **15.23 Good Faith and Fair Dealing.**

The Parties covenant and agree each to the other that its conduct under this Lease and the interpretation and enforcement of the provisions hereof, shall be characterized by good faith and fair dealings so that the objectives of each Party as set forth in this Lease may be achieved.

**15.24 Further Assurances.**

In connection with the execution and delivery of this Lease and the execution, delivery and recordation of any other instrument or agreement, provided for or contemplated by this Lease, Lessor or Lessee, at the written request of the other Party hereto, shall, within twenty (20) Business Days of such written request, execute and deliver to the requesting Party such other documents, certifications or agreements that are reasonably necessary to effectuate the intent of this Lease, such as bills of sale, assignments of leases, or certifications required by Applicable Law in connection with the recordation of instrument or agreements among the Land Records.

**15.25 Waiver of Immunity.**

Lessor hereby waives its governmental immunity from suit and immunity from liability as to any arbitration proceeding and/or legal action brought by Lessee resulting from an uncured default by Lessee. To effectuate such waiver, the Parties hereby agree, for purposes of this Lease only, that this Lease is a contract subject to Subchapter I, Chapter 271, Texas Local Government Code, as amended.

**15.26 Assignment by Lessor.**

This Lease may not be transferred or assigned by Lessor unless and until Lessee and its Mortgagees are provided with assurances that all Hotel Grants (as that term is defined in the Economic Development Incentive Agreement) will be timely paid and that the City is not being released from its obligations under Section 6 of the Economic Development Incentive Agreement to cause such Hotel Grants to be timely paid.

**SIGNATURES ON NEXT PAGE**

**IN WITNESS WHEREOF**, Lessor and Lessee executed this Lease under seal, the day and year first about written.

WITNESS:

LESSOR:  
ARLINGTON CONVENTION CENTER  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_  
President of the Board of Directors

WITNESS:

LESSEE:  
ARLINGTON BALLPARK DISTRICT  
ENTERTAINMENT BLOCK, LLC, a  
Delaware limited liability company,

By: Arlington Ballpark District Entertainment  
Block Investors, LLC, its Managing Member

By: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Its: \_\_\_\_\_

STATE OF TEXAS           §  
                                  §       **ARLINGTON CONVENTION CENTER**  
                                  §       **DEVELOPMENT CORPORATION**  
COUNTY OF TARRANT   §

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, in the County and State aforesaid, before me, the subscriber, a Notary Public authorized to take acknowledgments and proofs in said County and State, personally appeared \_\_\_\_\_, the President of the Board of Directors of the **ARLINGTON CONVENTION CENTER DEVELOPMENT CORPORATION**, a non-profit local government corporation, who I am satisfied, is the person who, as such officer of said public body, signed, sealed and dated the within instrument made by said public body, and he did acknowledge that he, as such officer, signed and delivered the same on behalf of said public body for the uses and purposes therein set forth, and that said instrument is the voluntary act and deed of said public body duly authorized by a proper resolution of its Members.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:

STATE OF MARYLAND       §  
                                  §       **ARLINGTON BALLPARK DISTRICT**  
                                  §       **ENTERTAINMENT BLOCK, LLC**  
CITY/COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ as the Authorized Person of **ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC**, a limited company, organized under the laws of Delaware.

\_\_\_\_\_  
Name:  
Notary Public

(NOTARY SEAL)  
My Commission Expires:

**Exhibit "A"**

**Plat Depicting the  
Leased Premises**

## Exhibit "B"

### Arbitration Procedures

- B.1 In the event a Party, pursuant to the provisions of Section 12.6, has elected to provide the other Party with an Arbitration Notice, such Arbitration Notice shall include such Party's determinations of the applicable issues of the Dispute and Controversy subject to such Arbitration. In the event that the Arbitration Notice has been sent in accordance with the provisions hereof and the Lease, the Parties shall mutually agree, within fifteen (15) Business Days of the deemed delivery date of the Arbitration Notice to the appointment of a single arbitrator (the "**Arbitrator**") to handle the Arbitration. If the Parties are unable to mutually agree upon the Arbitrator within the fifteen (15) Business Days described above, any Party may request the American Arbitration Association to independently select, within thirty (30) Business Days after such Arbitration Notice, an Arbitrator who has the qualifications to serve as the single Arbitrator to resolve this Arbitration. The Arbitration must take place in Tarrant County and be conducted by an Arbitrator that has no conflict of interest.
- B.2 Within fifteen (15) Business Days after the appointment of the Arbitrator, each Party shall supply the Arbitrator with such documents, materials or other evidence or written arguments as it or the Arbitrator desires, including such Party's proposed determinations of the applicable issues subject to such Arbitration. Each Party shall thereafter have an additional period of ten (10) Business Days to supply any rebuttal or other information it desires. The Arbitrator, in his/her sole discretion, may also request in writing, specific information and/or a hearing and shall alone otherwise determine the conduct of the Arbitration. Any information delivered or communicated during Arbitration by a Party shall be simultaneously delivered or communicated to (i) the other Party and (ii) the Arbitrator. The Arbitration shall be confidential, and the Parties shall maintain the confidential nature of the arbitration proceeding, arbitration hearing and award, except to the extent disclosure is required to regulators, to insurers, pursuant to an enforcement proceeding, or as otherwise required by applicable law.
- B.3 The Arbitrator shall determine all matters necessary to resolve the dispute, including matters beyond the expertise of the Arbitrator. The Arbitrator shall be permitted to employ other professional advisors or experts as the Arbitrator deems reasonably necessary, at the expense of the Parties.
- B.4 All costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in connection with an Arbitration shall be borne equally by the Parties, subject to reimbursement as set forth herein. Within forty-five (45) Business Days after the selection of an Arbitrator, the Arbitrator shall select one of the proposed determinations submitted by one of the Parties (and the Arbitrator shall not have the power to add to, modify, or change any of proposed determinations of the Parties). For purposes of this provision, the Party whose position is adopted by the Arbitrator will be deemed the prevailing Party. While each Party shall advance ½ of the costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in

connection with the Arbitration, the prevailing Party will be reimbursed by the non-prevailing party the ½ of the costs and expenses referenced herein within 30 days of the Arbitrator's final decision. All other costs and expenses incurred by the Parties shall be borne by the Party incurring same.

- B.5 The Parties agree to act in good faith with respect to any communication with the Arbitrator and the Arbitration process.
- B.6 Time shall be of the essence with respect to these Arbitration Procedures, and the Parties shall take all reasonable actions necessary to cause any necessary Arbitration hearing to occur promptly, and the Arbitrator shall be directed to arbitrate the dispute and issue its decision as soon as reasonably practicable, but in no event later than forty-five (45) Business Days after the appointment of the Arbitrator.
- B.7 The Arbitration shall not relieve any Party from any of its respective obligations under this Lease during the term of any such Arbitration (other than in respect of the subject matter of the dispute that is being arbitrated).
- B.8 In the event of a dispute between one or more of the Parties concerning this Lease and the Economic Development Incentive Agreement, and one or more of the Parties have elected to resolve such dispute pursuant to the Arbitration Procedures contained herein or in the Economic Development Incentive Agreement, there shall only be one Arbitration proceeding concerning such dispute (and not separate proceedings under this Lease and the Economic Development Incentive Agreement or under any of the other ground leases executed pursuant to the terms of the Economic Development Incentive Agreement). If more than one Arbitration proceeding has been initiated, such proceedings shall be consolidated.

**Exhibit "H"**  
**Arbitration Procedures**

## Exhibit "H"

### Arbitration Procedures

- H.1 In the event a Party, pursuant to the provisions of Section 13(l), has elected to provide the other Party with an Arbitration Notice, such Arbitration Notice shall include such Party's determinations of the applicable issues of the Dispute and Controversy subject to such Arbitration. In the event that the Arbitration Notice has been sent in accordance with the provisions hereof and the Agreement, the Parties shall mutually agree, within fifteen (15) Business Days of the deemed delivery date of the Arbitration Notice to the appointment of a single arbitrator (the "**Arbitrator**") to handle the Arbitration. If the Parties are unable to mutually agree upon the Arbitrator within the fifteen (15) Business Days described above, any Party may request the American Arbitration Association to independently select, within thirty (30) Business Days after such Arbitration Notice, an Arbitrator who has the qualifications to serve as the single Arbitrator to resolve this Arbitration. The Arbitration must take place in Tarrant County and be conducted by an Arbitrator that has no conflict of interest.
- H.2 Within fifteen (15) Business Days after the appointment of the Arbitrator, each Party shall supply the Arbitrator with such documents, materials or other evidence or written arguments as it or the Arbitrator desires, including such Party's proposed determinations of the applicable issues subject to such Arbitration. Each Party shall thereafter have an additional period of ten (10) Business Days to supply any rebuttal or other information it desires. The Arbitrator, in his/her sole discretion, may also request in writing, specific information and/or a hearing and shall alone otherwise determine the conduct of the Arbitration. Any information delivered or communicated during Arbitration by a Party shall be simultaneously delivered or communicated to (i) the other Party and (ii) the Arbitrator. The Arbitration shall be confidential, and the Parties shall maintain the confidential nature of the arbitration proceeding, arbitration hearing and award, except to the extent disclosure is required to regulators, to insurers, pursuant to an enforcement proceeding, or as otherwise required by applicable law.
- H.3 The Arbitrator shall determine all matters necessary to resolve the dispute, including matters beyond the expertise of the Arbitrator. The Arbitrator shall be permitted to employ other professional advisors or experts as the Arbitrator deems reasonably necessary, at the expense of the Parties.
- H.4 All costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in connection with an Arbitration shall be borne equally by the Parties, subject to reimbursement as set forth herein. Within forty-five (45) Business Days after the selection of an Arbitrator, the Arbitrator shall select one of the proposed determinations submitted by one of the Parties (and the Arbitrator shall not have the power to add to, modify, or change any of proposed determinations of the Parties). For purposes of this provision, the Party whose position is adopted by the Arbitrator will be deemed the prevailing Party. While each Party shall advance ½ of the costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in

connection with the Arbitration, the prevailing Party will be reimbursed by the non-prevailing party the ½ of the costs and expenses referenced herein within 30 days of the Arbitrator's final decision. All other costs and expenses incurred by the Parties shall be borne by the Party incurring same.

- H.5 The Parties agree to act in good faith with respect to any communication with the Arbitrator and the Arbitration process.
- H.6 Time shall be of the essence with respect to these Arbitration Procedures, and the Parties shall take all reasonable actions necessary to cause any necessary Arbitration hearing to occur promptly, and the Arbitrator shall be directed to arbitrate the dispute and issue its decision as soon as reasonably practicable, but in no event later than forty-five (45) Business Days after the appointment of the Arbitrator.
- H.7 The Arbitration shall not relieve any Party from any of its respective obligations under this Agreement during the term of any such Arbitration (other than in respect of the subject matter of the dispute that is being arbitrated).
- H.8 For all purposes of the Arbitration Procedures the City and ACCDC (or their respective successors and assigns of their respective interests in this Agreement) shall be referred to as a Party, Developer and ABDEB (or their respective successors and assigns of their respective interests in this Agreement) jointly shall be referred to as a Party and acting jointly, the City and ACCDC (or their respective successors and assigns of their respective interests in this Agreement) and, acting jointly, Developer and ABDEB (or such respective successors and assigns) shall be referred to as Parties. For all purposes of the Arbitration Procedures, Developer and ABDEB (or such respective successors and assigns) shall be considered one Party and shall act through Developer (or such respective successor and assign). For all purposes of the Arbitration Procedures, the City and ACCDC (or such respective successors and assigns) shall be considered one Party and shall act through the City (or such respective successor and assign).
- H.9 In the event of a dispute between one or more of the Parties concerning this Agreement and the Hotel Project Ground Lease, the Convention Center Annex Ground Lease and/or the Entertainment Project Ground Lease, and one or more of the Parties have elected to resolve such dispute pursuant to the Arbitration Procedures contained herein or in the Hotel Project Ground Lease, the Convention Center Annex Ground Lease and/or the Entertainment Project Ground Lease, there shall only be one Arbitration proceeding concerning such dispute (and not separate proceedings under this Agreement, the Hotel Project Ground Lease, the Convention Center Annex Ground Lease and/or the Entertainment Project Ground Lease). If more than one Arbitration proceeding has been initiated, such proceedings shall be consolidated.

**Exhibit "I"**  
**Form of the Deed**

**FORM OF SPECIAL WARRANTY DEED**

After Recording, Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER AND DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

KNOW ALL MEN BY THESE PRESENTS:

\_\_\_\_\_, a \_\_\_\_\_ (hereinafter called "**Grantor**"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD, and CONVEYED and by these presents does GRANT, BARGAIN, SELL, AND CONVEY unto \_\_\_\_\_, a Texas \_\_\_\_\_ ("**Grantee**"), the real property in Tarrant County, Texas, fully described in Exhibit A hereto, together with all rights, titles, and interests appurtenant thereto (collectively, the "**Property**").

This Special Warranty Deed and the conveyance hereinabove set forth is executed by Grantor and accepted by Grantee subject to the matters described in Exhibit B hereto, to the extent the same are validly existing and applicable to the Property (collectively, the "**Permitted Encumbrances**").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anywise belonging, unto Grantee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the title to the Property unto the said Grantee, its successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Grantor but not otherwise, subject to the Permitted Encumbrances.

Grantee's address is: c/o City Manager , 101 W. Abram Street, Arlington, Texas 76004-3231.

EXECUTED as of \_\_\_\_\_, 20\_\_.

**ATTEST:**

\_\_\_\_\_,  
a \_\_\_\_\_

\_\_\_\_\_  
SECRETARY

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

STATE OF TEXAS       §  
                                  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT A**

**LEGAL DESCRIPTION**

[SEE ATTACHED]

**EXHIBIT B**

**PERMITTED ENCUMBRANCES**

[SEE ATTACHED]